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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MARSHALL J. KEITH,
RESPONDENT.

:
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:
:

FINAL DECISION
AND ORDER

(87 REB 7, 86 REB 356, 87 REB 80,
88 REB 437, 86 REB 343)

The parties to this action for the purposes of Wis. Stats. sec. 227.53
are:

Marshall J. Keith
112 South Lake Avenue
Crandon, WI 54520

Real Estate Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

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 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

1. That Marshall J. Keith, hereinafter the Respondent, was at all times
relevant to this complaint duly licensed under the provisions of ch. 452,
Stats., to practice as a real estate broker in the State of Wisconsin.

2. That the Respondent's license is #30770, issued on January 11, 1984.

3. That the Respondent's last reported address is 112 South Lake
Avenue, Crandon, Wisconsin 54520.

THE BENNETT TRANSACTION

4. That in June, 1985, Josephine Bennett listed her tavern, the Pour
House, with the Respondent.

5. That by August of 1985, the property had not sold but the Respondent
had obtained potential buyers, Edward and Margaret Huneck.

6. That the Hunecks were unable to provide a down payment on the property and so a meeting was held in the Respondent's office on approximately August 15, 1985 to negotiate a rental agreement. The participants at the meeting were Bennett, the Hunecks and the Respondent. A copy of the resulting lease is attached as Exhibit A.

7. That paragraph 7 of the lease provides for a security deposit in the sum of \$1,000.

8. That the Respondent failed to receive a cash security deposit but claims he received a promissory note for \$1,000 from the Hunecks.

9. That the Respondent never advised Bennett that a promissory note was received in lieu of cash and never reduced authority for use of a promissory note to writing.

10. That at the time the lease was drafted, the Respondent also signed a piece of paper acknowledging Keith Realty's personal responsibility for the stock in the tavern in the amount of \$2,800 because the Hunecks did not have money to guarantee the stock. A copy of the paper acknowledging this responsibility is attached as Exhibit B.

11. That the Hunecks took possession of the tavern on October 1, 1985 and vacated the tavern on October 8, 1985.

12. That the Respondent failed to return any form of security deposit to Bennett and has failed to reimburse Bennett for use of the tavern stock.

THE BRITZ TRANSACTION

13. That on May 12, 1986, Nick and Lori Britz made an offer to purchase a property located at 403 West Madison, Crandon, Wisconsin. The offer was drafted by the Respondent.

14. That on May 19, 1986, earnest money in the sum of \$1,400 was given to the Respondent by Nick and Lori Britz.

15. That Nick and Lori Britz were unable to meet the financing contingency in the offer and requested the return of the earnest money from the Respondent.

16. That the Respondent delayed in returning the earnest money until July 30, 1986, when the Respondent made out two checks. The first check was made out to Nick Britz in the sum of \$1,275 with the stated purpose on the check being "refund." The second check was in the sum of \$125 and was made out to both Nick Britz and Jack Keefe with the stated purpose being "rent."

17. That Nick Britz advised the Respondent that Britz owed no money to Mr. Keefe and that Britz wanted his entire earnest money of \$1,400 returned.

18. That the Respondent advised Britz that the Respondent wanted to make it look like the Respondent had paid some money to Keefe and therefore had to issue two checks. Britz signed and deposited the check for \$1,275. Britz signed both his name and Keefe's name to the check for \$125 and also deposited this check. A copy of the two checks are attached as Exhibit C. Exhibit D is a copy of the residential offer to purchase bearing the earnest money receipt.

19. That an inspection of Keith's trust account by a real estate auditor revealed that there was no deposit in May of 1986 of \$1,400. The inspection also revealed that the refund checks, Exhibit C, were written on the Respondent's business account and not on his trust account.

THE KEEFE TRANSACTION

20. That from December 20, 1985 through July 31, 1986, William Keefe listed his property located at Route 1, Crandon with the Respondent.

21. That on approximately May 1, 1986, the Respondent rented said property to Nick and Lori Britz without the permission and knowledge of the owner, William Keefe.

22. That Nick and Lori Britz had an agreement with the Respondent that Nick and Lori Britz would provide the materials and labor to make repairs to the property in exchange for rental payments. No rent was paid for the months of May and June, 1986. For the third month, July, 1986, a check in the sum of \$125 was issued by Nick Britz to Gravitter Service to offset monies owed by the Respondent to Gravitter. A copy of said check is attached at Exhibit E.

23. That Keefe subsequently learned that Nick and Lori Britz were occupying the cabin and in approximately July of 1986 Keefe explained to Nick and Lori Britz that he had never given authorization to the Respondent to rent the property.

24. Nick and Lori Britz vacated the property in July, 1986.

THE CRANDON CHURCH TRANSACTION

25. That in October, 1986, the Respondent was the listing broker for a piece of land on Highway 8 in Crandon, Wisconsin. The land was owned by the Laona State Bank.

