

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

ARTHUR E. FRIEDMAN,  
EDWARD E. MESHESKI,  
F-M REALTY,  
FM MORTGAGE AND FINANCE CO., and  
FM MORTGAGE AND FINANCE CO., INC.

RESPONDENTS

FINAL DECISION  
AND ORDER

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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

Dated this 27th day of September, 1990.

Arthur J. Achil's

Based on the entire record herein, the examiner recommends that the Real Estate Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. Respondent Arthur E. Friedman (Friedman), 914 Milwaukee Avenue, South Milwaukee, WI 53172, is currently licensed as a real estate broker by license # 6986, granted on November 26, 1973, and is currently licensed as a loan solicitor by license #13, granted on November 1, 1988. Friedman is an officer and partner in respondent F-M Realty.
2. Respondent Edward E. Mesheski (Mesheski), 6541 Washington Circle, Wauwatosa, WI 53213, is currently licensed as a real estate broker by license #6985, granted on December 21, 1972, and is currently licensed as a loan solicitor by license #14, issued November 1, 1988. Mesheski is an officer and partner in respondent F-M Realty.
3. Respondent F-M Realty is currently licensed to practice real estate as a partnership by license #7721, issued on May 22, 1974.
4. Respondent FM Mortgage and Finance Co. is currently licensed as a loan solicitor by license # 17, issued on November 1, 1988.
5. Respondent FM Mortgage and Finance Co., Inc. is currently licensed as a loan solicitor by license #18, issued on November 10, 1988.
6. On February 26, 1987, mortgage foreclosure proceedings were filed against Ruth H. Ritsch (Ritsch) on Ritsch's duplex property located at 6427-6429 North 73rd Street, Milwaukee, Wisconsin. A judgment of foreclosure was filed on April 13, 1987, in the amount of \$45,661.95, with six months redemption.
7. Subsequent to the filing of the mortgage foreclosure proceedings, Ritsch responded to a form letter from Friedman concerning the foreclosure. Ritsch telephoned F-M Realty and spoke to Friedman. Within a few days thereafter, Ritsch met with Friedman, who indicated the possibility that he could assist her in keeping the property.
8. At a subsequent meeting on April 6, 1987, Friedman prepared and Ritsch executed documents consisting of a form entitled "Borrower's 'Confidential' Information" setting forth information related to Ritsch's finances, a "Financing Contract" by which Ritsch gave F-M Realty the exclusive right to procure financing for her property, and an "Authorization to Pay Off", by which Ritsch agreed to pay F-M Realty \$3500 out of the proceeds of any loan procured. Friedman failed to procure a loan for the property.
9. On or about October 1, 1987, F-M Realty, with Friedman as listing broker, entered into a "Residential Listing Contract - Exclusive Right to Sell" agreement with Ritsch to sell Ritsch's duplex. The property was listed at a price of \$86,600; terms were to be all cash at closing; occupancy date was established as subject to the tenants' rights; and the broker's commission was to be \$3500. The term of the contract was to be from October 1, 1987 until December 31, 1988.

20. Between April 8, 1988, and July 1, 1988, the date established for closing, Perry inquired of both Mesheski and Owen as to when and how the earnest money had been paid, and asked for proof of the earnest money payment. Mesheski indicated the earnest money had either been paid in one lump sum or over a period of time. Owen indicated the money had been paid over a period of time. Neither Mesheski nor Owen provided proof that the earnest money had in fact been paid.

21. The "Statement for Closing Real Estate Transaction" for the closing scheduled for July 1, 1988, indicates a sales price of \$88,000, balanced against credits to the buyer totaling \$20,350.47--including \$17,600 down payment credit which was never paid--resulting in a balance due to the seller of \$67,649.53. From this is deducted the cost of title policy, recording fees, transfer fees, and satisfaction of the two previous mortgages, resulting in a net balance of \$3656.96 owed by the seller.

22. Mesheski knew or should have known that the earnest money deposit had never been paid, and that the loan application documents and closing documents indicating that earnest money had been paid were falsified.

23. Present at the closing on July 1, 1988, were Perry, Mesheski and Owen. Perry again asked for verification of the earnest money deposit from both Mesheski and Owen. Because neither could provide it, Perry postponed the closing until verification could be provided.

24. Following the postponement, Attorney Fred Van Hecke arrived late at the closing. Perry asked him, as Ritsch's attorney, if he could verify payment of the earnest money deposit. Van Hecke was unable to provide verification.

25. In a letter dated July 11, 1988, addressed to Owen, Perry wrote as follows:

This letter is to inform you that our loan committee has cancelled your loan commitment on [6427-29 North 73rd Street]. The reason for our cancellation is due to several facts set forth in the loan application which materially changed and other misrepresentations regarding occupancy and earnest money.

