

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

MATTHEW E. WHITESIDE,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0008213

Division of Legal Services and Compliance Case No. 21 REB 082

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

Matthew E. Whiteside
Brookfield, WI 53005

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 Matthew E. Whiteside (Birth Year 1975) is licensed by the State of Wisconsin as a real estate broker, having license number 56948-90, first issued on July 6, 2012 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 Brookfield, Wisconsin 53005.

2. On August 3, 2021, the Department received a complaint alleging that Respondent had improperly included too many names of prospective purchasers on a Protected Buyers List. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 21 REB 082 for investigation.

3. On November 10, 2020, Complainant's firm entered into a listing contract with Respondent for the sale of a commercial property. The listing contract, drafted using form WB-5, provided, at lines 204-217, defines a protected buyer as "a buyer who personally, or through any

Person Acting on Behalf of Buyer,” does one of the following during the term of the listing contract:

- a. Delivers to the seller a written offer to purchase, exchange or option on the property;
- b. Views the property with the seller or negotiates directly with the seller regarding any potential terms upon which the individual might acquire an interest in the property; or
- c. Attends an individual showing of the property or communicates directly with an agent of the firm or cooperating firm regarding any potential terms upon which the individual might acquire an interest in the property, provided that the agent or firm delivers the buyer’s name to the seller, in writing, no later than three days after the earlier of expiration or termination of the listing.

4. On June 1, 2021, Complainant cancelled the listing contract with Respondent and requested a Protected Buyers List for the property.

5. On June 1, 2021, Respondent provided Complainant with a Protected Buyers List containing 98 individual names.

6. Respondent later told the Department that he originally sent out an email to over 3,000 potential buyers regarding the property. He then directly called or emailed 98 individuals that became the makeup of his Protected Buyers List. Respondent stated that some of the 98 did not return his call or reply to his email, but he “believes he spoke to directly with the vast majority of them.”

7. Respondent did not retain any records of his phone calls or emails to these contacts.

8. On June 7, 2021, Complainant, through his attorney (Complainant), objected to Respondent’s Protected Buyers List.

9. On June 17, 2021, Respondent, through his attorney (Respondent), responded to Complainant’s objections and defended the Protected Buyers List, but agreed in good faith to reduce the number of protected buyers from 98 to 70.

10. On July 16, 2021, Complainant sent a letter to Respondent, further objecting to the Protected Buyers List providing an affidavit from one individual on the list, M.B., who stated he had not discussed the property with Respondent or anyone from his firm, and he had not been aware the property was for sale.

11. In the July 16, 2021 letter, Complainant also provided an obituary for an individual on the list, M.C., who had been deceased when the listing contract was signed.

12. On July 26, 2021, Respondent sent Complainant an updated Protected Buyers List, having agreed in good faith to reduce the number of individual names to 18 prospective purchasers.

13. On August 12, 2021, Respondent addressed the concerns raised in Complainant's July 16, 2021 letter in a written response to the Department, stating that he had sent information regarding the property to the last-known points of contact for M.B. and M.C, and he had not been aware that M.C. had passed away. Respondent later explained to the Department that M.C. had been a principal in a real estate investor group, and Respondent had communicated with someone else from that group. He stated he included M.C.'s name because that was how the name was listed in Respondent's database of investors, but he understands how this may have caused confusion and will ensure his protected buyers lists are clearer in the future.

14. In the August 12, 2021 letter, Respondent stated that he reduced the Protected Buyers List to 18 names in order to reach a good faith compromise with the seller, in the interest of resolving the matter and moving on. Respondent noted that this was by no means an admission that the prior lists were "overkill" or "fraudulent."

15. On March 9, 2022, Respondent sent the Department a spreadsheet detailing the 98 individual names identified on the original Protected Buyers List.

16. Respondent's spreadsheet consisted of a list of 98 individuals to whom Respondent had sent information about the property. Notes in the spreadsheet indicated the following:

- a. Spreadsheet notes indicated that 7 individuals toured the property.
- b. Spreadsheet notes indicated that 15 individuals specifically stated that they were not interested in the property.
- c. For 32 individuals, the spreadsheet notes simply indicate that a message was left by Respondent.
- d. For 5 individuals, there are no spreadsheet notes at all.

17. Respondent has clarified that the notes in the spreadsheet represented the last contact made by Respondent after having initially reached out to every contact on the list by telephone or e-mail regarding the property. However, Respondent did not record any of his phone calls to such individuals and has no other records aside from the spreadsheet to prove he reached out to the individuals on the list.

18. According to Respondent's spreadsheet, no individuals made an offer to purchase the property or communicated directly with the seller, and only 7 viewed or toured the property.

19. 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)(a) by failing to provide brokerage services honestly and fairly, pursuant to Wis. Stat. § 452.133(4m)(a).
3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § REEB 15.04 by failing to retain all documents and correspondence utilized, received or prepared in connection with the subject transaction.
4. 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 Matthew E. Whiteside is REPRIMANDED.
3. Respondent Matthew E. Whiteside's real estate broker license (no. 56948-90) is LIMITED as follows:
 - a. Within sixty (60) days of the date of this Order, Respondent shall successfully complete one (1) remedial education course on the topic of consumer protection, and one (1) course on the topic of office management, from a provider pre-approved by the Board or its designee, including taking and passing any exam(s) offered for the course.
 - 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 Matthew E. Whiteside shall pay the COSTS of this matter in the amount of \$1,001.
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

Respondent may also submit this information online via DSPS' Monitoring Case Management System at: <https://dpsmonitoring.wi.gov/>

6. In the event Respondent violates any term of this Order, Respondent's license (number 56948-90), 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 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:

Thomas J. Reine
A Member of the Board

10/20/22

Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MATTHEW E. WHITESIDE,
RESPONDENT.

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STIPULATION

ORDER 0008213

Division of Legal Services and Compliance Case No. 21 REB 082

Respondent Matthew E. Whiteside 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. Respondent is represented by Attorney Seth Mott.
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. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Matthew E. Whiteside, Respondent
Brookfield, WI 53005
Credential No. 56948-90

10/10/2022

Date



Seth Mott, Attorney for Respondent
23975 Park Sorrento #400
Calabasas, CA 91302

10/10/22

Date



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

10/11/2022

Date