26. That James Crawford, Treasurer for the Crandon Church of Christ, met with the Respondent to draft an offer to purchase said land. A contingency on the offer made the offer subject to a Perc test. A copy of said offer is attached as Exhibit F.

27. That the Crandon Church of Christ subsequently gave the Respondent a check for \$6,023.60 and \$1,750 in cash as evidenced by Exhibit G.

28. That Crawford never received an accepted offer but did receive an executed warranty deed from the Respondent on October 30, 1986. The Respondent explained to Crawford that the money previously paid had been turned over to the bank.

29. That on a number of occasions prior to and subsequent to the October 30, 1986 date, the Respondent represented to Crawford that the property did "perc out".

30. That the Respondent arranged for a Perc test to be conducted by Allan Flannery.

31. That the Perc test was not conducted until approximately November 15, 1986 and the property did not pass the Perc test.

32. That the Respondent claims the bank and Reverend Crawford agreed to close on the transaction prior to the perc test and that if the lot did not pass the Perc test then the bank would refund the money so long as the church had not yet started digging the hole for the basement.

33. That no such contingency as referred to in paragraph 32 appears in the offer to purchase, attached as Exhibit F.

THE NESS TRANSACTION

34. That at some time prior to July, 1988, Lester Ness listed a property with the Respondent.

35. That in July, 1988, Charles Ritchie, Jr. purchased said property by land contract.

36. That the Respondent suggested to Ness that Ritchie make payments to the Respondent and then the Respondent would pay Ness. The Respondent advised Ness that Ness would then not have to worry about receiving bad checks from Ritchie.

37. That a check dated August 1, 1988, in the sum of \$99.34, was delivered to the Respondent and a check dated September 3, 1988, in the sum of \$99.34 was delivered to the Respondent for purposes of land contract payments by Ritchie. Copies of these checks are attached as Exhibit H.

38. That Ness requested on numerous occasions that the Respondent Provide the two payments to Ness, but the Respondent failed to do so.

39. That the Respondent also failed to deposit said checks, Exhibit H, into his real estate broker's trust account.

THE KIEFER TRANSACTION

40. That on September 10, 1985, Anthonai and Fusai Kiefer made an offer to purchase the Mitchell property located in Crandon, Wisconsin. Pursuant to this offer, Anthonai and Fusai Kiefer provided earnest money to the Respondent in the sum of \$1,000. A copy of the offer to purchase is attached as Exhibit I.

41. That the Kiefers were not able to purchase the Mitchell property because a contingency in the offer regarding the sale of their home in California was not met.

42. That the Respondent never returned the earnest money of \$1,000 to the Kiefers.

THE DUBBERSTEIN TRANSACTION

43. That the Respondent drafted an offer to purchase on behalf of Gordon Dubberstein for the Kasten property located in the town of Lincoln, Wisconsin. A copy of the offer to purchase is attached as Exhibit J.

44. That a contingency of said offer was that financing be obtained by the buyer.

45. That the Respondent drafted said contingency in a negligent and inadequate manner as evidenced by Exhibit J, line 23.

46. That \$500 earnest money was obtained from Dubberstein by the Respondent pursuant to Exhibit J.

47. That the Respondent disbursed \$263 of this earnest money to clear the title but had no authorization to do so.

FINANCING CONTINGENCIES

48. That on numerous occasions the Respondent has failed to draft a financing contingency in an adequate and competent manner.

49. That examples of improperly drafted contingencies are attached as Exhibits K (Winter), L (Ritchie), M (Weber), N (Yeager), O (Sanders) and P (Roth).

INADEQUATE FUNDS

50. That the Respondent issued numerous checks upon his business account without adequate funds. A listing of said checks from October 24, 1985 through November 28, 1986, is attached as Exhibit Q.

51. That the daily balances on dates from May 13, 1985 through October 27, 1986, are attached as Exhibit R.

UNLICENSED PRACTICE

52. That from January 1, 1989 through December 27, 1989, the Respondent practiced as a real estate broker without a current license.

53. That on December 28, 1989, the Respondent renewed his license as a real estate broker.

CONCLUSIONS OF LAW

1. That by engaging in the activities set forth in Findings of Fact 4 through 12, the Respondent has failed to put an agreement in writing contrary to Wis. Adm. Code sec. RL 24.08, has accepted a promissory note in lieu of cash contrary to Wis. Adm. Code sec. RL 18.11(2), has made false promises of a character such as to influence the seller contrary to sec. 452.14(3)(c), Stats. and has demonstrated incompetency contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), Stats.

2. That by engaging in the activities set forth in Findings of Fact 13 through 19, the Respondent has failed to deposit earnest money, contrary to sec. 452.13, Stats., has failed to deposit real estate trust funds within 24 hours contrary to Wisconsin Administrative Code sec. RL 18.03(1)(b), has engaged in improper, fraudulent, and dishonest dealing contrary to sec. 452.14(3)(k), Stats., and has demonstrated incompetency contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), Stats.