26. The transaction never closed.

27. In February 1990, at Friedman's request, Ritsch signed a counter-offer backdated to February 25, 1988, purporting to counter the Owen Offer to Purchase, purporting to establish that all dates set forth in the Offer to Purchase "are 1988", and establishing the closing date as April 24, 1988. Ritsch's signature was backdated to February 25, 1988. The date inserted for Owen's signature line for the ostensible acceptance of the falsified "Counter-offer" was February 24, 1988.

28. On the same day in February, 1990, again at Friedman's request, Ritsch signed an "Amendment to Listing Contract" backdated to December 18, 1987. This falsified document purported to increase the listed price of the property from \$86,600 to \$88,000, and to change the expiration date of the listing from December 31, 1988, to April 29, 1988.

IT IS FURTHER ORDERED that F-M Realty be, and hereby is, reprimanded.

### OPINION

The record in this matter is unfortunately rather thin. Neither respondent appeared personally and therefore neither testified. Complainant's principal witnesses were both seemingly reluctant to testify. Ms. Ritsch appeared to have little recollection and less comprehension of the transactions to which she was a party; which may be explained in part by the fact that she was testifying on condition of and pursuant to a promise by complainant's attorney that "if certain information comes out, I won't support a referral to the law enforcement agencies, and I will talk to those agencies that might be involved." Mr. Perry's reluctance and occasionally evasive testimonial performance is less easy to explain, but there are many aspects of this case which are difficult to explain. One thing is certain, however. It is not necessary to set forth the obvious inferences to be drawn from respondents' actions in this matter to decide that their motives were imperatively not to assist Ms. Ritsch to retain her property.

The facts of this case, as gleaned from the testimony and transaction documents are as follows:

In February, 1987, foreclosure proceedings were commenced against Ruth Ritsch on her Milwaukee duplex. Shortly thereafter, Ms. Ritsch received a form letter from respondents inviting her to contact them regarding the pending foreclosure. She called the offices of F-M Realty, spoke to Mr. Friedman, and thereafter met with him in his offices. Friedman indicated to Ms. Ritsch that he might be able to assist her in keeping the property by procuring a loan to pay off mortgage arrearages. At their next meeting on April 6, 1987, Friedman prepared and Ms. Ritsch signed documents by which she gave F-M the exclusive right to procure financing for her property, and by which she agreed to pay F-M \$3500 from the proceeds of the loan if a loan was procured.

There is no record of what efforts were expended by respondents in securing a loan, but those efforts, if any, were unsuccessful. Then, on October 1, 1987, Ms. Ritsch executed a listing agreement, with Mr. Friedman as listing broker, giving F-M Realty the exclusive right to sell the duplex until December 31, 1988, at a price of \$86,600. One may ask what selling the property has to do with assisting Ms. Ritsch to keep it, but her testimony is that she understood that the arrangement would be one where she would be permitted to continue to live in the property as a tenant until she could afford to reacquire it.

On February 24, 1988, Friedman drafted an Offer to Purchase whereby one John A. Owen, a shadowy figure known only by the appearance of his name on the various documents generated by this transaction, offered to purchase the Ritsch duplex for \$88,000. No earnest money accompanied the offer, but earnest money of \$17,600 -- or 20% of the selling price -- was to be paid to the seller within 10 days. The seller was to pay all closing and financing costs; and the buyer was permitted to void the transaction at any time prior to closing and receive a full refund. The document was not signed by Friedman or by any other broker.

There was, of course, no earnest money deposit made within 10 days or at any time thereafter, about which more later. That circumstance did not concern Ms. Ritsch, however, for Mr. Friedman had told her long before that though any offer to purchase would indicate that an earnest money deposit was made, no actual money would be involved.

At some point later in 1988, Wauwatosa Savings and Loan filed a complaint with this department concerning the matter, and an investigation was initiated. Starting in approximately October, 1988, there was correspondence between department investigator John Kitslaar III and Mr. Friedman, and a formal Complaint was filed against Mr. Friedman et al in January of this year. Presumably in response to the Complaint, Friedman approached Ms. Ritsch in February, and requested her to execute backdated documents for the ostensible reason that they were documents which had been previously a part of the file, but which could not be located. Ms. Ritsch's present attorney, Adam Gerol, had advised Ms. Ritsch that she should have no contact with Mr. Friedman, however she nonetheless met with him. The documents in question are found at Exhibit #5 and purport to be a "Counter-Offer" executed by both Owen and Ms. Ritsch, the terms of which are that "All dates are 1988 with closing on or before 4/24/88"; and an "Amendment to Listing Contract" raising the list price from \$86,600 to \$88,000, and changing the expiration date of the listing contract from December 31, 1988, to April 29, 1988.

