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IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
ROBIN H. WALLINGFORD and :
SIMON M. MARGULIUS, : LS0608247REB
 :
RESPONDENTS. :

Division of Enforcement Case No. 03 REB 257

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

Robin H. Wallingford
922 Ilya Avenue
Belgium, WI 53004

Simon M. Margulius
5678 Brown Deer Road
Milwaukee, WI 53223

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

1. Respondent Robin H. Wallingford (“Wallingford”), whose date of birth is October 22, 1962, and whose address of record with the Department of Regulation and Licensing (“Department”) is 922 Ilya Avenue, Belgium, WI, 53004,

holds a license as a Real Estate Salesperson in the state of Wisconsin (94-49369). Respondent was first granted the license on November 5, 1998, pursuant to Wis. Stat. Ch. 452. Ms. Wallingford's license is currently active, and is scheduled to expire on December 31, 2006.

2. Respondent Simon M. Margulius ("Margulius"), whose date of birth is March 14, 1950, and whose address of record with the Department is 5678 Brown Deer Road, Milwaukee, WI, 53223, holds a license as a Real Estate Broker in the state of Wisconsin (90-8421). Respondent was first granted the license on January 1, 1973, pursuant to Wis. Stat. Ch. 452, and the license is scheduled to expire on December 31, 2006. At all times relevant to this transaction, Mr. Margulius' trade name on file with the Department was House Search Realty, Inc.

3. Mr. Margulius and/or members of his immediate family own several corporations related to real estate. These include, but are not limited to: (a) House Search Realty, Inc., a corporation under through which Mr. Margulius operated as a real estate broker at all times relevant to this matter, but which is not active at this time; (b) AAA Properties, Inc., a corporation used by Mr. Margulius to manage rental properties; (c) various other corporations, some of which simply owned one property, including 5870 Corp, the owner of 5870 North 80th Street, Milwaukee, WI ("5870 N. 80th Street").

4. At all times relevant to this matter, and currently, Ms. Wallingford practices real estate under the supervision of Mr. Margulius, and is employed by one or more of Mr. Margulius' companies.

5. At all time relevant to this matter, Ms. Wallingford was licensed as a mortgage loan originator, and was employed as a mortgage loan originator through Moneyline Mortgage. Ms. Wallingford is still licensed as a mortgage loan originator, but is now employed as a mortgage loan originator through Amazing Mortgage. At all times relevant to this complaint, and currently, Ms. Wallingford conducted her activities as a mortgage loan originator in the same office where she conducted her activities as a real estate salesperson under the supervision of Mr. Margulius. Mr. Margulius was, at all times aware of Ms. Wallingford's activities, and incorporated Ms. Wallingford's status as a mortgage loan originator into his business plan.

6. On March 10, 2003, 5870 North 80th Street was listed for sale by Simon Margulius on behalf of 5870 Corp. The listing agent was Robin Wallingford of House Search Realty.

7. In July of 2003 L.R. received a flyer from AAA Properties Corp. The flyer indicated that AAA Properties had ten properties for sale and available for immediate occupancy. The flyer provided a telephone number to call for open house showing times. The flyer also claimed that the properties could be purchased, "FROM \$1995 DOWN." Beside a photo of each property were sales prices, a monthly payment amounts, and amounts that apparently represented down payments.

8. At some point L.R. also received a flyer stating that he had, "*Been Approved for One of Our Homes.*" The flyer is signed simply, "Si." The flyer is neither dated nor addressed to any person. Mr. Margulius admits that "Si" refers to himself.

9. L.R. responded to the flyers by contacting AAA Properties and meeting with Ms. Wallingford, who also offered to provide services as a mortgage loan originator.

10. On August 2nd, 2003, L.R. signed an offer to purchase 5870 North 80th Street ("offer"). Mr. Margulius admits that he drafted the offer, although the offer only states that it was drafted by House Search Realty, and does not state the licensee who drafted the offer. The offer does not state who presented the offer, but it was signed by Mr. Margulius as agent for the seller.

11. Notable terms of the offer include the following: (a) no earnest money was required by the offer; (b) the offer called for closing within 30 days, and contained a financing contingency; (c) the offer was also written as a secondary offer, although Mr. Margulius admits that there was no other pending offer at the time that the offer was accepted; and (d) the offer contained a provision stating that no ownership interest was created by acceptance of the offer.

12. No agency disclosure notice was provided to L.R. in the course of this transaction by either Mr. Margulius or Ms. Wallingford.

