

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. SHOWERS, LOUIS V.	:	
BREELER and REAL MARKETING,	:	LS0808214REB
LLC	:	
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 05 REB 148

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

Mark W. Showers
280 East Fernau Avenue
Oshkosh, WI 54904

Louis V. Breeler
280 East Fernau Avenue
Oshkosh, WI 54904

Real Marketing, LLC
280 East Fernau Avenue
Oshkosh, WI 54904

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. The Board has reviewed the attached Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Mark W. Showers ("Showers"), whose date of birth is July 31, 1965, is duly licensed as a Real Estate Broker in the state of Wisconsin (90-51968). Ms. Shower's most recent address of record on file with the Department of Regulation and Licensing ("Department") is 280 East Fernau Avenue, Oshkosh, WI 54904. The license was first granted on January 6, 2004, and is due to expire on December 14, 2008.

2. Louis V. Breeler ("Breeler"), whose date of birth is March 20, 1967, is duly licensed as a Real Estate Broker in the state of Wisconsin (90-54018). Mr. Breeler's most recent address of record on file with the Department is 280 East Fernau Avenue, Oshkosh, WI 54904. The license was first granted on September 14, 2006, and is due to expire on December 14, 2008. At the time of this transaction Mr. Breeler was licensed as a Real Estate Salesperson (94-58986). The license was first granted on January 14, 2004, and expired on December 31, 2006.

3. Real Marketing, LLC, is duly licensed as a Real Estate Entity in the state of Wisconsin (91-700894). Real Marketing's most recent address of record on file with the Department is 280 East Fernau Avenue, Oshkosh, WI 54904. The license was first granted on April 12, 2004, and is due to expire on December 14, 2008. Mark W. Showers was the owner of Real Marketing, LLC, at all times relevant to this matter. Department records indicate that Mr. Breeler is the owner of Real Marketing as of 2006.

4. On September 11, 2004, Mr. Breeler, acting as a representative of Real Marketing, LLC, entered into a Residential Listing Contract with L.O. ("seller") for the sale of real property located at 413 West 16th Avenue, Oshkosh, WI ("property"). The initial list price was \$84,900, which was later amended to \$81,900.

5. On April 8, 2005, Mr. Breeler assisted P.F. ("1st Buyer") in drafting an Offer to Purchase the property for the sum of \$74,500. On April 9, 2005, Mr. Breeler presented the Offer to Purchase to the seller, L.O. The seller and buyer each made a counter offer with an eventual sales price of \$76,500 being agreed to by the parties on April 10, 2005.

6. By April 12, 2005, Mr. Breeler and his supervising broker, Mr. Showers, learned that the seller had not kept up with mortgage payments and utility bills, with arrearages estimated at \$4,000.

7. Mr. Showers contacted the 1st Buyer on or before April 18, 2005, explained the situation, and asked whether the 1st Buyer would increase the purchase price to cover the arrearages. The 1st Buyer indicated that she would not. Subsequently, Mr. Showers and Mr. Breeler presented the 1st Buyer with a Mutual Release, which the 1st Buyer did not sign.

8. On April 14, 2005, Linda Kuhn, a real estate salesperson employed by Real Marketing, LLC, drafted an Offer to Purchase the property for a 2nd Buyer. The 2nd Buyer's Offer to Purchase was not drafted as a secondary offer. The 2nd Buyer's offer was presented to the seller on April 15, 2005 by Mr. Breeler, who drafted a counter offer that same day. The counter-offer did not reflect that the 2nd Buyer's offer a secondary offer. The 2nd Buyer's offer was accepted on April 17, 2005, with a negotiated purchase price of \$79,400.

9. On May 27, 2005, the 2nd Buyer closed on the property. At no time was the Title Company, Assurance Title Services, Inc., informed that the 1st Buyer had an unresolved claim with respect to the property.

10. 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 and selling public based upon these factors.

11. 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... salesperson... in such manner as to safeguard the interests of the public under s. 452.14 (3) (i), Stats."

12. Per Wis. Stat. § 452.14 (3) (i), a licensee is subject to discipline if he or she has, "Demonstrated incompetency to act as a...salesperson... in a manner which safeguards the interests of the public."

