

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

J.A. FULLER AND
PINNACLE REALTY INC.,
RESPONDENTS.

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FINAL DECISION AND ORDER

0005710

Division of Legal Services and Compliance Case No. 16 REB 016

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

J.A. Fuller
118 W. Broadway
P.O. Box 709
Waukesha, WI 53187-0709

Pinnacle Realty Inc.
118 W. Broadway
P.O. Box 709
Waukesha, WI 53187-0709

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 J.A. Fuller (DOB April 18, 1957) is licensed by the State of Wisconsin as a real estate broker, having license number 34122-90, first issued on April 17, 1985 and current through December 14, 2018. Respondent Fuller's most recent address on file with

the Wisconsin Department of Safety and Professional Services (Department) is 118 West Broadway, P.O. Box 709, Waukesha, Wisconsin 53187-0709.

2. Respondent Pinnacle Realty Inc. is licensed by the State of Wisconsin as a real estate business entity, having license number 833203-91, first issued on April 24, 1985 and current through December 14, 2018. Respondent Pinnacle Realty Inc.'s most recent address on file with the Department is 118 West Broadway, P.O. Box 709, Waukesha, Wisconsin 53187-0709.

3. Respondent Fuller is the owner and managing broker of Respondent Pinnacle Realty Inc.

4. Respondents maintained a common real estate trust account at Associated Bank in Waukesha, Wisconsin, with account number ending in -94.

5. On March 10, 2015, an auditor with the Department sent an email to Respondents' email address on file, requesting to perform an audit on March 23, 2015 at 10:00 a.m.

6. On March 11, 2015, the Department auditor called Respondents' phone number on file to confirm that he had used the correct email address. A male who answered the phone confirmed the email address.

7. On March 12, 2015, the Department auditor sent a Notice of Audit via certified mail to Respondents' address on file, proposing the same date and time for the audit.

8. On March 16, 2015, the Department auditor received a call from Respondent Fuller, requesting to move the audit date. The audit was moved to March 25, 2015.

9. Due to other business running longer than anticipated, the Department auditor had to cancel the audit scheduled for March 25, 2015. The Department auditor called Respondents' phone number on file and spoke to a male to explain the need to cancel the audit.

10. On November 19, 2015, the Department auditor sent an email to Respondents' email address on file, requesting to perform an audit on December 9, 2015, at 10:00 a.m.

11. On November 24, 2015, the Department auditor called Respondents' phone number on file and left a voice mail message requesting confirmation of the audit.

12. On December 2, 2015, the Department auditor called Respondents' phone number on file and left a voice mail message confirming that the audit would take place on December 9, 2015 at 10:00 a.m.

13. On December 9, 2015, the Department auditor arrived at Respondents' address on file at 9:55 a.m. and found the building abandoned. The Department auditor left a voice mail message for Respondents stating he would remain in the area and wait for a call. No response was received by the Department auditor.

14. On December 18, 2015, the Department auditor called Respondents' phone number on file and left a voice mail message requesting cooperation and advised that a complaint would be opened if no response was received.

15. On February 26, 2016, Division of Legal Services and Compliance Case No. 16 REB 016 was opened for investigation.

16. On October 20, 2016, a Department investigator mailed a letter to Respondents at an address located during the Department's investigation, requesting a response to the complaint and informing Respondents that they needed to update their addresses with the Department.

17. On November 21, 2016, a Department investigator sent an email to Respondents' email address on file indicating that a response had not been received to the investigator's October 20, 2016 letter, asking if Respondents had updated their addresses with the Department, and requesting the materials that were needed for the audit.

18. On November 21, 2016, Respondent Fuller responded via email, but did not respond to the complaint and did not provide the requested audit materials.

19. On November 22, 2016, a Department investigator sent Respondents an email indicating that a written response to the complaint was needed, requesting a statement as to why Respondents did not respond to the investigator's letter, asking if Respondents had updated their addresses with the Department, and requesting the materials for the audit.

20. On November 28, 2016, a Department investigator sent Respondents an email requesting confirmation that Respondents had received the investigator's November 22, 2016 email, and again requested the audit materials.

21. On December 5, 2016, a Department investigator sent Respondents an email detailing the investigator's attempts to gain cooperation from Respondents, and again requested the audit materials.

22. On December 8, 2016, Respondent Fuller responded via email to advise that she moved her businesses to a new location on November 5, 2016, that her father had been ill, and requested to have until January 16, 2017 to formally answer the investigator's letter and provide the requested audit materials.

