

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
JONATHAN A. NEWBY, :
RESPONDENT. : **0005151**

Division of Legal Services and Compliance Case No. 15 REB 100

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

Jonathan A. Newby
1710 N. Commerce St., Apt. 421
Milwaukee, WI 53212

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 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 Jonathan A. Newby (DOB 08/20/1986) is licensed by the State of Wisconsin as a real estate salesperson, having license number 79157-94, first issued on August 18, 2014 and current through December 14, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1710 North Commerce Street, Apartment 421, Milwaukee, Wisconsin 53212.

2. On September 3, 2015, the Department received a complaint regarding a real estate transaction handled by Respondent. Division of Legal Services and Compliance Case No. 15 REB 100 was subsequently opened for investigation.

3. On March 5, 2015, Respondent drafted an Offer To Purchase (OTP) on behalf of the buyer. The OTP included an inspection contingency and a requirement that the earnest money be mailed or delivered within three days of acceptance of the offer.
4. On March 6, 2015, after being presented with a counter-offer, the buyer accepted and signed the counter-offer.
5. On March 6, 2015, the buyer requested a walk-through of the property, which Respondent scheduled for March 7, 2015. Respondent attended the walk-through but did not go inside the property. The buyer was accompanied with one other person, later identified as an unregistered inspector.
6. On March 10, 2015, the seller's agent contacted Respondent and indicated that the earnest money had not been received. Respondent stated that he would check with the buyer and get back to the seller's agent.
7. Respondent contacted the buyer regarding the earnest money and to set up an inspection. The buyer indicated that the inspection had already transpired and that it was the walk-through on March 7, 2015. The buyer stated they would not send the earnest money until a lower price was accepted due to the unsatisfactory inspection. The "property inspection form" listed interior and exterior issues with estimated repair costs up to \$46,990.
8. On March 13, 2015, Respondent contacted the seller's agent to inform him that an inspection had been done, and that the buyer reported several issues with the property, including needing new windows and issues with the electric panels. Respondent informed the seller's agent that the buyer refused to submit the earnest money until the inspection issues were worked out. Later that day, Respondent informed the seller's agent that the buyer wanted to drop the purchase price by \$14,900.
9. On April 1, 2015, after not being able to reach a mutually agreeable resolution, the seller and buyer signed a Cancellation Agreement and Mutual Release terminating the transaction.
10. In resolution of this matter, Respondent consents 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 violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care.
3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § REEB 24.03(2)(a) by providing services which he was not competent to provide without engaging the assistance of one who is competent.

4. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(i), (L) and (4m)(b).

ORDER

1. The attached Stipulation is accepted.
2. Respondent Jonathan A. Newby is REPRIMANDED.
3. The real estate salesperson license (number 33978-94) issued to Jonathan A. Newby is LIMITED as follows:
 - a. Within 90 days of the date of this Order, Respondent shall successfully complete six hours of education on the topic of real estate contracts offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam(s) offered for the course(s).
 - b. Respondent 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.
4. Within 90 days from the date of this Order, Respondent shall pay the COSTS of this matter in the amount of \$580.
5. Payment of costs, made payable to the Wisconsin Department of Safety and Professional Services, requests for pre-approval and proof of successful course completion 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

6. In the event Respondent fails to timely submit payment of the costs as ordered, or fails to successfully complete the ordered education, Respondent's license (number 79157-94), or Respondent's right to renew his license, 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 costs and successful completion of education.
7. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE EXAMINING BOARD

by: 
A Member of the Board

2-8-17
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JONATHAN A. NEWBY,
RESPONDENT.

:
:
:
:
:

STIPULATION

0005151

Division of Legal Services and Compliance Case No. 15 REB 100

Respondent Jonathan A. Newby 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. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees 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. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

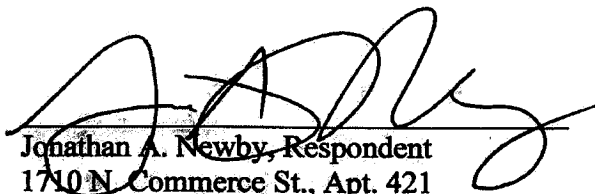
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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 Respondent, 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. 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.

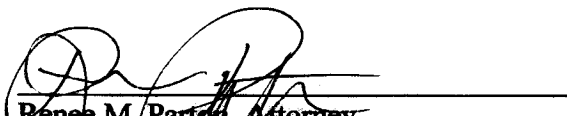
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Jonathan A. Newby, Respondent
1710 N. Commerce St., Apt. 421
Milwaukee, WI 53212
License no. 79157-94

12/2/16

Date



Renee M. Parton, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

12/5/2016

Date