

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
:
RONALD R. MALUEG. : LS0806262REB
JUIDTH A. EBELT-MLSNA. :
COUNTRY AIRE REALTY. :
RESPONDENTS. :
:

[Division of Enforcement Case File #: 05 REB 242]

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

Ronald R. Malueg
Country Aire Realty
517 E. Green Bay Street
Shawano, WI 54166

Judith A. Ebelt-Mlsna
Country Aire Realty
517 E. Green Bay Street
Shawano, WI 54166

Country Aire Realty
517 E. Green Bay Street
Shawano, WI 54166

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 Wisconsin Real Estate Board (“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. Ronald R. Malueg, date of birth: 10/06/54, is licensed in the State of Wisconsin as a real estate broker having li #90-0037046. This license was first granted on 02/27/86.

2. Mr. Malueg's last reported business address on file with the Department of Regulation and Licensing ("Department") is: 517 E. Green Bay Street, Shawano, Wisconsin 54166.

3. At all times relevant to the facts stated below, Mr. Malueg was employed as the Responsible Broker of Country Aire Realty, Incorporated (091-0021476), located at 517 E. Green Bay Street, Shawano, Wisconsin 54166. This license was first granted to the business entity on 01/12/79.

4. Judith A. Ebel-Mlsna, date of birth: 09/22/48, is licensed in the State of Wisconsin as a real estate salesperson having license #94-0059953. This license was first granted on 04/08/04. Mrs. Ebel-Mlsna's business address on file with the Department is: 517 E. Green Bay Street, Shawano, Wisconsin 54166.

5. Mrs. Ebel-Mlsna is an employee at Country Aire Realty, Inc. and supervised by Mr. Malueg.

6. On or about November 21, 2005, the Department received a consumer complaint alleging that Mrs. Ebel-Mlsna had engaged in unprofessional conduct while acting as a real estate agent in a real estate transaction. The Complainant, who was a prospective buyer, alleged he was ill advised by Mrs. Ebel-Mlsna as to how much money should be provided for an earnest money payment. The Complainant also alleges that Mrs. Ebel-Mlsna failed to notify the sellers of important defects to the property.

7. The Complainant related to the Department that Mrs. Ebel-Mlsna acted as buyer's agent in the above-noted transaction. Country Aire Realty, Incorporated states that Mrs. Ebel-Mlsna acted as a seller subagent in the above-noted transaction. On June 2, 2005, a Disclosure of Real Estate Agency Form was drafted by Mrs. Ebel-Mlsna and initialed by the Complainant. The Disclosure of Real Estate Agency Form does not have either box checked to indicate whether Mrs. Ebel-Mlsna was acting as the Owner's Agent or the Buyer's/Tenant Agent.

7. On or about June 2, 2005, Mrs. Ebel-Mlsna drafted a Residential Offer to Purchase ("Offer") for property located at N2965 Oak Lane, Clintonville, Wisconsin, ("Property"). The Offer lists Mrs. Ebel-Mlsna as the selling agent. The Residential Offer to Purchase listed the total purchase price as \$178,900. The original closing date for the real estate transaction was scheduled to place no later than July 1, 2005.

8. In particular, the Offer in this real estate transaction stated that \$20,000 would be provided within fifteen (15) days of acceptance. The Offer also contained inspection contingency language that stated the Buyer, within fourteen (14) days of acceptance, would deliver to the Seller (and to listing broker if Property is listed), a copy of the inspector's written inspection report(s) and written notice listing the defect(s) identified in the inspection report(s) to which Buyer objects." The Offer also notes the Buyer's concerns about one crack in the basement floor.

9. On June 3, 2005, the offer was presented to the sellers of the Property by a different agent and accepted on that day. On June 13, 2005, Mrs. Ebel-Mlsna drafted an Amendment to Offer to Purchase which changed the closing date from June 15, 2005 to on or before July 15, 2005. The Amendment to Offer to Purchase was presented to and accepted by the sellers on June 15, 2005.

10. During the course of this transaction, a number of defects involving the Property were brought to Mrs. Ebel-Mlsna's attention by the Complainant. The defects brought to Mrs. Ebel-Mlsna's attention included:

cracks, breaks, and leaks were found in four different areas throughout the basement floor; walls and foundation needed to be fixed;

deck ledger board not being bolted to the house;

anchor bolts on the west wall of the house not being fastened down properly;

four (4) water and gas pipes not bonded to the main panels;

screw post columns not bolted properly;

gutters and down spouts needing to be installed; and

air conditioning unit needing to be leveled.

