

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
MARK W. CARLSON and CALRSON	:	
EVERGREEN AGENCY, INC.,	:	LS0610264REB
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 03 REB 222 and 04 REB 013

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

Mark W. Carlson
2002 260th Avenue
Luck, WI 54853

Carlson Evergreen Agency, Inc.
2002 260th Avenue
Luck, WI 54853

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 **Mark W. Carlson** (“Carlson”), whose date of birth is December 6, 1963, and whose address of record with the Department of Regulation and Licensing (“Department”) is 2002 260th Avenue, Luck WI, holds a license as a Real Estate Broker in the state of Wisconsin (#90-50194). Mr. Carlson was first granted the license on April 13, 2000, pursuant to Wis. Stat. Ch. 452; the license is scheduled to expire on December 31, 2006. Mr. Carlson’s license expired on December 31, 2002, was placed in expired status by the Department on January 8, 2003, and was not placed in active status until February 17, 2003. At all times relevant to this complaint Mr. Carlson was practicing as a licensed broker.

2. Respondent **Carlson Evergreen Agency, Inc.** (“Agency”), which does business as Osceola Realty, and whose address of record with the Department is P.O. Box 6, Cascade, WI 54020, is a licensed Real Estate Entity in the state of Wisconsin (#91-15137). The Agency’s license was first issued on March 6, 1978, and is scheduled to expire on December 31, 2006. The Agency’s license did expire on December 31, 2002, was placed in expired status by the Department on January 8, 2003, and was not placed in active status until February 21, 2003. At all time relevant to this complaint the Agency was practicing as a licensed real estate entity by and through more than one licensed broker.

3. On May 3, 2003, R.S. (Seller), and married resident of the state of Wisconsin, entered into a listing agreement for the sale of vacant land with Mr. Carlson and the Agency. The listing agreement ran from May 5, 2003 to May 5, 2004, offered a ten (10) acre parcel (“parcel”) for sale for the sum of \$70,000, with a commission of \$5,000 due under the terms of the listing agreement. Seller’s spouse (Spouse), asserts that she was not aware of the listing agreement at the time that it was entered into, and there is no evidence that Spouse was aware that the parcel was being offered for sale until August 18, 2003. Spouse had an ownership interest in the parcel.

4. On July 18, 2003, the listing agreement was amended to lower the sales price for the parcel to \$59,500. The amendment to the listing agreement was signed by Seller, but not by Spouse.

5. On August 5, 2003, S.D. and J.D. (Buyers) made an offer to purchase the parcel. The terms of the offer were an exchange of land valued at \$30,000, and the sum of \$19,500 in cash. The offer to purchase does not state who presented the offer to Seller or when. However, Mr. Carlson presented the offer to purchase to Seller, and assisted Seller in drafting a counter-offer on August 8, 2003. The counter-offer was signed by Seller, but not Spouse. Buyers countered this offer, and again there is no indication as to when the counter-offer was presented to Seller, and again Seller initialed the counter-offer, but not Spouse. However, counter-offer #3 was prepared by Mr. Carlson on August 18, 2003, and signed by both Seller and Spouse. The transaction collapsed on August 29, 2003, after an exchange of more counter-offers. In one of the final counter-offers authored by the Buyer he offered to sell fifteen (15) acres for \$70,000.

6. On September 3, 2003, Mr. Carlson contacted the real estate licensee (Agent) who was representing the Buyers, and asked whether Buyers were still interested in purchasing the ten (10) acre parcel. The Agent stated that they were. On September 3, 2003, Buyers made a new offer to purchase the parcel for the sum of \$49,500. Response was due by September 5, 2003.

7. On September 4, 2003, Mr. Carlson offered to purchase the parcel himself, plus and additional five acres, for the sum of \$70,000. Seller signed the offer to purchase, but Spouse did not. Under the terms of the offer no earnest money was due. Under the terms of the offer the Seller was to pay half of the cost of a survey, and to finance the purchase by a land contract with a term of two years, an interest rate of 0%, and with one payment due at the end of the term. Mr. Carlson did not present the offer to purchase to from the Buyers, described in paragraph 6, above, but the Seller was aware that Mr. Carlson would be selling ten of the fifteen acres that he purchased to Buyers.

8. On September 4, 2003, Mr. Carlson accepted the offer to purchase from the Buyers as the seller of the parcel.

9. Sometime after September 4, 2003, Seller contacted Mr. Carlson and told him that he wanted out of his agreement to sell the parcel to Mr. Carlson. Mr. Carlson agreed.

10. On September 19, 2003, Buyers again drafted an offer to purchase the parcel from Sellers. The offer was to expire on September 22, 2003. Buyers offered to pay \$50,000 for the parcel. A cancellation and mutual release agreement was executed by Mr. Carlson and Seller dated September 18, 2003. Mr. Carlson states that he did not execute the agreement until an agreement to sell the parcel to the Buyers was in place, because otherwise he would have been required by the terms of the offer to purchase executed between himself and the Buyers to produce a ten (10) acre parcel.

11. On September 19, 2003, F.B. and A.B. drafted and signed an offer to purchase the parcel from Sellers. The offer was to expire on September 22, 2003. Mr. Carlson rejected the offer to purchase. Mr. Carlson asserts that he believed that he was still the seller at the time that he rejected the offer to purchase from F.B. and A.B. Mr. Carlson did not present the Sellers about the offer to purchase from F.B. and A.B. However, Sellers had been contacted directly by F.B. and A.B., and were expecting to receive an offer to purchase from F.B. and A.B. F.B. and A.B. offered to pay \$59,500 for the parcel.

12. Per Wis. Stat. § 452.03, “No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as... a broker or salesperson without a license.”