13. Per Wis. Stat. § 452.133 (1), "In providing brokerage services to a party to a transaction, a broker shall do all of the following: (a) provide brokerage services to all parties to the transaction honestly, fairly and in good faith."

14. Per Wis. Stat. § 452.14 (3) (L), a licensee is subject to discipline if he or she has, “Violated any provision of this chapter.”

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.
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 failing to draft the counter to the 2nd Buyer’s Offer to Purchase to reflect the fact that the Offer was a Secondary Offer until and unless the 1st Buyer’s accepted Offer to Purchase was released in writing, and by failing to ensure that the Title Company was informed of the same, as set forth more fully above in paragraphs 5-9 of the Findings of Fact, Respondent **Louis V. Breeler** has demonstrated incompetency to act as a salesperson in a manner which safeguards the interests of the public, and failed to deal with all parties in good faith, contrary to Wis. Admin. Code § RL 24.03 (2) (c) and Wis. Stat. § 452.133 (1) (a), thereby subjecting himself to discipline per Wis. Stat. § 452.14 (3) (i) and (3) (L).
4. By failing to ensure that the Title Company was informed of the fact that the 1st Buyer had an unreleased Offer to Purchase the property, as set forth more fully above in paragraphs 5-9 of the Findings of Fact, and failing to ensure that the Counter-Offer to the 2nd Buyer accurately reflected the same, Respondent **Mark W. Showers** has demonstrated incompetency to act as a salesperson in a manner which safeguards the interests of the public, and failed to deal with all parties in good faith, contrary to Wis. Admin. Code § RL 24.03 (2) (c) and Wis. Stat. § 452.133 (1) (a), thereby subjecting himself to discipline per Wis. Stat. § 452.14 (3) (i) and (3) (L).
5. Due to the misconduct of Mr. Showers, as set forth above, **Real Marketing, LLC** is subject to discipline per Wis. Stat. § 452.13 (4).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of **Mark W. Showers (90-51968)** is hereby **REPRIMANDED** and **SUSPENDED** for a period of **SIXTY DAYS**, to begin 30 days after the date of signing of this Order.
2. The license of **Louis V. Breeler (90-54018)** is hereby **REPRIMANDED**.
3. The license of **Real Marketing, LLC (91-5700894)** is hereby **REPRIMANDED**.
4. **Louis V. Breeler** and **Mark W. Showers** are each ordered to take no less than sixteen class-room hours of continuing education, which may not be counted towards Respondent’s continuing education requirements. Education required by this Order must be completed within six months of the date of signing of the Order.
5. **Louis V. Breeler** and **Mark W. Showers** shall each pay ½ of the costs of the Division of Enforcement in investigating this matter, in the amount of \$375.00 each, within 60 days of the date of signing of this Order. Respondents shall be held jointly and severally liable for the payment of costs.
6. All payments and proof of completion of remedial 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

7. 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 Respondent's license. 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 that either 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 responsible Respondent(s) license(s) (90-51968 and/or 90-58986) SHALL BE SUSPENDED, without further notice or hearing, until Respondent(s) has/have complied with the terms of this Order.

8. This Order is effective on the date of signing.

9. Division of Enforcement Case Number 05 REB 148 is hereby CLOSED.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

8/21/08
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
MARK W. SHOWERS, LOUIS V.	:	
BREELER and REAL MARKETING	:	
LLC	:	
	:	LS# _____
RESPONDENTS.	:	

Division of Enforcement Case No. 05 REB 148

It is hereby stipulated between Mark W. Showers, Respondent, on behalf of himself and Real Marketing, LLC, Respondent; Louis V. Breeler, Respondent; and Mark A. Herman, attorney 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. 05 REB 148). 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 waives 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, the Wisconsin Administrative Code, and any other provisions of state or federal law.
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 attorneys, 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.

MARK W. SHOWERS, Respondent On behalf of himself and Real Marketing, LLC, Respondent 280 East Fernau Avenue Oshkosh, WI 54904	Date
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LOUIS V. BREELER, Respondent 280 East Fernau Avenue Oshkosh, WI 54904	Date
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Mark A. Herman, Attorney Division of Enforcement P.O. Box 8935 Madison, WI 53708-8925	Date
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