

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**
PATRICK J. CONNORS, D/B/A :
CASTLE ROCK REALTY, AND : **04 REB 261**
RALPH D. AUSTIN :
RESPONDENTS. : **LS0711293REB**

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

Patrick J. Connors d/b/a
Castle Rock Realty
P.O. Box 318
Mauston, WI 53948

Ralph D. Austin
N4955 State Rd. 58
Mauston, WI 53948

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
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 disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **Patrick J. Connors**, date of birth 05/12/52, is licensed as a real estate broker having license # 90-31507. This license was first granted to him on 04/05/82. Connors's most recent address on file with the Department of Regulation and Licensing is P.O. Box 318, Mauston, WI 53948. Connors does business under the trade name of "Castle Rock Realty." Connors is the supervising broker of Castle Rock Realty.

2. **Ralph D. Austin**, date of birth 08/05/32, is licensed as a real estate salesperson having license # 94-28630. This license was first granted to him on 5/12/88. Mr. Austin's most recent address on file with the Department of Regulation and Licensing is N4955 State Rd. 58, Mauston, WI 53948.

3. At all times relevant hereto Mr. Austin was employed by Mr. Connors as a salesperson as that term is used in chapter 452 of the Wisconsin Statutes.

4. On or about May 29, 2002, Mr. Austin, on behalf of Castle Rock Realty, entered into a WB-1 RESIDENTIAL LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL with Gail and William Mitchell for the marketing of their vacation home. The Mitchells' vacation home was located at N10596 Lakeside Court, Necedah, WI. The list price was to be \$79,900.00. The term of the initial listing contract was from May 28, 2002 through November 28, 2002.

5. By amendment dated November 25, 2002, the listing contract was extended from November 28, 2002 to May 28, 2003. By amendment dated May 28, 2003, the listing contract was extended from May 28, 2003 to November 28, 2003. Castle Rock Realty was unable to produce any other amendment to the listing contract.

6. On or about March 3, 2004, Mr. Austin, on behalf of Castle Rock Realty and as an agent of the seller, drafted a WB-11 RESIDENTIAL OFFER TO PURCHASE for Marshall Baltazar for the Lakeside Court property. The offered price was \$75,000.00 and earnest money of \$500.00 accompanied the Offer. Lines 149-150 of the Offer to Purchase read: "Financing contingency: This Offer is contingent upon Buyer being able to obtain a Fixed Rate first mortgage loan commitment as described below, within 30 days of acceptance of this Offer"

7. The Offer was accepted by the Mitchells on March 5, 2004.

8. The closing date was originally set for April 9, 2004, but by amendments to the offer the closing was changed to April 23, 2004, then to April 30, 2004, and then to May 21, 2004.

9. Mr. Austin suggested that Mr. Baltazar contact Metro Mortgage in order to obtain a home mortgage. Mr. Baltazar paid Metro Mortgage \$400.00 to start the process of obtaining a home loan. Metro Mortgage would not approve the loan until a few conditions were met including a railing being put around the outside patio deck. Mr. Austin suggested that if Mr. Baltazar wanted the loan then he should pay to have the railing put on the deck. When Mr. Baltazar was about to start working on the deck railing, Mr. Austin notified him that his loan was cancelled. No reason for the cancellation was given.

10. Mr. Baltazar gave Metro Mortgage an additional \$300.00 to pursue other loan possibilities. Eventually Mr. Austin notified Mr. Baltazar that Metro Mortgage was unable to obtain a loan on this property because the home was a "modular home" and it was discovered that the home was not anchored to the foundation.

11. After the loan fell through, Mr. Baltazar decided that he no longer wanted to pursue the purchase of the Lakeside Court property. Mr. Baltazar requested the return of his \$500.00 earnest money. Mr. Austin told Mr. Baltazar that he used the earnest money to pay for various tests that were performed on the property. Mr. Austin also told Mr. Baltazar that he owed him an additional \$385.00 for the extra tests and work done on the property.

12. At no time did Mr. Austin have a written agreement regarding who would be financially responsible for the tests that he ordered without the knowledge of, or approval of, Mr. Baltazar.

13. At no time did Mr. Austin obtain signatures on a Cancellation and Mutual Release for the disbursement of the earnest money.

14. This transaction failed to close and Mr. Baltazar never received his earnest money.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondent **Patrick J. Connors d/b/a Castle Rock Realty** has violated Wis. Admin Code §§ RL 17.08(1)

and RL 17.08(2) and Wis. Stat. §§ 452.12(3) and 452.14(3)(i) of the Wisconsin Statutes by failing to appropriately supervise the real estate activities of Ralph D. Austin, a real estate salesperson under his supervision.

3. Respondent **Ralph D. Austin** has violated:

a. Wis. Admin. Code § RL 24.025(2), by continuing to market the property after the listing contract expired;

b. Wis. Admin. Code § RL 18.09(1)(b) by failing to execute a Cancellation and Mutual Release form that would have indicated what was to be done with the \$500 in earnest money;

c. Wis. Admin. Code § RL 24.08 by failing to reduce all agreements to writing regarding the financial responsibilities for tests ordered by Mr. Austin;

d. Wis. Stat. § 452.14(3)(i) by demonstrating incompetency to act as a real estate salesperson in a manner which safeguards the interests of the public; and

e. Wis. Stat. §§ 452.133(1)(b) and 452.14(3)(L) of the Wisconsin Statutes by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED that:

1. Respondent **Patrick J. Connors**, license # 90-31507, be, and hereby is, **REPRIMANDED**.

2. Respondent **Ralph D. Austin**, license # 94-28630, be, and hereby is, **REPRIMANDED**.

3. Respondent **Patrick J. Connors**, within six months of the date of this Order, successfully complete a **contracts course** that is a minimum of 3 hours and submit proof of the same in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

4. Respondent **Ralph D. Austin**, within six months of the date of this Order, successfully complete a **contracts course** that is a minimum of 3 hours and submit proof of the same in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED that:

5. Respondent **Patrick J. Connors** shall, within 60 days of the date of this Order, pay a **forfeiture in the amount of \$500.00**.

6. Respondent **Ralph D. Austin** shall, within 60 days of the date of this Order, pay a **forfeiture in the amount of \$500.00**.

7. Respondents **Patrick J. Connors** and **Ralph D. Austin**, shall jointly and severally pay **COSTS** in this matter in the amount of **\$1,240.00**, within 90 days of the date of this Order.

Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement

8. 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 Respondents fail to timely submit any payment as ordered or complete the education in the manner stated above, the Respondents' licenses SHALL BE SUSPENDED, without further notice or hearing, until Respondents have complied with the terms of this Order.

9. This Order is effective on the date of its signing.

Dated this 29th day of November, 2007.

WISCONSIN REAL ESTATE BOARD

By: Peter A. Sveum
A member of the Board