

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
LACINDA G. GERKE and CINDY GERKE	:	
& ASSOCIATES, INC.,	:	
	:	LS0608245REB
RESPONDENTS.	:	
	:	

Division of Enforcement Case No. 06 REB 041

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Lacinda G. Gerke
1005 Cliffwood Lane
La Crosse, WI 54601

Cindy Gerke & Associates, Inc.
1283 County Hwy. PH
Onalaska, WI 54650

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Real Estate Board (“Board”). The Board has reviewed the Stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

- Respondent **Lacinda G. Gerke** (“Gerke”), whose date of birth is November 18, 1950, and whose address of record with the Department of Regulation and Licensing (“Department”) is 1005 Cliffwood Lane, LaCrosse, WI, 54601, holds a license as a Real Estate Broker in the state of Wisconsin (90-38366). Ms. Gerke was first granted the license on July 22, 1986, pursuant to Wis. Stat. Ch. 452; the license is scheduled to expire on December 31, 2006.
- Respondent **Cindy Gerke & Associates, Inc.** (“Gerke & Associates”), whose address of record with the Department is 1283 County Hwy. PH, Onalaska, WI, 54650, holds a license as a Real Estate Business Entity in the state of Wisconsin (91-834616). Gerke & Associates was first granted the license on October 27, 1994, pursuant to Wis. Stat. Ch. 452; the license is scheduled to expire on December 31, 2006. At all times relevant to this matter, Ms. Gerke was the owner

and broker of record for Gerke & Associates.

3. On December 13, 2005, an auditor for the Department of Regulation and Licensing, Division of Enforcement, reviewed all documents related to the real estate trust account of Gerke & Associates.

4. On April 3, 2006, the auditor reviewed the results of the audit with Ms. Gerke. The auditor found that monthly reports required by Wis. Admin. Code Chap. RL 18 had not been completed for several months, including, but not necessarily limited to: bank reconciliations, trial balances and validations. Ms. Gerke acknowledged that such violations were explained to her.

5. A review of the records gathered during the course of the audit shows that as of January 31, 2006, the trust account was missing approximately \$7,484.78. Subsequently, Ms. Gerke supplied the auditor with evidence suggesting that \$5,000.00 in trust fund money had been inadvertently deposited into another account. On February 28, 2006, Ms. Gerke supplied a deposit slip to the auditor showing that \$7,484.78 had been deposited into the account.

6. On March 30, 2006, Ms. Gerke supplied the auditor with monthly reports, which the auditor commented on in order to educate Ms. Gerke regarding appropriate procedures to complete the reports.

7. Per Wis. Admin. Code § RL 18.031(1), "A broker shall deposit all real estate trust funds received by the broker... in a real estate trust account within 48 hours of the receipt of the trust funds.

8. Per Wis. Admin. Code § RL 18.13, "Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following: ... (3) The broker... shall reconcile the real estate trust account in writing each month... (4) The broker shall prepare... (a) "trial balance" of all open items in the real estate trust account... (5) The broker... shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled."

9. Per Wis. Admin. Code § RL 18.14, "A broker who fails to comply with the rules of this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14(3), Stats."

10. Per Wis. Stat. § 452.14(3), "...The board may revoke, suspend or limit any broker's... license... or reprimand the holder of the license... if it finds that the holder of the license or registration has: (i) Demonstrated incompetency to act as a broker... in a manner which safeguards the interests of the public;"

MITIGATING FACTORS

11. Ms. Gerke fully cooperated with the auditor at all times; Ms. Gerke promptly deposited the shortage of \$7,484.78 into the trust account upon receiving notification from the auditor; there is no evidence of intent to take funds that belong to another person; and there is no evidence that any person suffered any actual harm.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 452.14.

2. The Wisconsin Real Estate Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. By failing to timely conduct bank reconciliations, trial balances and validations, **Lacinda G. Gerke**, both as an individual broker, and as the licensee of record for **Cindy Gerke & Associates, Inc.**, violated Wis. Admin. Code § RL 18.13, thereby subjecting herself to discipline per Wis. Admin. Code § RL 18.14 and Wis. Stat. § 452.14(3)(i).

4. By placing \$5,000.00 in the wrong banking account, and by otherwise permitting her trust account to accumulate an unaccounted for deficit of over \$7,400.00, **Lacinda G. Gerke**, both as an individual broker, and as the licensee of record for **Cindy Gerke & Associates, Inc.**, violated Wis. Admin. Code § RL 18.031(1), thereby subjecting herself to discipline per Wis. Admin. Code § RL 18.14 and Wis. Stat. § 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The licenses of **Lacinda G. Gerke** and **Cindy Gerke and Associates, Inc.**, to practice as a real estate broker (#90-38366) and as a real estate entity (#91-834616) in the State of Wisconsin (#90-8421) shall be, and hereby are, **REPRIMANDED**, and is further **LIMITED** as follows: Respondents shall employ, at their own expense, a certified

public accountant to audit the trust account of **Lacinda G. Gerke and Cindy Gerke and Associates, Inc.** for compliance with Wis. Admin. Code Chap. RL 18 on a date to be randomly selected by the Department within twelve months of the date of signing of this Order. The results of the audit, together with any supporting documentation, shall be received by the Department Monitor within sixty (60) days of the date that the Department Monitor sends written notice to the Respondents requesting that the audit be performed. The materials received from the Certified Public Accountant may serve as the basis for additional disciplinary action against Respondents.

IT IS FURTHER ORDERED THAT:

2. **Lacinda G. Gerke and Cindy Gerke and Associates, Inc.**, shall be held jointly and severally liable for costs in this matter in the amount of \$1,000.00, which shall be paid by December 20, 2006.
3. All payments required by this Order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondents' licenses. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment as set forth above (if any), or fails to cause the Department Monitor to timely receive the results of an audit, as described above, the Respondents' licenses (90-38366 and 91-834616) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order, and with the suspension called for in this Order not to begin until the other terms of the Order have been complied with.
5. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

8/24/06
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
LACINDA G. GERKE and CINDY GERKE	:	
& ASSOCIATES, INC.,	:	LS# _____ REB
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 06 REB 041

It is hereby stipulated between **Lacinda G. Gerke**, Respondent, on her own behalf and on behalf of **Cindy Gerke & Associates, Inc.**, Respondent; and attorney Mark A. Herman, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondents’ licensures by the Division of Enforcement (Case No. 06 REB 041). Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondents have been provided with the opportunity to obtain the advice of legal counsel prior to signing this stipulation.
4. Respondents agree to the adoption of the attached Final Decision and Order by the Real Estate Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondents or their attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondents are informed that should the Board adopt this Stipulation, the Board’s final decision and order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Lacinda G. Gerke , Respondent, on her own behalf and behalf of Cindy Gerke & Associates Inc. 1283 County Hwy. PH Onalaska, WI 54650	Date

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Mark A. Herman, Attorney Department of Regulation and Licensing Division of Enforcement P.O. Box 8935 1400 East Washington Avenue Madison, WI 53708-8935	Date

[06 REB 041: Reprimand, Limitation, \$1,000 Costs.]