

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
CAROL A. TONER, :
RESPONDENT. : **ORDER 0008028**

Division of Legal Services and Compliance Case No. 20 REB 060

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

Carol A. Toner
Prescott, WI 54021

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 Carol A. Toner (Birth Year 1950) is licensed by the State of Wisconsin as a real estate salesperson, having license number 34288-94, first issued on November 26, 1990 and current through December 14, 2022. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Prescott, Wisconsin 54021.

2. On August 4, 2020, the Department received a complaint alleging that Respondent acted unethically in a real estate matter in which the Complainant hoped to purchase a property listed by Respondent's firm. Complainant alleged that Respondent pressured the seller to accept a different offer, in part because it would give Respondent a greater commission. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 20 REB 060 for investigation.

3. On June 18, 2020, Respondent's firm entered into a listing contract with a seller of a property in Prescott, Wisconsin. The form states that the firm will be paid a 5% commission. This form was signed by Respondent's colleague, Michael C. Olson.

4. On June 18, 2020, Respondent, Olson, and the seller signed a document titled, "Team/Assist Addendum to Representation/Service Contract." This document provides that Olson works with Respondent, and the term "Agent" is amended to mean Olson as well as Respondent. This document is not a Board-approved form and does not state who drafted it.

5. On June 18, 2020, the seller also signed a document titled, "Wisconsin Addendum to Listing Contract." This is not a Board-approved form and does not state who drafted it. The document is not referenced in the Listing Contract.

6. On July 16, 2020, Respondent drafted a WB-36 Buyer Agency Agreement between Respondent and a potential buyer (CT). The document provides the agreement is only for the property in Prescott, Wisconsin. The document does not provide the commission amount that would be paid.

7. On July 16, 2020, Respondent drafted an Offer to Purchase (OTP) on behalf of CT for the property. The document was not signed or dated as presented.

8. On July 16, 2020, Respondent, Olson, and CT all signed a document titled, "Team/Assist Addendum to Representation/Service Contract." This document provides that the term "Agent" is amended to mean Respondent or Olson. This document is not a Board-approved form and does not state who drafted it.

9. On July 16, 2020, Olson drafted an OTP for Complainant and submitted it to the seller. At the time, Olson was not aware that Respondent's client had also submitted an OTP. The next day, on July 17, 2020, Olson reached out to Complainant to let him know another offer had been made. Complainant agreed to increase his offering price. Olson drafted a new first page of the OTP and submitted it to the seller.

10. On July 17, 2020, the seller told Olson that he was going to accept Complainant's offer. Olson called Respondent and Complainant to tell them the news. Respondent then called her client, CT, who decided to increase their offer by \$25,000. Respondent asked the seller if he had signed Complainant's offer and he said he had not.

11. On July 18, 2020, Respondent drafted an Amendment to the OTP on behalf of CT, increasing the offered price by \$25,000. This document was not signed or dated by Respondent as presented. The seller accepted this offer.

12. On February 11, 2022, Respondent told the Department that the final commission was 3.2% instead of the 5% provided in the original listing contract with the seller. She admitted that the reduced commission was not in writing, but was told verbally to the seller.

13. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The 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 pursuant to Wis. Stat. § 452.133(4m)(a).

3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § REEB 24.08 by failing to put in writing all financial obligations expressing the exact agreement of the parties.

4. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § REEB 16.06(4)(a) and (b) by using a pre-prepared addendum form that did not identify the drafter of the form and which was not incorporated by reference into the approved form to which the addendum was connected.

5. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(L).

ORDER

1. The attached Stipulation is accepted.
2. Respondent Carol A. Toner is REPRIMANDED.
3. Respondent Carol A. Toner's real estate salesperson license (no. 34288-94) is LIMITED as follows:
 - a. Within sixty (60) days of the date of this Order, Respondent shall successfully complete one remedial education course on the topic of forms from a provider pre-approved by the Board or its designee, 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.
 - c. The education completed pursuant to this Order may not be used to satisfy any other continuing education requirements with the Board.
4. Within ninety (90) days from the date of this Order, Respondent Carol A. Toner shall pay one-half of the COSTS of this matter in the amount of \$1,043.
5. Requests for pre-approval, proof of successful course completion, and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

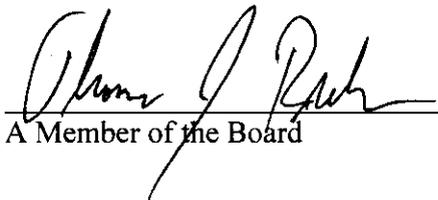
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

This information may also be submitted online via DSPS' Monitoring Case Management System
at: <https://dspsmonitoring.wi.gov/>

6. In the event Respondent violates any term of this Order, Respondent's license (number 34288-94), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN REAL ESTATE EXAMINING BOARD

by: 
A Member of the Board

6-16-2022
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
CAROL A. TONER, :
RESPONDENT. :

STIPULATION
ORDER 0008028

Division of Legal Services and Compliance Case No. 20 REB 060

Respondent Carol A. Toner 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 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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

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

Carol A. Toner

Carol A. Toner, Respondent
Prescott, WI 54021
Credential No. 34288-94

05/30/2022
Date

Megan Reed

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

05/31/2022
Date