11. On June 10, 2005, Mrs. Ebelt-Mlsna drafted a second WB-40 Amendment Offer to Purchase outlining the majority of the concerns listed above. The June 10, 2005 WB-40 document was never presented to the Sellers. The Department's investigation revealed that the above-noted issues were verbally communicated to the Sellers but were never reduced to writing.

12. On June 17, 2005, the inspection and written notice of defects contingency had expired. A home inspection was performed on the Property but the written notice of defects was never executed on behalf of the Complainant. The above-noted transaction closed on July 7, 2005 with the Complainant being the Buyer of the Property.

13. The Department's investigation revealed that Mr. Malueg assisted Mrs. Ebelt-Mlsna with the drafting of the initial document but failed to provide future assistance throughout the rest of the above-noted real estate transaction. In particular, adequate assistance was not provided with respect to issues concerning the defects found with the Property.

14. In resolution of this matter, Robert R. Malueg, Judith A. Ebelt-Mlsna, and Country Aire Realty, Inc. consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
3. Respondent Judith A. Ebelt-Mlsna has violated:
 - a. Wis. Stats. § 452.14(3)(i) and Wis. Admin. Code §§ RL 24.13(2) 24.025(1); 24.08 by failing to reduce important terms to writing in a real estate transaction. Once the buyer made the defects of concern to Mrs. Ebelt-Mlsna, the terms should have been reduced to writing within the fourteen (14) day period as called for in the Original Offer to Purchase; and
 - b. Wis. Stat. 452.135 and Wis. Admin. Code § RL 24.07(8)(a)1. by failing to complete the Disclosure of Real Estate Agency Form.
4. Respondents Robert R. Malueg and Country Aire Realty, Incorporated have violated:

Wis. Stats. §§ 454.14(3)(i)(k) and Wis. Admin. Code §§ RL 17.08(1)(2) by failing to reasonably review all documents that had been drafted and managed by, employee and real estate salesperson, Judith A. Ebelt-Mlsna in the above-noted transaction.
5. The violation of law by Judith A. Ebelt-Mlsna, Robert A. Malueg, and Country Aire Realty, Incorporated constitutes negligent and unprofessional conduct.

ORDER

A. Discipline upon Licenses

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

IT IS FURTHER ORDERED, that Respondent, Robert R. Malueg, license # 090-0037046 be, and hereby is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent, Judith A. Ebelt-Mlsna, license #094-0059953 be, and hereby is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent, Country Aire Realty, Incorporated, license # 091-0021476 be, and hereby is **REPRIMANDED**.

B. Continuing Education and Right of Inspection Requirements

IT IS FURTHER ORDERED that the Respondent, Robert R. Malueg, within six months of the dating and signing of this Order, successfully complete the following course: education on broker supervision responsibilities of at least four (4) hours. Proof of continuing education requirements must be submitted in the form of verification from the institution providing the education to 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 the Respondent, Judith A. Ebelt-Mlsna, within six months of the dating and signing of this Order, successfully complete the following course: education on real estate contracts and agency law of at least eight (8) hours. Proof of continuing education requirements must be submitted in the form of verification from the institution providing the education to 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 the Department's Division of Enforcement reserves the right to inspect the documentation of any and all real estate agents employed by Country Aire Realty, Incorporated, per the Board's discretion. Inspections will make sure Country Aire Realty, Incorporated is in compliance with chapter 452 of the Wisconsin Statutes and RL chapters 11-26 of the Wisconsin Administrative Code.

C. Costs and Forfeiture

IT IS FURTHER ORDERED that the Respondents, shall pay jointly and severally to the Department of Regulation and Licensing **COSTS** of **ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100.00)**.

IT IS FURTHER ORDERED that the Respondents, shall pay jointly and severally to the Department of Regulation and Licensing a **FORFEITURE** of **FIVE HUNDRED DOLLARS (\$500.00)**.

IT IS FURTHER ORDERED, that a down payment of **FOUR HUNDRED DOLLARS (\$400.00)** shall be submitted within ninety (90) days from the date of this order and three more payments of **FOUR HUNDRED DOLLARS (\$400.00)** due every ninety (90) days from the previous payment until the full **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600.00)** is paid. Payments shall be made by **certified check or money order**, payable to the Wisconsin Department of Regulation and Licensing and sent to:

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

IT IS FURTHER ORDERED that in the event the Respondents fail to pay the **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600.00)** in costs and forfeiture within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondents, Ronald R. Malueg, license #090-0037046, Judith A. Ebelt-Mlsna, license #094-0059953 and Country Aire Realty, license #091-0021476, shall be **SUSPENDED** without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs has been paid to the Department of Regulation and Licensing. Failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file **05 REB 242** be, and hereby is, closed as to all Respondents.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum, Board Chair

6/26/08