

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
	:	
LACINDA G. GERKE,	:	LS0804241REB
	:	
RESPONDENT.	:	

Division of Enforcement Case No. 08 REB 004

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

Lacinda G. Gerke
1005 Cliffwood Lane
La Crosse, WI 54601

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. Lacinda G. Gerke ("Gerke"), whose date of birth is November 18, 1950, is duly licensed as a Real Estate Broker in the state of Wisconsin (90-38366). Ms. Gerke's most recent address of record on file with the Department of Regulation and Licensing ("Department") is 1005 Cliffwood Lane, La Crosse, WI 54601. The license was first granted on July 22, 1986, and is due to expire on December 14, 2008. Ms. Gerke conducts business by and through Cindy Gerke & Associates, Inc. Realtors. (#91-834616).

2. On August 24, 2006, the Real Estate Board issued Final Decision and Order LS#0608245 ("prior Order). In that matter the Board concluded that Ms. Gerke failed to timely conduct bank reconciliations, trial balances and validations, all contrary to Wis. Admin. Code § RL 18.13. Additionally, the Board concluded that Ms. Gerke had permitted her real estate trust account to accumulate a significant and unaccounted for deficit, contrary to Wis. Admin. Code § RL 18.031 (1). Consequently, Ms. Gerke was reprimanded, assessed costs, and ordered to have a certified public accountant conduct an audit on a date of the Department's choosing, and at her own expense.

3. Pursuant to the prior Order, an audit was conducted of Ms. Gerke's real estate trust account covering the period of April 2006, through September of 2007. The audit was conducted by Frank, Weisbrod & Turnbull, CPA's. The audit was reviewed by the Department's Auditor.

4. A review of the audit shows that minor negative balances were maintained at various points in time from August 2006 through September 2007, with a peak negative balance of -\$171.32 in November of 2006.

5. The review of the audit further shows that journal entries for bank charges and broker funds were not maintained, no ledger was maintained, trial balances and validations were attempted, but improperly executed, and a double-posting of a single check by the financial institution maintaining the trust account was not detected for a period of months.

6. Per Wis. Admin. Code § RL 18.13, "Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following: ... (3) The broker... shall reconcile the real estate trust account in writing each month... (4) The broker shall prepare... (a) "trial balance" of all open items in the real estate trust account... (5) The broker... shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled."

7. 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."

8. 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;"

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 failing to timely conduct bank reconciliations, trial balances and validations, **Lacinda G. Gerke** violated Wis. Admin. Code § RL 18.13, thereby subjecting herself to discipline per Wis. Admin. Code § RL 18.14 and Wis. Stat. § 452.14(3)(i).

4. By permitting her trust account to accumulate an unaccounted for deficit of up to \$171.32, **Lacinda G. Gerke**, both as an individual broker, and as the licensee of record for **Cindy Gerke & Associates, Inc.**, violated Wis. Admin. Code § RL 18.031(1), thereby subjecting herself to discipline per Wis. Admin. Code § RL 18.14 and Wis. Stat. § 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The licenses of **Lacinda G. Gerke** to practice as a real estate broker (#90-38366) in the State of Wisconsin shall be, and hereby are, REPRIMANDED, and is further LIMITED as follows: for any real estate trust account owned or otherwise controlled by her, **Lacinda G. Gerke** must designate a licensed real estate broker in good standing to administer the trust account and to otherwise comply with all requirements of Wis. Admin. Code Chap. RL 18. Respondent shall inform the Department Monitor of the name and license number of the initial designated real estate broker within thirty (30) days of the date of signing of this Order, and of any subsequent designated real estate broker within forty-eight (48) hours of any change in designee. Further, **Lacinda G. Gerke** shall cause an audit to be conducted of the account on January 1, 2010, at her expense, and auditing the account from the date of this Order to through December 31, 2009. The audit, together with any supporting materials, shall be submitted to the Department Monitor by no later than February 28, 2010.

IT IS FURTHER ORDERED THAT:

2. **Lacinda G. Gerke** shall pay costs in this matter in the amount of \$250.00, within thirty (30) days of the date of signing of this Order.
3. **Lacinda G. Gerke** shall further pay a forfeiture in the amount of \$1,000 within sixty (60) days of the date of signing of this Order.
4. All payments and submissions required by this Order shall be mailed, faxed, or otherwise 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

5. 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 Respondent fails to timely submit any payment as set forth above (if any), or fails to cause the Department Monitor to timely receive the results of an audit, as described above, Respondent's licenses (90-38366) 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.
6. This matter shall be closed under prosecutorial discretion code P3 as to all respondents other than Lacinda G. Gerke.
6. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

4/24/08
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
LACINDA G. GERKE,	:	
	:	LS# _____
	:	
RESPONDENT.	:	

Division of Enforcement Case No. 08 REB 004

It is hereby stipulated between Lacinda G. Gerke, 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 Respondent’s licensure by the Division of Enforcement (Case No. 08 REB 004). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, 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 her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her 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. Respondent has been provided with the opportunity to seek legal counsel prior to signing this stipulation.
4. Respondent agrees 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. Respondent waives 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 Respondent or her 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. Respondent is 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.

Lacinda G. Gerke, Respondent
1005 Cliffwood Lane
La Crosse, WI 54601

Date

Mark A. Herman, Attorney
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Date