

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
GARY A. NATHAN and WOODLAND :
DEVELOPMENTS & REALTY :
 : LS0711295REB
RESPONDENTS. :
 :

Division of Enforcement Case No. 06 REB 123

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

Gary A. Nathan
8540 North Woodland Road
Hayward, WI 54843

Woodland Developments & Realty
Woodland Court, Suite 102
15617 Railroad Street
Hayward, WI 54843

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 **Gary A. Nathan** (“Nathan”), whose date of birth is June 15, 1951, and whose address of record with the Department of Regulation and Licensing (“Department”) is 8540 North Woodland Road, Hayward, WI 54843, holds a license as a Real Estate Broker in the state of Wisconsin (90-48973). Mr. Nathan was first granted the license on May 13, 1997, pursuant to Wis. Stat. Ch. 452; the license is scheduled to expire on December 14, 2008.

2. Respondent **Woodland Developments & Realty** ("WD&R"), whose address of record with the Department is Woodland Court, Suite 102, 15617 Railroad Street, Hayward, WI 54843, holds a license as a Real Estate Business Entity in the state of Wisconsin (91-933332). WD&R was first granted the license on March 29, 2000, pursuant to Wis. Stat. Ch. 452; the license is scheduled to expire on December 14, 2008. At all times relevant to this matter, Mr. Nathan was the owner and broker of record for WD&R.

3. On July 1, 2002, WD&R, by and through Mr. Nathan, entered into a listing agreement with E.H. and J. H. to sell a business and property referred to as Spider Lake Resort ("Resort").

4. On February 14, 2003, Mr. Nathan drafted an offer to purchase the Resort, including an addendum that included conditions such as seller financing. Per the offer to purchase the buyers were D.S. and A.A. ("Buyers"). Mr. Nathan acknowledged in the offer to purchase that A.A. was a real estate licensee employed by his firm. Mr. Nathan also acknowledged that D.S. and A.A. had asked Mr. Nathan to join them as buyers of the property, but that Mr. Nathan had declined the request at that time.

5. On February 15, 2003, Mr. Nathan assisted E.H. and J.H. in drafting a counter-offer. The counter-offer was accepted by the Buyers on February 17, 2003.

6. On April 27, 2003, Mr. Nathan informed a representative of E.H. and J.H. via a letter (which was not a contract) that he had decided to join D.S. and A.A. as a buyer of the Resort. In the same writing Mr. Nathan informed the representative that closing was set for May 1, 2003.

7. Per Wis. Admin. Code § 24.05 (2), "A licensee acting as an agent in a real estate business opportunity 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. For the purpose of this subsection, a licensee may obtain the written consent in the offer to purchase, option, lease or other transaction contract" (emphasis added).

8. 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."

9. 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

10. Mr. Nathan exceeded disclosure requirements by disclosing in the offer to purchase that he had been approached regarding whether he would participate in the transaction as a buyer. This action suggests that Mr. Nathan may not have intentionally violated the law by later failing to gain his client's consent to acting in the transaction as a buyer. However, acting as a buyer when a licensee's client is the seller is an inherent conflict of interest, which cannot be undertaken without the client's consent.

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 acting as a buyer when he had already undertaken the obligations of an agent to the seller, without seeking the client's consent, and without obtaining the consent in a written contract that was part of the transaction, **Gary A. Nathan** violated Wis. Admin. Code § RL 24.05 (2), thereby subjecting herself to discipline per Wis. Admin. Code § RL 18.14 and Wis. Stat. § 452.14 (3) (i).

4. Per Wis. Stat. § 452.12 (3), **Woodland Developments & Realty** is subject to discipline based upon the actions of Mr. Nathan, as set forth in above in paragraph 3 of these Conclusions of Law.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The licenses of **Gary A. Nathan** and **Woodland Developments & Realty**, to practice as a real estate broker (#90-48973) and as a real estate entity (#91-933332) in the State of Wisconsin shall be, and hereby are, **REPRIMANDED**.

IT IS FURTHER ORDERED THAT:

2. **Gary A. Nathan** and **Woodland Developments & Realty**, shall be held jointly and severally liable for costs in this matter in the amount of \$1,200.00, and a forfeiture in the amount of \$500.00, both of which shall be paid within ninety (90) days of the date of signing of this Order.
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 timely submit proof of completion of education as set forth above (if any), 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

11/29/07
Date

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

STIPULATION

GARY A. NATHAN and WOODLAND :
DEVELOPMENTS & REALTY :

LS# _____ REB

RESPONDENTS. :

Division of Enforcement Case No. 06 REB 123

It is hereby stipulated between **Gary A. Nathan**, Respondent, on his own behalf and on behalf of **Woodland Developments & Realty**, 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 123). 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.

Gary A. Nathan, Respondent, on his
own behalf and behalf of
Woodland Developments & Realty
Woodland Court, Suite 102
15617 Railroad Street
Hayward, WI 54843

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