

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CORT HOWARD and CMOR, LLC,
RESPONDENTS.

:
:
: FINAL DECISION AND ORDER
:
: ORDER 0001981

Division of Enforcement Case No. 09 REB 168

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

Cort Howard
5621 Cheryl Drive
Fitchburg, WI 53711

CMOR, LLC
5621 Cheryl Drive
Fitchburg, WI 53711

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

Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

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 Examining 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Cort Howard (dob 1/18/1966) is licensed in the State of Wisconsin as a real estate broker, having license number 90-51728, first issued on 7/30/2003 and current through 12/14/2012. Mr. Howard's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5621 Cheryl Drive, Fitchburg, WI 53711.

2. Respondent CMOR, LLC, dba Howard Realty, was licensed in the State of Wisconsin as a real estate business entity, having license number 91-701773, first issued on 05/03/2007 and expired on 12/14/2008. CMOR, LLC's most recent address known to the Department is 5621 Cheryl Drive, Fitchburg, WI 53711. Respondent Cort Howard is the responsible broker for CMOR, LLC.

3. On 02/08/2008, L.B. entered into a WB-4 Residential Condominium Listing Contract with Respondents Cort Howard and CMOR, LLC dba Howard Realty. The contract provided that "Broker's commission shall be 10% and \$395 Retainer Fee, paid at closing whichever is greater."

4. On 04/22/2008, L.B. signed a WB-42 Amendment to Listing Contract drafted by Respondent Howard that stated "Listing is on '39 Day' Plan." The form provides no other description of the "'39 Day' Plan." Respondent Howard told L.B. orally that the plan meant he would sell L.B.'s condominium in 39 days or sell it for free and take no commission, as long as it sold before the then-current listing contract expired.

5. On 09/27/2008, L.B. signed a WB-42 Amendment to Listing Contract drafted by Respondent Howard that provided:

Listing is changed to Howard Speed Sale. Sale shall take place in the month of October, 2008 on a date acceptable to Broker and Seller, for the highest price and best terms acceptable to Seller.

\$2000.00 of Broker Success Fee shall be pre-paid prior to any marketing of the Sale. This \$2000.00 shall not be above and beyond the 10% Success Fee, but shall be a pre-paid portion of it. If sale is made to unrepresented buyer, Success Fee shall be reduced to 5%.

6. Pursuant to the 09/27/2008 Amendment to Listing Contract, L.B. paid Respondents \$2000 as advanced payment of the "success fee." L.B. understood that the "success fee" referred to the commission earned according to the listing contract.

7. The 02/08/2008 Listing Contract and a later residential listing contract signed by the parties expired without a sale of L.B.'s condominium.

8. Following expiration of all listing contracts between Respondents and L.B., Respondents failed to return the \$2000 success fee to L.B. L.B. filed suit against Howard Realty in Fond du Lac County Circuit Court. On 09/22/2009, following a small claims court trial, judgment was entered against Howard Realty, ordering it to pay the \$2000 plus various fees and interest. Respondents have not yet paid the judgment. In late 2011, Respondent Howard stated, "The Company has very little money with which to pay this debt at this time. Howard Realty fully intends to pay the debt, and will do so when finances permit."

9. Respondents did not register their trust account with the Department.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondents Cort Howard and CMOR, LLC violated:

- a. Wis. Stat. § 452.133(1)(f) by failing to safeguard trust funds and other property held by Respondents.
- b. Wis. Admin. Code § RL (now REEB) 24.08 by failing to put in writing the exact agreement of the parties with respect to the "39 Day Plan."
- c. Wis. Stat. § 452.13(2)(b) by failing to register a trust account with the Department.

3. As a result of the above violations, Respondents Cort Howard and CMOR, LLC are subject to discipline pursuant to Wis. Stat. §§ 452.14(3)(i) and 452.14(3)(L).

4. By the conduct described in the Findings of Fact, Respondents Cort Howard and CMOR, LLC are also subject to discipline pursuant to § 452.14(3)(h) for failing, within a reasonable time, to remit money that belongs to another person.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Respondents Cort Howard and CMOR, LLC are hereby REPRIMANDED.
3. The real estate broker license issued to Respondent Cort Howard (license number 90-51728) is hereby LIMITED as follows:
 - a. Mr. Howard shall, within one year of the date of this Order, successfully complete 4 hours of education on the topic of contracts and forms offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.
 - b. Mr. Howard shall submit proof of completion 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 have been or may be instituted by the Board, Wisconsin Department of Safety and Professional Services or similar authority in any state, and also may not be used in future attempts to upgrade a credential in any state.

c. This limitation shall be removed from Respondent's license and Respondent will be granted a full, unrestricted license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

4. Within 20 months of the date of this Order, Respondent Cort Howard shall pay a FORFEITURE in the amount of \$2000. \$200 shall be paid within two months of the date of this Order and an additional 9 payments of \$200 shall be due every two months following the due date of the previous payment, until the full \$2000 is paid.

5. Proof of successful course completion and payment of the forfeiture (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:


Department Monitor
Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

6. 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 Cort Howard'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 payment of the forfeiture as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 90-51728) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the forfeiture and completion of the education.

7. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE EXAMINING BOARD

by:


A Member of the Board

8-16-12
Date