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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

DIANE J. WOODWARD AND	:	FINAL DECISION
WOODWARD APPRAISAL &	:	AND ORDER
REAL ESTATE, INC.,	:	Case No. LS0512141REB
RESPONDENTS.	:	

[DOE Case File #03REB108]

The parties to this action for purposes of §227.53, Wis. Stats., are:

Diane J. Woodward and Woodward Appraisal & Real Estate, Inc.
c/o Mr. Scott A. Swid
Swid Law Offices
415 Orbiting Drive
Suite A
Mosinee, WI 54455-1762

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

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on December 6 and 7, 2006, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by Attorney John N. Schweitzer. Attorneys Scott A. Swid and Benjamin Krautkramer appeared on behalf of Diane J. Woodward and Woodward Appraisal & Real Estate, Inc.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Diane J. Woodward (dob 2/25/49) is a Wisconsin licensed real estate broker (License # 90-48887). Her credential was first granted on March 17, 1997. Ms. Woodward's most recent address on file with the Department of Regulation and Licensing is 1021 Western Avenue in Mosinee, Wisconsin.
2. Ms. Woodward is the broker and owner of Woodward Auction Appraisal & Real Estate Inc., (License # 91 834657) located at 1021 Western Avenue in Mosinee, Wisconsin.
3. On or about July 21, 2002, Ms. Woodward entered into a residential listing contract with an exclusive right to sell with Heidi Reichartz. Ms. Reichartz had been appointed as the personal representative for her brother's estate and in that capacity listed his home and adjoining property located at 2227 Hwy 153 E in Mosinee, Wisconsin, for \$135,000.00. The closing date identified in the listing contract was to be no later than February 28, 2003. The listing contract had an expiration date of December 31, 2002. Ms. Reichartz had never resided in the home and had no knowledge of its condition.
4. Line 239 of the listing contract states that the "seller requests monthly report of showings, seller requests Diane Woodward be present at all showings."
5. Lines 240 and 241 of the listing contract contain a handwritten statement: "Seller request no lock box at property key to be kept in Woodward real estate's possession". The statement was added after the listing contract was signed by Ms. Reichartz. Ms. Woodward did not formally amend the listing contract to include this language.
6. On December 31, 2003, the listing contract between Ms. Woodward and Ms. Reichartz expired. On or about January 6, 2003, Ms. Reichartz received an extension agreement for the expired listing contract from Ms. Woodward. Ms. Reichartz did not sign or return the extension agreement.
7. Ms. Woodward continued to market the property without a contract, and on or about January 9, 2003, Ms. Woodward forwarded a written offer to purchase from Frank Zastrow to Ms. Reichartz. The offer expressly stated the property was being sold "as is/without warranties".
8. On or about January 10, 2003, Ms. Woodward inquired whether Ms. Reichartz had received the extension to the listing contract. Ms. Reichartz explained that she needed to discuss plans with regard to the property with her sisters. Ms. Reichartz did not sign the extension agreement.
9. On or about January 11, 2003, Ms. Woodward called Ms. Reichartz and explained that there was a second Offer To Purchase from Gerald Pilch.
10. Thereafter, Ms. Woodward recommended to Ms. Reichartz that she respond to the two offers (Zastrow and Pilch) with a Multiple Counter Proposal. Ms. Woodward forwarded the documents to Ms. Reichartz, and Ms. Reichartz approved the Pilch Multiple Counter Proposal and returned it to Ms. Woodward by facsimile transmission. A thorough discussion of the terms of the offer was held with Ms. Reichartz on January 20, 2003.
11. The terms of the Pilch offer and the Zastrow offer were not identical. The Pilch Offer did not include language that the property was being sold "as is/no warranty." The closing dates also differed. The Pilch offer also contained a zoning contingency for a new horse arena.
12. On or about January 23, 2003, Attorney Konrad Tuchscherer contacted Ms. Woodward regarding an addendum to the Pilch Offer to Purchase. The addendum required Mr. Pilch to accept the property in "as is" condition. It also contained a closing date of April 4, 2003.
13. On or about February 7, 2003, Ms. Woodward called Ms. Reichartz's mother who was not a party to the transaction, and told her details about it. She also wrote a letter to Ms. Reichartz's parents.

14. Later that same month, Ms. Reichartz wrote to Ms. Woodward asking her to return the house keys to her.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to § 452.14, Wis. Stats.
2. By continuing to market the property as described in Finding of Fact #3 after the listing contract expired, Diane J. Woodward and Woodward Auction Appraisal & Real Estate Inc., violated § RL 24.025 (2), Wis. Admin. Code.
3. By contacting Ms. Reichartz's parents and discussing details of the transaction with them as set forth in Finding of Fact #13 and #14, Diane J. Woodward and Woodward Auction Appraisal & Real Estate Inc., violated § RL 24.025 (1), Wis. Admin. Code and § 452.133 (1) (d), Wis. Stats.

ORDER

IT IS HEREBY ORDERED: No discipline is imposed.

EXPLANATION OF VARIANCE

The Board has accepted those Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge (ALJ). The Board has not accepted the ALJ's recommended Order.

For discipline, the ALJ had proposed that:

NOW THEREFORE IT IS HEREBY ORDERED that Diane J. Woodward is REPRIMANDED.

IT IS FURTHER ORDERED that Ms. Woodward complete a minimum of sixteen class hours of continuing education in the areas of real estate sales and ethics to be approved in advance by the Real Estate Board. Ms. Woodward shall submit proof of her course completion to the Monitor at the Department of Regulation and Licensing at P.O. Box 8935, Madison, Wisconsin 53708-8935. None of the education completed pursuant to this Order may be used to satisfy any of the biennial continuing education requirements necessary for renewal.

IT IS FURTHER ORDERED that Ms. Woodward pay one-third of the total assessable costs in this matter pursuant to sec. 440.22, Wis. Stats.

After reviewing the record in this case as well as the ALJ's proposed decision and the parties' written objections and responses thereto, the Board exercises its discretion to determine that no discipline is imposed.

Dated: October 18, 2007

Lisabeth Weirich
Vice Chair
Wisconsin Real Estate Board