The most grievous misconduct described in the foregoing statement of facts is, of course, that Mr. Friedman participated in procuring a loan for Owen by representing that a 20% down payment had been made which in fact had not been. This conduct, at the very least, constituted a fraud on the lending institution, and it evinces a financing scheme which took advantage of an obviously gullible and financially ignorant woman made vulnerable by the impending loss of her home in order to procure a loan for an ostensible buyer without expending a penny for down payment, loan expenses or closing costs, and in order to acquire the seller's property at a price nearly \$20,000 below its market value. Respondents argue, however, that there is insufficient evidence that there was, in fact, never a down payment made. Their argument, as set forth in the "Final Argument of Respondents", runs as follows:

The prosecuting attorney hammered consistently at the issue of the down payment. No witness however could absolutely confirm that the down payment (in any form) had or had not been made.

Indeed, the closing was postponed and then cancelled without any bank ultimately learning of the final form of any down payment, or its location or payment. The best that can be said is that Mr. Perry can only speculate that some down payment was not made. The best that can be said for Ms. Ritsch is that she too speculates. Mr. Perry also told us that his bank returned the full amount paid by Ms. Ritsch as an application fee. This may very well reflect a sense of guilt or regret on the bank's part, and could be inferred or deemed to represent the bank's apology for having aborted the transaction without fully understanding the dynamics involved.

The witnesses called by the prosecution can only offer speculation and conjecture, not factual evidence, about the items the prosecution attacks.

\* \* \* \*

What about the buyer's attorney, Fred Van Hecke? The prosecution tried through hearsay to produce evidence of Mr. Van Hecke's statements, oral and non-verbal. Notwithstanding this, no one still knows if that attorney ever had or still has the so called down payment, or

be a clear inference of that fact, for the document makes no sense on its face. Ms. Ritsch, who supposedly made the counteroffer, is shown as having signed the document on February 25, 1988. Mr. Owen, however, is shown as having accepted the counteroffer on the day before. The purpose of the document may also be inferred. The reference to all dates being 1988 is presumably to clear up the question of the 1987 acceptance date on the Offer to Purchase (though an October, 1988, acceptance date would place it approximately six months after the closing date). Moving the closing date to April 24, 1988, would place it after the date of the loan commitment, ostensibly resolving the question of Owen's applying for a loan three days after the date set for closing. The purpose of the falsified "Amendment to Listing Contract" is also clear: To explain why Owen would have offered \$88,000 for the property when it was listed for only \$86,600.

It is more likely than not that no counteroffer or amendment to the listing contract ever existed, and that they were created exclusively to clear up obvious discrepancies in the actual transaction documents. Ms. Ritsch testified, however, that she signed them because she believed she had signed them once before and that neither she nor Mr. Friedman had a record of them. Whether there were or were not previous similar documents signed by Ms. Ritsch, however, these documents are clearly falsified, and their creation by Mr. Friedman just as clearly constitutes improper, fraudulent or dishonest dealing within the meaning of Wis. Stats. sec. 452.14(3)(k).

It is well established that the purposes of licensee discipline in Wisconsin are to protect the public, to deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. McIntyre, 41 Wis. 2d 481 (1969). Mr. Friedman's conduct in this matter may not be attributed to error, mistake, negligence or incompetence. His conduct was obviously intentional and, in the view of the examiner, is abhorrent. Persons engaging in real estate transactions with licensed brokers have every right to expect those brokers to deal with them honestly and ethically. When a broker purposefully and intentionally acts in a manner diametrically opposed to those principles, nothing less than revocation is appropriate.

As to Mr. Mesheski, there is insufficient evidence in this record to conclude that he had actual knowledge of the fact that no down payment had been made. At the very least, however, and even if he did not have actual knowledge, it may be said that he failed grievously in his affirmative duty to discover and to disclose to all interested parties the fact that the earnest money deposit required by the Offer to Purchase had not been made. That failure, coming after repeated inquiries by such an interested party, is sufficiently serious to warrant serious discipline. It is deemed that a one year suspension of Mr. Mesheski's license should subserve the cited disciplinary objectives.

There is nothing in this record which would indicate the size or organizational structure of F-M Realty. It must probably be assumed that there are other employees, including other licensed brokers, associated with the firm who have no culpability as to these events and for whom loss of the firm's broker license would work a hardship. Reprimand of the firm will put the public on notice of the firm's involvement in this proceeding without unnecessarily and unwittingly punishing innocent employees.

## 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 the 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 the 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: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is October 2, 1990.

WLD:dms  
886-490