3. That by engaging in the activities set forth in Findings of Fact 20 through 24, the Respondent has failed to put an agreement in writing contrary to Wisconsin Administrative Code sec. RL 24.08, has made substantial misrepresentations contrary to sec. 452.14(3)(b), Stats., has made false promises contrary to sec. 452.14(3)(c), Stats., has demonstrated incompetency to act as a broker contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), Stats., and has engaged in conduct which constitutes improper fraudulent or dishonest dealing, contrary to sec. 452.14(3)(k), Stats.

40. That by engaging in the activities set forth in Findings of Fact 25 through 33, the Respondent has improperly disbursed funds, contrary to Wisconsin Administrative Code sec. RL 18.09(2), has failed to reduce agreements to writing, contrary to Wisconsin Administrative Code sec. RL 24.08, has made substantial misrepresentations contrary to section 452.14(3)(b), Stats., has made false promises so as to influence the purchaser, contrary to section 452.14(3)(c), Stats, and has demonstrated incompetency to act as a broker, contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), stats.

5. That engaging in the activities set forth in Findings of Fact 34 through 39, the Respondent has failed to remit money within a reasonable time contrary to sec. 452.14(3)(h), Stats., and has failed to deposit trust funds within 24 hours of receipt contrary to Wisconsin Administrative Code sec. RL 18.03(1)(b).

6. That by engaging in the activities set forth in Findings of Fact 40 through 42, the Respondent has failed to remit money belonging to another, within a reasonable time, contrary to sec. 452.14(3)(h), Stats.

7. That by engaging in activities set forth in Findings of Fact 43 through 47, the Respondent has failed to place agreements in writing, contrary to Wisconsin Administrative Code sec. RL 24.08, has improperly disbursed trust funds, contrary to Wisconsin Administrative Code sec. RL 18.09(2), and has demonstrated incompetency to practice as a broker contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), Stats.

8. That by engaging in the activities set forth in Findings of Fact 48 and 49, the Respondent has failed to put agreements in writing, contrary to Wisconsin Administrative Code sec. RL 24.08 and has demonstrated incompetency to practice as a broker contrary to Wisconsin Administrative Code sec. RL 24.01(3) and sec. 452.14(3)(i), Stats.

9. That by failing to have adequate funds in a business account as set forth in Findings of Fact 50 and 51, the Respondent has violated Wisconsin Administrative Code sec. RL 24.15.

10. That by practicing without a current license as set forth in Findings of Fact 52 and 53, the Respondent has violated ch. 452, Stats.

11. That the Board has jurisdiction to take disciplinary action against the Respondent pursuant to ch. 452, Stats.

Therefore, it is hereby ORDERED:

1. That the Respondent voluntarily surrenders his license as a real estate broker.

2. That the Board accepts the Respondent's surrender under the following terms and conditions:

- a. The Respondent may not be licensed as a real estate broker or as a salesperson for a period of one year from the date of this Order.
- b. That upon reapplication the Respondent must meet the educational requirements of sec. 452.09(2), Stats., and Ch. RL 25. If the educational requirements change, the Respondent must meet the then existing requirements.
- c. That upon reapplication the Respondent must meet the competency(examination) requirements set forth in sec. 452.09(3) and Ch. RL 12, Wis. Adm. Code. If the competency requirements change, the Respondent must meet the then existing requirements.
- d. That the Respondent may take the education required in paragraph b. and the examination required in paragraph c. at any time after the date of this order.
- e. That the Respondent is not required to meet the experience requirement of sec. 452.09(2)b, Stats., or of any subsequent experience requirements.
- f. That the Respondent pay partial costs of the proceeding to the Department of Regulation and Licensing in the sum of \$1,000.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

REAL ESTATE BOARD

By:

Linda L. Schwesky
A Member of the Board

Feb 22, 1990
Date

MJB:vks
DOEATTY-939

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MARSHALL J. KEITH,
RESPONDENT.

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:
:

STIPULATION

It is hereby stipulated between Marshall J. Keith, personally on his own behalf and Michael J. Berndt, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Keith's licensure by the Division of Enforcement (87 REB 7, 86 REB 356, 87 REB 80, 88 REB 437, 86 REB 343). Keith consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Keith understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Keith neither admits nor denies the allegations in this matter but agrees to the adoption of the attached Final Decision and Order by the Real Estate Board.

4. 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 be returned to the Division of Enforcement for further proceedings.

5. If the Board accepts the terms of this Stipulation, 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.

6. That case 89 REB 98 shall be closed by the Board for Board discretion.

7. Attached to this Stipulation is the current licensure card of Keith.

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is February 23, 1990.

WLD:dms
886-490