13. Per Wis. Stat. § 452.12(2)(a), “A license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The license issued to the business entity entitles each business representative of the business entity who is a licensed broker to act as a broker on behalf of the business entity.”

14. Per Wis. Admin. Code § RL 24.03(2)(c), “Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors.”

15. Per Wis. Admin. Code § RL 24.13, “(2)... (b)Licensees shall present promptly all offers received to the seller... for consideration...”

16. Per Wis. Admin. Code § RL 24.01(3), “If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker... in such manner as to safeguard the interest of the public under s. 452.14(3)(i), Stats.”

17. Per Wis. Stat. § 452.133(2), “In addition to his or her duties under sub.(1), a broker providing brokerage services to his or her client shall do all of the following: (a) Loyally represent the client’s interests by placing the client’s interests ahead of the interests of any other party...”

18. 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... salesperson... in a manner which safeguards the interests of the public;... and (L) Violated any provision of this chapter;”

19. Mr. Carlson acknowledges that his actions were not proper, but feels asserts that his primary goal was to create a win-win situation by delivering the ten acre parcel to the Buyers, and by delivering to the Sellers a sum of \$70,000, when the Sellers’ goal was to raise \$60,000 in cash. The additional benefit to himself of purchasing five acres for \$20,000 was not his primary goal.

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 holding himself out to the public as a licensed broker while his license was expired, as described above in paragraph 1 of the findings of fact, Respondent **Mark W. Carlson** violated Wis. Stat. § 452.03, thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(L).

4. By being represented by two or more brokers while its license was expired, as described above in paragraph 2 of the findings of fact, Respondent **Carlson Evergreen Agency, Inc.**, d/b/a Osceola Realty, violated Wis. Stat. § 452.12(2)(a), thereby subjecting itself to discipline per Wis. Stat. § 452.14(3)(L).

5. By drafting and forwarding a counter-offer to the representative of a potential buyer, without the knowledge or consent of the a spouse with an ownership interest in the property, as described above in paragraph 5 of the findings of fact, and with specific reference to the counter-offer signed by one spouse on August 8, 2003, Respondent **Mark W. Carlson** failed to be knowledgeable regarding laws affecting real estate and violated Wis. Admin. Code § 24.03(2)(c), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

6. By failing to indicate on various offers or counter-offers that he presented the offers to purchase, and by failing to note the date that the offers or counter-offers were presented, as described above in paragraph 5 of the findings of fact, Respondent **Mark W. Carlson** demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(i)

7. By failing to submit an offer to purchase to the Sellers for a higher purchase price than offered by the Buyers, Respondent **Mark W. Carlson** failed to loyally represent his clients, in violation of Wis. Stat. § 452.133(2)(a), thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(L).

8. By signing an offer to purchase the parcel from Buyers as the seller, under the theory that he held equitable title to the parcel, when, in fact, the land contract had not been executed, and, therefore, there was still an outstanding contingency and equitable title had not passed to him, Respondent **Mark W. Carlson** failed to be knowledgeable regarding laws affecting real estate and violated Wis. Admin. Code § 24.03(2)(c); and failed to promptly present an offer to purchase to the seller in

violation of Wis. Admin. Code § RL 24.13(2)(b); thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

9. By refusing to submit an offer to purchase to the Sellers from F.B. and A.B., and by rejecting the offer to purchase as the seller, even though he had previously executed a cancellation and mutual release agreement nullifying his offer to purchase the parcel, Respondent **Mark W. Carlson** failed to be knowledgeable regarding laws affecting real estate and violated Wis. Admin. Code § 24.03(2)(c); and refused to present an offer to purchase to the seller in violation of Wis. Admin. Code § RL 24.13(1); thereby subjecting himself 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 **Mark W. Carlson** to practice as a real estate broker (#90-50194) shall be, and hereby is, **SUSPENDED** for a period of **SIXTY (60) DAYS**, beginning November 2, 2006.

IT IS FURTHER ORDERED THAT:

2. The license of **Carlson Evergreen Agency, Inc.**, as a real estate entity (#91-15137) shall be, and hereby is, **REPRIMNDED**.
3. **Mark W. Carlson** and **Carlson Evergreen Agency, Inc.**, shall pay to the Department of Regulation and Licensing costs incurred in investigating and resolving this matter in the total amount of \$1,800.00. Respondents shall be held jointly and severally liable for the payment of costs. Costs shall be due on May 1, 2007.
4. **Mark W. Carlson** shall take and successfully complete the broker pre-licensure course, to include the testing component. Education required by this Order is for remedial purposes only, and may not be counted towards fulfillment of Respondent's continuing education requirements. Education required by this Order shall be completed by May 1, 2007.
5. Payments required by this Order and proof completion of education 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

6. 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 (#90-50194 and #91-15137). 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 Respondents fail 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 (#90-50194 and/or #91-15137, as applicable) **SHALL BE SUSPENDED**, without further notice or hearing, until Respondents have complied with the terms of this Order.

7. This Order is effective on the date of signing.
8. Division of Enforcement Case No. 03 REB 222 and 04 REB 013 are hereby closed.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

10/26/2006
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
MARK W. CARLSON and CALRSON	:	
EVERGREEN AGENCY, INC.,	:	LS# _____ REB
	:	
RESPONDENTS.	:	

Division of Enforcement Case No.s 03 REB 222 and 04 REB 013

It is hereby stipulated between **Mark W. Carlson**, Respondent, on his own behalf and on behalf of **Carlson Evergreen Agency, 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 pending investigations of Respondents' licensures by the Division of Enforcement (Case No.s 03 REB 222 and 04 REB 013). 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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Mark W. Carlson , Respondent, on his own behalf and on behalf of Carlson Evergreen Agency, Inc. 2002 260 th Avenue Luck, WI 54853	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