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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

**DAVID G. DELAHUNT,
RESPONDENT.**

FINAL DECISION AND ORDER

97 REB 258

LS 9906241REB

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

*David G. Delahunt
1648 W. Bradford Dr.
Mequon, WI 53092*

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

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 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. **David G. Delahunt** ("Delahunt"), date of birth 7/17/41, is licensed in the State of Wisconsin as a real estate broker, license # 90-18602. This license was first granted to him on 5/23/77.
2. Delahunt's most recent address on file with the Department of Regulation and Licensing is, 1648 W. Bradford Dr., Mequon, WI 53092.
3. At all times relevant to the facts set forth herein Delahunt was the supervising broker/owner of Double Corp. d/b/a Remax Lakeside Real Estate located at 1648 W. Bradford Dr. Mequon, WI 53092, license # 91 834338. Ari B. Friedman was at all time relevant to the facts set forth herein employed as a real estate salesperson by Double Corp. d/b/a Remax Lakeside Real Estate.
4. On January 1, 1997, Friedman's Wisconsin real estate salesperson's license expired and it was not renewed by him until on or about February 23, 1998. During that timeframe he continued to practice real estate as exemplified by paragraphs 6 through 11 below.
5. Daniel and Deborah Bartman were owners of property located at, 132 Debbie Court, Waukesha WI. In 1997 they were marketing this property as being "For Sale By Owner".
6. On or about August 22, 1997, Friedman drafted a Buyer Agency Agreement contract for potential homebuyer Mr. Ralph W. Floyd Jr. Lines 13 and 14 of the contract identifies 132 Debbie Court, Waukesha, WI. as the specific

property involved. Line 22 of the Buyer Agency Agreement indicates that the broker's compensation would be a "\$500.00 Document Preparation Fee". A copy of the Buyer Agency Agreement contract is attached as **Exhibit 1** and is incorporated herein by reference.

7. On or about August 22, 1997, Friedman drafted a Residential Offer To Purchase contract on behalf of Floyd for the 132 Debbie Court property. Lines 9 & 10 of the Residential Offer To Purchase requires \$1,000.00 in earnest money in the form of a check to be paid within 3 days of acceptance. The offer was accepted by the Bartmanns on August 25, 1997. Line 23 indicates that TIME IS OF THE ESSENCE as to earnest money payment(s). Attached to the Residential Offer To Purchase was Addendum A, and other real estate forms prepared by Friedman while he was not licensed. A copy of the Residential Offer To Purchase contract with attachments is attached as **Exhibit 2** and is incorporated herein by reference.

8. On or about August 26, 1997, an Amendment To Offer To Purchase was drafted by Friedman and signed by Floyd changing the closing date from August 29, 1997, to September 5, 1997, and changing the occupancy date from August 29, 1997, to September 30, 1997. A copy of the Amendment To Offer To Purchase is attached as **Exhibit 3** and is incorporated herein by reference.

9. On or about August 29, 1997, check # 2486 in the amount of \$500.00 was issued to ReMax Lakeside by Floyd. At the bottom left corner of the check the words " For Document Preparation" appear. A copy of check # 2486 is attached as **Exhibit 4** and is incorporated herein by reference.

10. The Bartmann/Floyd transaction failed because Floyd was unable to obtain necessary financing.

11. Floyd never submitted the \$1,000.00 earnest money as required by the Residential Offer To Purchase (Exhibit 2). Friedman did not inform Bartmann of Floyd's failure to submit the earnest money until after the transaction failed.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.
3. Respondent **David G. Delahunt** has violated:

a. Wis. Adm. Code sec. RL 17.07, Wis. Adm. Code sec. RL 17.08(1), Wis. Adm. Code sec. RL 17.08(2), and Wis. Adm. Code sec. RL 24.17(3), and Wis. Stats. sec. 452.12 (3), Wis. Stats. sec. 452.14(3)(i), and Wis. Stats. sec. 452.14(3)(L) by not, at the beginning of each biennial licensure period, determining that each licensee employed by the broker is properly licensed, and by not adequately supervising the activities of salesperson Ari B. Friedman regarding the failed Bartmann/Floyd transaction, specifically in regards to earnest money responsibilities and charging a document preparation fee.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED, that Respondent **David G. Delahunt**, license # 90-18602 be, and hereby is, **Reprimanded**.

IT IS FURTHER ORDERED, that Respondent **David G. Delahunt**, within six months of the date of this Order, successfully complete the following course modules from the 36 hour real estate broker's pre-licensing course at an educational institution approved by the Department of Regulation and Licensing:

- a. The four hour Personnel module - section RL 25.02(2)(f), of the Wisconsin Administration Code, and
- b. The four hour Business Ethics module - section RL 25.02(2)(g), of the Wisconsin Administration Code,

and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, WI 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the

Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent **David G. Delahunt** fails to successfully complete and report the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **David G. Delahunt** his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **David G. Delahunt**, pay partial costs of this matter in the amount of \$300.00, within 30 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent **David G. Delahunt** fails to pay the \$300.00 partial costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **David G. Delahunt**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said partial costs have been paid to the Department of Regulation and Licensing and his failure to pay the partial costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 97 REB 258 be, and hereby is, CLOSED.

Dated this 24th day of June, 1999.

WISCONSIN REAL ESTATE BOARD

By: James Imhoff