23. On January 11, 2017, Respondents provided the requested audit materials.

24. On February 23, 2017, an auditor with the Department audited Respondents' trust account. The audit revealed the following:

- a. Respondents' cash journal did not provide a means of identification linking the journal to the ledgers;
- b. Respondents' cash journal did not show a daily running balance;

c. Respondents' reconciliation reports were not printed each month upon completion, and no reconciliation reports were prepared for the period January 2015 – December 2016;

d. Respondents' trial balances for the period December 2013 to December 2014 lumped all earnest money into a single figure, and did not list the names of the parties to each transaction and the amount held for the parties, and in subsequent periods the sum of individual liabilities did not equal the reconciled account balance; and

e. Respondents did not validate their trust account.

25. 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, J.A. Fuller violated Wis. Admin. Code § REEB 15.04 by failing to promptly send exact and complete copies of documents requested by the Board.

3. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 18.13(1)(c) by failing to maintain a cash journal that identified each transaction by including at least the name of the principal, an identification number or other means of identification linking the journal to the transactions and the ledger.

4. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 18.13(1)(d) by failing to maintain a cash journal that included a running balance for each day on which receipts or disbursements are entered.

5. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 18.13(3) by failing to reconcile the real estate trust account in writing each month.

6. By the conduct described in the Findings of Fact, J.A. Fuller 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 that included at least the names of all parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation.

7. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 18.13(5) by failing to review the reconciled account statement balance, 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.

8. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 23.02 by, after moving from the last address provided to the Department, failing to notify the Department in writing of the new address within 30 days of the change.

9. By the conduct described in the Findings of Fact, J.A. Fuller violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to the Department and the Board regarding any request for information within 30 days of the date of the request.

10. By the conduct described in the Findings of Fact, Pinnacle Realty Inc. violated Wis. Admin. Code § REEB 24.17(3) by aiding or abetting the above violations.

11. As a result of the above violations, J.A. Fuller and Pinnacle Realty Inc. are subject to discipline pursuant to Wis. Stat. § 452.14(3)(i) and (L).

ORDER

1. The attached Stipulation is accepted.
2. Respondent J.A. Fuller's real estate broker license (no. 34122-90) is REPRIMANDED.
3. Respondent Pinnacle Realty Inc.'s real estate business entity license (no. 833203-91) is REPRIMANDED.
4. Respondent J.A. Fuller's real estate broker license (no. 34122-90) is LIMITED as follows:
 - a. Respondent Fuller shall not maintain a real estate trust account under her own name or the name of any entity in which she is an owner, partner, officer or director.
 - b. Respondent Fuller shall not handle any real estate trust funds or client funds.
 - c. Within 30 days from the date of this Order, Respondent Fuller shall submit proof to the Department Monitor that the common real estate trust account at Associated Bank in Waukesha, Wisconsin, with account number ending in -94 is closed.
5. Within 90 days from the date of this Order, Respondent J.A. Fuller shall pay a FORFEITURE of \$500.
6. Within 180 days from the date of this Order, Respondent J.A. Fuller shall pay one-half of the COSTS of this matter in the amount of \$855.
7. Within 180 days from the date of this Order, Respondent Pinnacle Realty Inc. shall pay one-half of the COSTS of this matter in the amount of \$855.

8. Verification of trust account closure and payment of forfeiture and 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

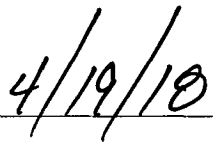
9. In the event Respondents fail to timely submit verification of trust account closure or payment of the forfeiture and costs as ordered, Respondents' licenses (nos. 34122-90 and 833203-91), or Respondents' right to renew their licenses, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with the ordered limitations and payment of the forfeiture and costs.

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

WISCONSIN REAL ESTATE EXAMINING BOARD

by:


A Member of the Board


Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

J.A. FULLER AND
PINNACLE REALTY INC.,
RESPONDENTS.

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: STIPULATION
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0005710

Division of Legal Services and Compliance Case No. 16 REB 016

Respondents J.A. Fuller and Pinnacle Realty 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 have been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondents are represented by Attorney Christopher T. Kolb.

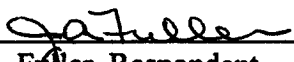
4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents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

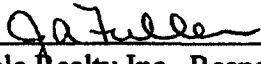
8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



J.A. Fuller, Respondent
118 W. Broadway
P.O. Box 709
Waukesha, WI 53187-0709
License no. 34122-90


02-14-2018

Date

By: , President
Pinnacle Realty Inc., Respondent
By: J.A. Fuller
118 W. Broadway
P.O. Box 709
Waukesha, WI 53187-0709
License no. 833203-91

02-14-2018

Date



Christopher T. Kolb, Attorney for Respondents
Halling & Cayo, S.C.
320 E. Buffalo St., Ste. 700
Milwaukee, WI 53202

2/20/18

Date

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

2.21.18
Date