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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST :

ELIZABETH A. HOUGH

FINAL DECISION AND ORDER

RESPONDENT

LS0012072REB

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

Elizabeth A. Hough

PO Box 375

Oxford, WI 53952

Wisconsin Real Estate Board

P.O. Box 8935

Madison, WI 53708-8935

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. Elizabeth A. Hough ("Hough"), date of birth 11/08/28, is licensed in the State of Wisconsin as a real estate broker having license # 90-44837. This license was first granted to her on 02/08/91. Hough's most recent address on file with the Department of Regulation and Licensing is, PO Box 375, Oxford, WI 53952.
2. At all times relevant to the facts set forth below Hough was the acting real estate broker of Century 21 Marquette Realty, Inc., P O Box 375, Oxford, WI 53952, because of her broker husband's illness.
3. On or about June 22, 1998, Marty and Marie Freese entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Bob Knutson, a broker for ReMax Country Realty, PO Box 275, Westfield, WI 53964, for the sale of their property located at 316 E. 8th St., Westfield, WI. The listed price was \$126,900.00 and the contract was to be in effect until December 30, 1998. A copy of the Residential Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 1** and is incorporated herein by reference.
4. On or about September 25, 1998, Hough prepared a Disclosure Of Real Estate Agency document informing prospective buyers Warren and Selma Begin that Century 21 Marquette Realty, Inc. and Beth Hough were working as "Seller's Agent". Warren and Selma Begin acknowledged receipt of this disclosure by signing the form on September 28, 1998. A copy of the Disclosure Of Real Estate Agency form is attached as **Exhibit 2** and is incorporated herein by reference.

5. On or about October 17, 1998, Hough, as agent for the seller, drafted a Residential Offer to Purchase on behalf of Warren Begin for the 316 E. 8th St., Westfield, property. The offered price was \$124,900.00 with closing to occur no later than November 30, 1998. The offer was subject to a finance contingency in the amount of \$114,900.00. Earnest money of \$2000.00 was to be paid within 5 days of acceptance. Lines 124-127 of the offer read; "EARNEST MONEY HELD BY: Earnest money, if held by a broker, shall be held in the trust account of the broker drafting the Offer prior to acceptance of Offer and in the trust account of the listing broker (buyer's agent if Property is not listed) after acceptance until applied to purchase price or otherwise disbursed as provided in the Offer". Marie Freese and Marty Freese accepted this offer by signing the document on October 18 and October 19, 1998, respectively. The \$2,000.00 earnest money was paid and was deposited in the Marquette Realty Trust Account on October 9, 1998. A copy of the October 17, 1998, Residential Offer to Purchase with acceptance is attached as **Exhibit 3** and is incorporated herein by reference. A copy of the Marquette Realty, Inc. ledger for this transaction is attached as **Exhibit 4** and is incorporated herein by reference.

6. Shortly after the their offer was accepted, the Begins applied for a fixed rate mortgage with Amcore bank in Montello, WI, in the amount of \$114,900.00. Prior to approving the mortgage application the Amcore bank ordered an appraisal of the property.

7. On or about November 12, 1998, Hough forwarded a note to the Begins informing them that the Bank wouldn't be ready for the scheduled November 30, 1998, closing. To obtain an extension of time the Begins, on or about November 17, 1998, submitted an Amendment/Notice Relating to Offer to Purchase, as prepared by Hough, changing the closing date from November 30, 1998, to December 15, 1998. On or about November 20, 1998, Marie Freese signed the Amendment/Notice Relating To Offer To Purchase granting the extension. Hough alleges she did not receive a copy of this Amendment/Notice Relating to Offer to Purchase from the listing broker after it was signed by Freese. A copy of the November 12, 1998, note from Hough to Mr. & Mrs Begin is attached as **Exhibit 5** and is incorporated herein by reference. A copy of Amendment/Notice Relating to Offer to Purchase is attached as **Exhibit 6** and is incorporated herein by reference.