13. No written disclosure of Mr. Margulius' ownership interest in 5870 Corp. was made to L.R. during the course of this transaction, and notice was not provided to L.R. that Mr. Margulius was a licensee who was acting as a principal in the transaction.

14. There is no evidence that Ms. Wallingford disclosed to L.R. that she may receive compensation for providing mortgage loan originator services to L.R.

15. On August 18, 2003, L.R. paid \$350 to AAA Properties for home owners insurance for 5870 North 80th Street.

16. On August 22, 2003, L.R. signed a rental agreement with AAA Properties for the rent of 5870 North 80th Street. Per the rental agreement, the lease was month-to-month, rent was set at \$595, and a “nonrefundable option fee of \$1995” was charged. There is no explanation on the document what the “nonrefundable option fee” pertains to. Mr. Margulius and Ms. Wallingford assert that the placement of the amount “\$1995” on the “nonrefundable option fee” was in error. Mr. Margulius and Ms. Wallingford claim that the \$1995 amount was for the first month’s rent of \$595, plus a deposit of \$1400. L.R. claims that he believed that the \$1995 was part of the down payment for his purchase of the property.

17. On August 24, 2003, Mr. Margulius drafted a notice to L.R. that the offer was cancelled due to L.R.’s failure to secure financing. The notice states that it was delivered to L.R. at 5870 North 80th Street.

18. On September 10, 2003, L.R. was sent a notice stating that the rent was increasing from \$595 to \$950 per month as of October 1, 2003, and offering a \$750 refund if he would vacate the property by September 15, 2003. The notice does not specify the source of funds for the \$750 refund. The notice also served as a notice of termination of lease, and required L.R. to move by October 31, 2003.

19. On October 1, 2003, Ms. Wallingford, in her capacity as mortgage loan originator for Moneyline Mortgage, sent L.R. a credit denial notice.

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

21. Per Wis. Admin. Code § RL 24.01(3), “If a licensee violates rules in (Wis. Admin. Code Chap. RL 24), the licensee has demonstrated incompetency to act as a broker (or) salesperson... in such manner as to safeguard the interests of the public under s. 452.14(3)(i), Stats. However, the term “incompetency” is not limited in its meaning to violations of this chapter.”

22. Per Wis. Admin. Code § RL 24.04(2)(a), “... a broker shall in all advertising disclose the broker’s name exactly as printed on the broker’s license or disclose a trade name previously filed with the department...”

23. Per Wis. Admin. Code § RL 24.05(2), “A licensee acting as an agent in a real estate... transaction may not act in the transaction on the licensee’s own behalf... or on behalf of any other organization or business entity in which the licensee has an interest without the prior written consent of all parties to the transaction.”

24. Per Wis. Admin. Code § RL 24.05(3), “A licensee acting as an agent in a real estate... transaction may not recommend or suggest to a party to the transaction the services of another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest... unless the licensee, prior to or at the time of the referral, discloses the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services.”

25. Per Wis. Admin. Code § RL 24.05(5)(a), “A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her or its license status and intent to act in the transaction as a principal at the earliest of the following: 1. The first contact with the other party... where information regarding the other party or the transaction is being exchanged. 2. A showing of the property. 3. Any other negotiation with the seller or the listing broker.

26. Per Wis. Admin. Code § RL 24.07(8)(a)1., “Prior to providing brokerage services to a party, each licensee shall provide a copy of the agency disclosure form required under s. 452.135, Stats. If the services are for the sale of real estate used or intended to be used principally for one to 4 family residential purposes, the licensee shall, at the time the disclosure is provided, request the party to acknowledge in writing the receipt of a copy of the disclosure form.”

MITIGATING FACTORS

27. Mr. Margulius has acknowledged that his conduct as set forth above falls below the minimum standards of the profession, has engaged legal counsel competent in the area of real estate law to review his procedures, and has taken the broker pre-licensure course.

