

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 :
: FINAL DECISION AND ORDER
BARRY G. LUCE, KATHY S. ZIMMERMANN, :
AND RE/MAX COMMUNITY REALTY LLC, :
RESPONDENTS. :

0005054

Division of Legal Services and Compliance Case No. 15 REB 114

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

Barry G. Luce
112 S. Main St.
Lake Mills, WI 53551

Kathy S. Zimmermann
112 S. Main St.
Lake Mills, WI 53551

Re/Max Community Realty LLC
112 S. Main St.
Lake Mills, WI 53551

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 Barry G. Luce (DOB July 16, 1949) is licensed by the State of Wisconsin as a real estate broker, having license number 50496-90, first issued on January 2, 2001 and current through December 14, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 112 South Main Street, Lake Mills, Wisconsin 53551.

2. Respondent Kathy S. Zimmermann (DOB November 4, 1953) is licensed by the State of Wisconsin as a real estate broker, having license number 43973-90, first issued on July 16, 1990 and current through December 14, 2016. Respondent's most recent address on file with the Department is 112 South Main Street, Lake Mills, Wisconsin 53551.

3. Respondent Re/Max Community Realty LLC is licensed by the State of Wisconsin as a real estate business entity, having license number 700654-91, first issued on February 27, 2003 and current through December 14, 2016.

4. Respondent Luce is the responsible broker for Respondent Re/Max Community Realty LLC. Respondents Luce and Zimmermann manage Re/Max Community Realty LLC's real estate trust account.

5. Respondents maintained a common real estate trust account at Bank of Lake Mills in Lake Mills, Wisconsin, with account number ending in -81.

6. On October 28, 2015, an auditor with the Department audited Respondents' trust account. The audit revealed the following:

- a. Respondents failed to prepare trial balances for approximately 18 months;
- b. Respondents failed to disburse \$300 of earnest money to a seller from a transaction in June 2015;
- c. Respondents commingled company funds in the trust account for a significant period of time; and
- d. Respondents failed to withdraw commissions from the trust account within 24 hours after transactions were consummated or terminated or after the commissions were earned.

7. 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, Barry G. Luce and Kathy S. Zimmermann violated Wis. Stat. § 452.133(1)(f) by failing to safeguard trust funds.
3. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.09(3)(a) by failing to withdraw commissions earned from the trust account within 24 hours after transactions were consummated or terminated, or after the commissions were earned.
4. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.10(1) by failing to deposit only real estate trust funds in the real estate trust account.
5. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.13(1) by failing to maintain a journal showing the chronological sequence in which real estate trust funds are received and disbursed.
6. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.13(2) by failing to maintain a ledger including the receipts and the disbursements as they affect each particular transaction.
7. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.13(3) by failing to reconcile the real estate trust account or accounts in writing each month.
8. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.13(4) by failing to prepare a trial balance of all open items in the real estate trust account.
9. By the conduct described in the Findings of Fact, Barry G. Luce and Kathy S. Zimmermann violated Wis. Admin. Code § REEB 18.13(5) by failing to 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.
10. By the conduct described in the Findings of Fact, Re/Max Community Realty LLC violated Wis. Admin. Code § REEB 24.17(3) by aiding or abetting the above violations.
11. As a result of the above violations, Respondents Barry G. Luce, Kathy S. Zimmermann and Re/Max Community Realty LLC are subject to discipline pursuant to Wis. Stat. § 452.14(3)(h), (i) and (L).

ORDER

1. The attached Stipulation is accepted.
2. Respondent Barry G. Luce is REPRIMANDED.
3. Respondent Kathy S. Zimmermann is REPRIMANDED.

4. Respondent Re/Max Community Realty LLC is REPRIMANDED.
5. Within 90 days from the date of this Order, Respondent Barry G. Luce shall pay one-third of the COSTS of this matter in the amount of \$78.
6. Within 90 days from the date of this Order, Respondent Kathy S. Zimmermann shall pay one-third of the COSTS of this matter in the amount of \$78.
7. Within 90 days from the date of this Order, Respondent Re/Max Community Realty LLC shall pay one-third of the COSTS of this matter in the amount of \$78.
8. Payment of costs, 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 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

9. In the event Respondents fail to timely submit payment of the costs as ordered, Respondents' licenses (nos. 50496-90, 43973-90 and 700654-91), or Respondents' right to renew their licenses, 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 costs.
10. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE EXAMINING BOARD

by: Michael Mulleady
A Member of the Board

12/1/14
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

BARRY G. LUCE, KATHY S. ZIMMERMANN, :
AND RE/MAX COMMUNITY REALTY LLC, :
RESPONDENTS. :

STIPULATION

0005054

Division of Legal Services and Compliance Case No. 15 REB 114

Respondents Barry G. Luce, Kathy S. Zimmermann and Re/Max Community Realty LLC 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 have been provided an opportunity to obtain legal counsel before signing this Stipulation.

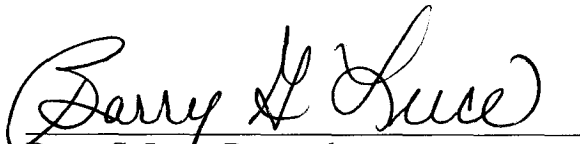
4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents 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.

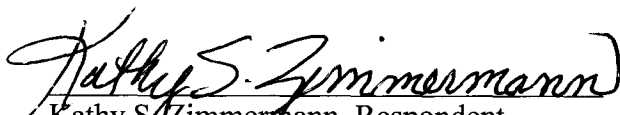
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes 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.

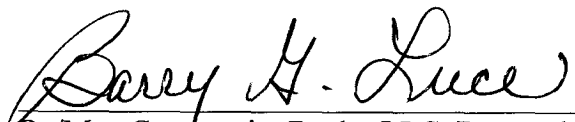
8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Barry G. Luce, Respondent
112 S. Main St.
Lake Mills, WI 53551
License no. 50496-90

11-21-16
Date


Kathy S. Zimmermann, Respondent
112 S. Main St.
Lake Mills, WI 53551
License no. 43973-90

11-21-16
Date


Re/Max Community Realty LLC, Respondent
By: Barry G. Luce
112 S. Main St.
Lake Mills, WI 53551
License no. 700654-91

11-21-16
Date

Sarah E. Norberg
Sarah E. Norberg, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

11.28.16
Date