

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
JASON S. SCHWITTAY, : LS0804246REB
RESPONDENT. :

Division of Enforcement case numbers 07 REB 049 and 07 REB 074

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Jason S. Schwittay
800 S. Daybreak Dr.
Appleton, WI 54915

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

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 Wisconsin Real Estate Board ("Board"). The Board has reviewed this Stipulation and considers it acceptable. Accordingly, the Board adopts the attached Stipulation in this matter and makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Jason S. Schwittay is licensed in the State of Wisconsin as a Real Estate Salesperson having license number 94-66092, first granted on January 20, 2006.
2. Mr. Schwittay's most recent address on file with the Department of Regulation and Licensing ("Department") is 800 S. Daybreak Dr., Appleton, WI 54915.
3. Mr. Schwittay is employed as a Real Estate Salesperson by Re/Max Valley Realtors, 1000 N. Lynndale Dr., Appleton., WI 54914. Re/Max Valley Realtors holds Real Estate Entity license number 91-834585, first issued on July 12, 1994. Mr. Schwittay was employed by Re/Max Valley Realtors at the time of the events that form the basis for the cases referred to herein.
4. The supervisor and broker/owner of Re/Max Valley Realtors is Kevin Dieck. Mr. Dieck is licensed in the State of Wisconsin as a Real Estate Broker having license number 90-23164, first issued on January 14, 1980.
5. In early 2007, Mr. Schwittay sent a letter (undated) to Michael and Shirley Rakauskas of Oshkosh, Wisconsin with the following text:

As I was looking through the "Notice of Default" records at the county courthouse, I noticed your name. Oshkosh Central Credit Union has referred me to you and is willing to pay all costs to sell your home before it goes into foreclosure. I have a great reputation with Oshkosh Central Credit Union so they are confident I will be able to sell

the house before foreclosure. This makes for a win-win situation.

Don't hesitate to give me a call. If you let your home get auctioned off at a Sheriff's Sale, you will not get a dime. Not to mention, you will still be responsible to your bank.

Remember, you have a choice! Besides, you really can't lose. You have a golden opportunity to sell your home and walk away. Wouldn't it be great to save your record from a foreclosure? It's not too late!

I've already found a potential buyer for your house! Call me immediately at [number] so we can discuss the details.

6. Mr. Schwittay was not referred to the Rakauskas by Oshkosh Central Credit Union, Oshkosh Central Credit Union did not inform Mr. Schwittay that it was willing to pay all costs, and Mr. Schwittay had no reputation with Oshkosh Central Credit Union prior to their receiving a copy of Mr. Schwittay's letter to the Rakauskas.

7. In early 2007, Mr. Schwittay sent a letter (undated) to Richard Suprise of Schiocton, Wisconsin. The letter was essentially the same as that described in Finding of Fact 5 above except that it omitted the first sentence and begins with the following two sentences:

Dairyman's State Bank has referred me to you and is willing to pay all shortsale costs to sell your home before it goes into foreclosure. I have a great reputation with Dairyman's State Bank so they are confident I will be able to sell the house before foreclosure.

8. Mr. Schwittay was not referred to Mr. Suprise by Dairyman's State Bank, Dairyman's State Bank did not agree to pay all shortsale costs, and Mr. Schwittay did not have a great reputation with Dairyman's State Bank.

9. Mr. Schwittay sent similar letters to approximately 100 homeowners.

10. Mr. Schwittay made false and fraudulent statements in the letters he sent to the Rakauskas, to Mr. Suprise, and to approximately 100 other home owners, contrary to sections RL 24.03 (2) (b) and RL 24.04 (1) of the Wisconsin Administrative Code and section 452.14 (3) (k) of the Wisconsin Statutes.

11. Mr. Schwittay stated that he obtained a template for the form letter from a person at a networking meeting.

12. On November 29, 2007, Departmental Investigator Doug Austin visited Mr. Schwittay at his office and examined Mr. Schwittay's paper and computer files. Mr. Schwittay's files did not contain a copy of the template for the form letter, copies of any of the form letters, or a list of the individuals to whom he sent the form letters.

13. Mr. Schwittay failed to retain for at least 3 years copies of correspondence he prepared in connection with a transaction, contrary to section RL 15.04 of the Wisconsin Administrative Code.

14. Mr. Schwittay stated that the statement in the form letter about having a potential buyer was factual, as he has many investors that he can contact on a moments notice to advise them of property that is for sale.

15. Mr. Schwittay did not show the letters to his supervising broker prior to sending them out, contrary to agency policy.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to section 452.14 (3) of the Wisconsin Statutes and is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

2. Respondent Jason S. Schwittay is subject to discipline under section 452.14 (3) of the Wisconsin Statutes for the violations in the Findings of Fact.

ORDER

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

IT IS FURTHER ORDERED that Jason S. Schwittay be REPRIMANDED.

IT IS FURTHER ORDERED that within 120 days of the date of this Order, Mr. Schwittay must successfully complete the Ethical Real Estate Practices module of the Real Estate Salesperson's Pre-Licensure Program and submit proof of successful completion in the form of verification from the institution providing the education to the following address:

Department Monitor
Department of Regulation and Licensing,
PO Box 8935, Madison, WI 53708-8935.
Fax (608) 266-2264
Tel. (608) 261-7904

None of the education completed pursuant to this order may be used to satisfy any continuing education requirement. In the event Mr. Schwittay fails to successfully complete the educational requirement or to obtain an extension of time for good cause from the Department Monitor, his Real Estate Salesperson's license shall be suspended without further notice, without further hearing, and without further Order of the Board, and said suspension shall continue until proof of successful completion of the education requirement is received by the Department of Regulation and Licensing.

IT IS FURTHER ORDERED that Mr. Schwittay pay the Department's costs of this matter in the amount of **\$615.86** within 60 days of the date of this Order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to the Department Monitor.

IT IS FURTHER ORDERED that Mr. Schwittay pay a forfeiture in the amount of **\$400** within 60 days of the date of this Order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to the Department Monitor.

In the event Mr. Schwittay fails to pay either the forfeiture or the costs within the time and in the manner as set forth above, his Real Estate Salesperson's license shall be suspended without further notice, without further hearing, and without further Order of the Board, and said suspension shall continue until the full amount of said forfeiture and costs have been paid to the Department of Regulation and Licensing.

IT IS FURTHER ORDERED that the receipt by the Department within two years of the date of this Order, of any complaint against Mr. Schwittay for an action, other than the mailing detailed above, which the Board considers to be substantially similar in nature to the violations above, shall be construed as conduct imperiling public health, safety and welfare and shall result in the summary suspension of Respondent's license until a full disciplinary hearing can be held on the matter or a new Stipulation and Final Decision and Order are presented to the Board.

IT IS FURTHER ORDERED that files 07 REB 049 and 07 REB 074 be closed.

Dated this 24th day of April, 2007.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A member of the Board