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 advertising the sale of real estate under a name other than his own name or his trade name on file with the Department, **Mr. Margulius** violated Wis. Admin. Code § RL 24.04(2)(a), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

4. By drafting an offer to purchase for L.R. without informing L.R. of his interest in 5870 Corp., and securing L.R.'s written consent to act as an agent in the transaction, **Mr. Margulius** violated Wis. Admin. Code § RL 24.05(2), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

5. By acting as an agent in a real estate transaction and offering L.R. services as a mortgage loan originator, without disclosing the fact that she would receive compensation for acting as a mortgage loan originator, **Ms. Wallingford** violated Wis. Admin. Code § RL 24.05(3), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

6. By failing to timely inform L.R. of his status as a licensee with intent to act as a principal in the real estate transaction, **Mr. Margulius** violated Wis. Admin. Code § RL 24.05(5), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

7. By providing brokerage services to L.R., without providing an agency disclosure form to him, **Mr. Margulius** and **Ms. Wallingford** violated Wis. Admin. Code § RL 24.07(8) (a), thereby subjecting themselves to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The license of **Simon M. Margulius** to practice as a real estate broker in the State of Wisconsin (#90-8421) shall be, and hereby is, REPRIMANDED, and is further LIMITED as follows:
 - a. **Mr. Margulius** may not advertise the sale of any real estate in which he has an ownership interest except under the name of "House Search Realty" (or other name which is registered with the Department as a brokerage entity) or through another licensed broker who is not affiliated with or employed by himself;
 - b. **Mr. Margulius** may not rent any real estate in which he has an ownership interest to any person who has a pending offer to purchase the same real estate except by use of Wisconsin Realtors Association Addendum O to the offer to purchase;
 - c. In the event that **Mr. Margulius** is renting a property to a person with a pending offer to purchase and the offer to purchase is cancelled, then he shall enter into a rental agreement that fixes the amount of rent to be charged for the property which is not different than the monthly equivalent of the rent charged under Wisconsin Realtors Association Addendum O, and which shall be fixed for a period of not less than twelve (12) months from the closing date called for by the offer to purchase;
 - d. **Mr. Margulius** must insure that all disclosures or consents required by the Real Estate Settlement Procedures Act ("RESPA") and/or Wis. Admin. Code Chap. RL 24 are made on a timely basis, and the language of the disclosure must specify the nature of his role, the interest, or the source of the profit disclosed, or comply with RESPA, where applicable; and
 - e. In addition to the conditions noted above, the following shall conditions shall apply where a person ("buyer") is purchasing any property in which **Mr. Margulius** has an ownership interest, where the buyer rents the property prior to closing, and where the buyer is being provided with mortgage loan origination services by **Mr. Margulius** or any person employed by or affiliated with **Mr. Margulius** ("mortgage broker"): (1) The mortgage broker will provide written notice to the buyer of the name and business address of every lender to which an application is being submitted; (2) The mortgage broker will provide written notice within five business days to the buyer of any information which leads the mortgage broker to believe that the loan might not be approved; a reminder will be included with the notice stating that the buyer may want to independently secure financing; (3) The mortgage broker will provide written notice to the buyer stating that the mortgage broker will not be able to secure financing for the buyer when the mortgage broker has reason to know that all lenders to whom an application has been submitted have rejected the application, and will notify the buyer to seek financing from another source; (4) Immediately following the sending of a notice under provision (3) of this sub-paragraph, **Mr. Margulius**, or the entity through which he is acting, will enter into an amendment to the offer to purchase granting the buyer an extension of time to secure financing, which shall be no less than thirty (30) days from the date of mailing the notice under provision (3) of this sub-paragraph to the buyer.

2. The license of **Robin H. Wallingford** (#94-49369) shall be, and hereby is, REPRIMANDED.

IT IS FURTHER ORDERED THAT:

3. Respondent **Simon M. Margulius**, shall, by November 15, 2006, pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$3,000.00. In the event of non-payment by **Mr. Margulius** Respondent **Robin H. Wallingford** shall be held jointly and severally liable for the payment of costs.
4. 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

5. 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 timely submit proof of completion of education as set forth above (if any), the Respondents' licenses (90-8421 and 94-49369) 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.
6. 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 :
:
ROBIN H. WALLINGFORD and :
SIMON M. MARGULIUS, :
:
RESPONDENTS. :

STIPULATION

LS# _____

Division of Enforcement Case No. 03 REB 257

It is hereby stipulated between Robin H. Wallingford, Respondent; Simon M. Margulius, Respondent; attorney Alan H. Deutch, attorney for Respondents; 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. 03 REB 257). 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. Respondent waives 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.

Robin H. Wallingford, Respondent
922 Iyla Avenue
Belgium, WI 53004

Date

Simon M. Margulius, Respondent
5678 West Brown Deer Road
Milwaukee, WI 53223

Date

Alan H. Deutch, Attorney for Respondents
Deutch & Weiss, LLC
7670 North Port Washington Road, Suite 200
Fox Point, WI 53217

Date

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

[03 REB 257: Reprimand, Limitation, \$3,000 Costs.]