

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

BRENDA L. UOTINEN AND
BACHAND REAL ESTATE, INC.,
RESPONDENTS.

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FINAL DECISION AND ORDER

0003284

Division of Legal Services and Compliance Case No. 13 REB 039

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

Brenda L. Uotinen
1406 Belknap Street
Superior, WI 54880

Bachand Real Estate, Inc.
1406 Belknap Street
Superior, WI 54880

Wisconsin Real Estate Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 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 Brenda L. Uotinen (dob October 5, 1959) is licensed in the State of Wisconsin as a real estate broker, having license number 32249-90, first issued on June 12, 1984 and with registration current through December 14, 2014. Brenda L. Uotinen's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1406 Belknap Street, Superior, WI 54880.

2. Respondent Bachand Real Estate, Inc. (d/b/a Bachand Estates LLP, Coldwell Banker/Bachand Realty, Coldwell Banker/Van Vleck-Clemens Agency) is licensed in the State of Wisconsin as a real estate business entity, having license number 933370-91, first issued on April 16, 2007 and current through December 14, 2014. Bachand Real Estate, Inc.'s most recent address on file with the Department is 1406 Belknap Street, Superior, WI 54880.

3. Respondent Uotinen is identified in Department records as the responsible broker for Respondent Bachand Real Estate, Inc.

4. Since at least December 31, 2005, Respondent Uotinen has utilized a common real estate trust account at Superior Savings Bank with account number ending in -72. Between 2005 and 2007, Respondent Uotinen designated this account as Blu Inc. Trust Account.

5. In 2007, Respondent Uotinen sold her company Blu, Inc. to Respondent Bachand Real Estate, Inc. Respondents continued using the trust account at Superior Savings Bank with account number ending in -72 but changed the account name to Bachand Estates LLP d/b/a Coldwell Banker/Bachand Realty Trust Account.

6. Respondents did not send a form authorizing consent to examine and audit the trust account to the Department until on or after April 26, 2007.

7. Respondents did not direct Superior Savings Bank to remit trust account interest to the Department of Administration.

8. Between February 15, 2010 and late 2012, Respondents utilized a common real estate trust account at Wells Fargo Bank designated Bachand Group, Inc. Trust Account with account number ending in -39.

9. On May 23, 2013, an auditor with the Department audited Respondents' trust accounts. The audit revealed the following about Respondents' trust account at Superior Savings Bank:

- a. A cash journal, as required by the Board's regulations, was not provided.
- b. Monthly account reconciliations were not performed.
- c. Monthly trial balances were not performed.
- d. Monthly validations were not completed.
- e. The trust account had a deficit for over a year.
- f. Fees charged by the bank against the principal of the trust account were not restored within 10 business days following a receipt or other notification from a bank that a service charge has been made against the account for which insufficient personal funds are available in the account.

10. The May 23, 2013 audit revealed the following about Respondents' trust account at Wells Fargo Bank:

- a. Respondent Uotinen did not oversee this account and did not possess any information about this account. This account did not have another responsible broker.
- b. A cash journal, as required by the Board's regulations, was not provided.
- c. Monthly account reconciliations were not performed.
- d. Monthly trial balances were not performed.
- e. Monthly validations were not completed.
- f. Respondents commingled trust funds with other funds by using the account simultaneously as both a business account and a property management and security deposit trust account.

11. In resolution of this matter, Respondents consent to the entry of the following Conclusions of Law and Order.

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, Respondent Uotinen violated Wis. Stat. § 452.133(1)(f) by failing to adequately safeguard trust funds.

3. By the conduct described in the Findings of Fact, Respondent Uotinen violated Wis. Admin. Code § REEB 18.13(1)–(5) by failing to:

- a. Maintain a cash journal;
- b. Reconcile the real estate trust account monthly;
- c. Prepare a trial balance monthly; and
- d. Validate the account monthly.

4. By the conduct described in the Findings of Fact, Respondent Uotinen violated Wis. Stat. § 452.13(2)(b)1. and Wis. Admin. Code § REEB 18.035(1) by failing to provide the department with the required consent to examine and audit trust account form within 10 days after opening a new trust account.

5. By the conduct described in the Findings of Fact, Respondent Uotinen violated Wis. Stat. § 452.13(2)(e)1. by failing to direct the depository institution to remit trust account interest to the Department of Administration.

6. By the conduct described in the Findings of Fact, Respondent Uotinen violated Wis. Admin. Code § REEB 18.10 by commingling the broker's personal funds or other funds in the trust account and by failing to deposit additional personal funds in the real estate trust account within 10 business days following a receipt or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

7. By the conduct described in the Findings of Fact, Respondent Uotinen violated Wis. Admin. Code § REEB 15.04 by failing to retain for at least 3 years exact and complete copies of all trust account records.