8. On or about November 18, 1998, the appraisal ordered by the bank was completed and it indicated an estimated market value of \$115,000.00 for the 316 E. 8th St., property. The bank advised the Begins that since the appraisal was approximately \$10,000.00 less than the purchase price they would have to have an additional \$10,000.00 down payment to obtain the loan. The Begins were not financially able to increase their down payment by \$10,000.00.

9. Upon learning of the appraisal being \$115,000.00, Bob Knutson and the Freeses made arrangements to have a second appraisal done. The purpose of the second appraisal was to assist the bank and the Begins in determining documented value of the 316 E. 8th St. property and thus provide additional information to the bank in the Begin loan application process. They did this with the approval of Amcore bank which had indicated a willingness to approve the loan provided the property appraised at or above the purchase price

10. On or about November 25, 1998, Hough faxed to the listing broker, ReMax attention Don, a memo indicating that the buyers (Begins) did not want to pursue this transaction. A copy of Hough's faxed memo is attached as **Exhibit 7** and is incorporated herein by reference.

11. On or about November 30, 1998, Don Knutson faxed Hough the following message; "Dear Beth: Please deduct \$135.00 for the well and water inspections from the Begin earnest money and mail me a check for \$135.00 for payment to Kerschner's. I am forwarding a copy of Kerschner's invoice for your reference with this fax. Please call me if you have any questions." A copy of the November 30, 1998, fax is attached as **Exhibit 8** and is incorporated herein by reference.

12. On or about December 1, 1998, Hough in response to the above (Exhibit 8) faxed the following to Don Knutson; "Re Freese/Begin According to the contract the Seller pays for the well & water inspection, I think. If I'm wrong please let me know. Thanks ! " A copy of the December 1, 1998, fax is attached as **Exhibit 9** and is incorporated herein by reference.

13. Hough, having received no response to her December 1, 1998, fax (Exhibit 9) and believing the Offer To Purchase (Exhibit 3) no longer enforceable, independently decided to disburse the \$2,000.00 earnest money back to Warren Begin. She disbursed this earnest money to him on December 2, 1998, without a Cancellation Agreement and Mutual Release being approved by her clients, the Freeses, or no other written notice of dispersal sent to the parties. On learning that the earnest money had been returned to the Begins, the Freeses complained, believing that the money should have been disbursed to them. A copy of the December 2, 1998, check from Marquette Realty Inc. Trust Account signed by Hough in the amount of \$2,000.00 payable to Warren Begin is attached as **Exhibit 10** and is incorporated herein by reference.

14. The second appraisal for Amcore bank initiated by Don Knutson and the Freeses, was completed on December 6, 1998. The appraisal showed the Final Estimate of Value for the 316 E. 8th St. property as \$127,000.00. A copy of the December 6, 1998, Appraisal of Real Property is attached as **Exhibit 11** and is incorporated herein by reference.

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 **Elizabeth A. Hough** has violated:
 - a. Wis. Adm. Code secs. RL 18.08, RL18.09(1), RL 18.09(2), RL24.025(1) and RL 24.17(3) and Wis. Stats. secs. 452.133(2)(a), and 452.14(3)(i) by failing to forward the Begin's \$2,000.00 earnest money to the listing broker within 30 days, and by improperly disbursing the \$2,000.00 earnest money back to the Begins.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Elizabeth A. Hough**, license # 90-4837, be, and hereby is, **REPRIMANDED**.

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

- a. The Trust Account module-section RL 25.02(2)(c), of the Wisconsin Administrative Code and;
- b. The 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 **Elizabeth A. Hough** fails to successfully complete 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 **Elizabeth A. Hough**, her 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 **Elizabeth A. Hough**, pay partial costs of this matter in the amount of \$250.00, 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 **Elizabeth A. Hough** fails to pay the \$250.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Elizabeth A. Hough**, her real estate broker's 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 her failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that files 99 REB 306 & 99 REB 345 are hereby closed.

Dated this 7th day of December, 2000.

WISCONSIN REAL ESTATE BOARD

James Imhoff, Jr.

A member of the Board