8. By the conduct described in the Findings of Fact, Respondent Bachand Real Estate, Inc. violated Wis. Admin. Code § REEB 24.17(3) by aiding or abetting the above violations.

ORDER

1. The attached Stipulation is accepted.
2. Respondent Bachand Real Estate, Inc. is REPRIMANDED.
3. Respondent Brenda L. Uotinen is REPRIMANDED.
4. The real estate broker license issued to Brenda L. Uotinen (license number 32249-90) is LIMITED as follows:
 - a. Within 45 days of the date of this Order, Respondent Uotinen shall successfully complete six hours of education on the topic of trust accounts offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course.
 - b. Respondent Uotinen shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at 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 or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
5. The real estate broker license issued to Brenda L. Uotinen (license number 32249-90) is further LIMITED as follows:
 - a. Following the first full calendar month after the date of this Order, Respondent Uotinen shall submit a monthly report to the Department Monitor at

the address listed below by the fifteenth day of each month. The report shall include:

- i. A cash journal in accordance with Wis. Admin. Code § REEB 18.13(1) showing all real estate trust account transactions for trust account ending in -72 for the period in chronological order, along with a daily running balance;
- ii. Ledgers in accordance with Wis. Admin. Code § REEB 18.13(2) for all transactions involving earnest money either deposited or disbursed during the month;
- iii. The bank statement for the month under review;
- iv. A reconciliation of the bank statement in accordance with Wis. Admin. Code § REEB 18.13(3) that includes a numbered list of outstanding checks; and
- v. A trial balance in accordance with Wis. Admin. Code § REEB 18.13(4) that itemizes all deposits on hand and identifies the transaction or parties to which each deposit pertains.

b. The Board or its designee may require Respondent Uotinen to appear before it at any time, provided that written notice is given to Respondent Uotinen at her most recent address on file with the Department at least 30 days before any scheduled meeting.

6. Respondent Uotinen may petition the Board for removal of these limitations after she has provided six complete and correct reports and has satisfied the Board or its designee that she has successfully completed all of the ordered education.

7. Within 90 days from the date of this Order, Respondent Bachand Real Estate, Inc. shall pay a FORFEITURE in the amount of \$1,000 and shall pay one half of the COSTS of this matter in the amount of \$252.00.

8. Within 90 days from the date of this Order, Respondent Uotinen shall pay one half of the COSTS of this matter in the amount of \$252.00.

9. Proof of successful course completion, monthly reports and payment of forfeitures and costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondents to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190

Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

10. 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 Respondents' licenses. 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 Respondents fail to timely submit payment of the forfeitures and costs as ordered or fail to submit proof of successful completion of the ordered education or monthly reports as set forth above, Respondents' licenses (no. 933370-91 and no. 32249-90) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with payment of the forfeitures and costs and completion of the education and monthly reports.

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

WISCONSIN REAL ESTATE EXAMINING BOARD

by:


A Member of the Board

6-19-14
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

BRENDA L. UOTINEN AND
BACHAND REAL ESTATE, INC.,
RESPONDENTS.

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STIPULATION

0003284

Division of Legal Services and Compliance Case No. 13 REB 039

Respondents Brenda L. Uotinen and Bachand Real Estate, Inc. and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

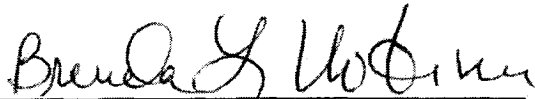
1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.
2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:
 - the right to a hearing on the allegations against Respondents, 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 Respondents;
 - the right to call witnesses on Respondents' behalf and to compel their attendance by subpoena;
 - the right to testify on Respondents' own behalf;
 - 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 Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
3. Respondents are aware of Respondents' right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Examining Board (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 then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the 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 the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

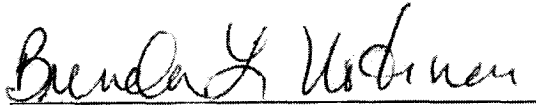
7. Respondents are informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



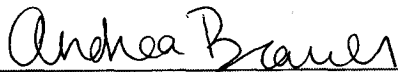
Brenda L. Uotinen, Respondent
1406 Belknap Street
Superior, WI 54880
License No. 32249-90

5/28/14
Date



Bachand Real Estate, Inc., Respondent
By: Brenda L. Uotinen
1406 Belknap Street
Superior, WI 54880
License No. 933370-91

5/28/14
Date



Andrea Brauer, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

5/28/14
Date