

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
BERNITA JACOBSON,	:	91 REB 046
RESPONDENT.	:	

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

Bernita Jacobson
2943 North Maryland Avenue
Milwaukee, WI 53211

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 decision 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. Bernita Jacobson (D.O.B. November 29, 1919) is duly licensed in the state of Wisconsin as a real estate broker (license #1133). This license was first granted on June 6, 1961.
2. Bernita Jacobson latest address on file with the Department of Regulation and Licensing is 2943 North Maryland Avenue, Milwaukee, Wisconsin 53211.
3. On or about June 20, 1990, Bernita Jacobson, hereinafter the Respondent, doing business as LaMar Realty Company, became listing broker for property located at 3847 North 25th Street, Milwaukee, Wisconsin. The owner/sellers of the property were Quincy and Mary McWilliams. A copy of the Residential Listing Contract-Exclusive Right to Sell signed by Respondent and the McWilliamses is attached hereto as Exhibit 1 and is incorporated herein by reference.

W. H. R. 100

100

4. A handwritten Amendment to Listing Contract was prepared by Respondent on or about February 23, 1991. This document was signed by the Respondent and the McWilliamses on February 23, 1991. The department approved form for amending a listing agreement is WB-42 Amendment to Listing Contract. A copy of the Amendment to Listing Contract as prepared by Respondent is attached as Exhibit 2 and is incorporated herein by reference.

5. On or about August 28, 1990, Respondent prepared a Residential Offer to Purchase, Form WB 11, on behalf of Frankie Banks for the McWilliamses' property. The offer to purchase contained a subject to financing contingency. The offer was accepted by the McWilliamses on or about August 31, 1990, subject to the financing contingency. A copy of the Residential Offer to Purchase (WB 11) is attached hereto as Exhibit 3 and is incorporated herein by reference.

6. On or about October 14, 1990, an Amendment to Contract of Sale was signed by Frankie Banks and the McWilliamses. The amendment changed the closing date of the transaction from November 1, 1990, to December 15, 1990, however, time was not of the essence for this transaction. A copy of the amendment to contract of sale is attached as Exhibit 4 and is incorporated herein by reference.

7. Respondent received a total of \$300.00 in earnest money from Frankie Banks in regards to his offer to purchase the McWilliamses' property. Respondent deposited the \$300.00 in her trust account at the University National Bank, Milwaukee, Wisconsin.

8. In late 1990, or in January of 1991, Frankie Banks verbally informed Respondent that he no longer was interested in purchasing the McWilliamses' property. This was prior to any decision being made as to his eligibility for financing. This change of mind was confirmed by Frankie Banks in writing on January 12, 1991. After consultation with Respondent, the McWilliamses considered Frankie Banks' decision not to proceed to closing a breach of contract on his part. The McWilliamses' determination as to breach was not reduced to writing and was not presented to Frankie Banks. Frankie Banks on at least one occasion asked Respondent as to when he could expect his earnest money back. A copy of Frankie Banks' handwritten note concerning his desire not to proceed to closing of the property is attached as Exhibit 5 and is incorporated herein by reference.

9. On about February 6, 1991, Respondent mailed by certified mail a notice of disbursement of funds as provided for by RL 18.09(4), Wisconsin Administrative Code. This notice was mailed after Frankie Banks had been informed that his financing had been disapproved. The notice indicated that disbursement would be in accordance with RL 81.09(d), Wisconsin Administrative Code, i.e., upon authorization granted within the contract. A copy of this notice is attached as Exhibit 6 and is incorporated herein by reference.

10. The applicable portion of the contract which addresses disbursement of earnest money is contained in lines 118 through 125 of the Residential Offer to Purchase (Exhibit 3) which read as follows:

"If the transaction fails to close and the parties fail to agree on the disposition of earnest money, then earnest money held by the broker shall be disbursed as follows:

1. To Buyer, unless Seller notifies Buyer and broker in writing no later than 15 days after the earlier of the Buyer's written demand for return of the earnest money or the date set for closing, that Seller elects to consider the earnest money as liquidated damages or partial payment for a specific performance.
2. To Seller, subject to amounts payable to broker, provided the above notice is given and neither party commences a lawsuit on this matter within 30 days after receipt of the notice.

In making the disbursement, the broker shall follow procedures in section RL 18.09(4), Wisconsin Administrative Code."

11. On or about January 31, 1991, Frankie Banks was notified that his financing was denied.

12. In March, 1991, Respondent disbursed \$290.00 of the earnest money to herself citing as authority the provisions in Paragraph 10 above as follows: "2. To Seller, subject to amounts payable to broker ---". The McWilliamses were not specifically informed that the Respondent was retaining the \$290.00 for herself or why, and never agreed either verbally or in writing to Respondent retaining this money.

CONCLUSIONS OF LAW

1. By the conduct described above, Bernita Jacobson is subject to disciplinary action against her license to practice as a real estate broker in the state of Wisconsin, pursuant to Wis. Stats. sec. 452.14, and Wis. Adm. Code Chapters 16, 18 and 24.

2. The Wisconsin Real Estate Board is authorized to enter into the attached stipulation pursuant to Section 227.44(5), Wisconsin Statutes.

3. Respondent Bernita Jacobson has violated RL 16.04(1) and Section 452.14(3)(i), Wisconsin Statutes and Section 452.14(3)(m), Wisconsin Statutes by her incompetency and failing to use approved forms, i.e., WB 42 Amendment to Listing Contract and instead using her handwritten amendment (Exhibit 2).

4. Respondent Bernita Jacobson has violated RL 18.09(4), Wisconsin Administrative Code and Section 452.14(3)(i), Wisconsin Statutes by her incompetency in failing to properly disclose specifically to whom and when the disbursement of earnest money would be made (Exhibit 6).

5. Respondent Bernita Jacobson has violated RL 24.05(1) and RL 18.09(2), Wisconsin Administrative Code and Section 452.14(3)(i), Wisconsin Statutes by her incompetency in improperly disbursing the \$290.00 earnest money to herself without the knowledge and consent of the McWilliamses.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

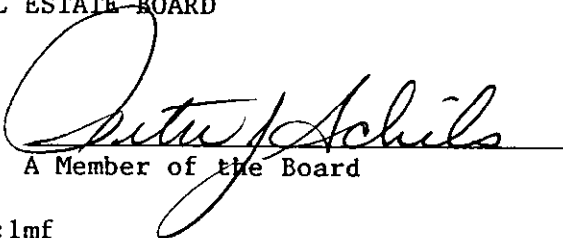
1. The attached Stipulation is accepted.
2. The Wisconsin Real Estate Board hereby accepts the voluntary surrender of Bernita Jacobson's real estate broker's license #1133.

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".

This Order shall become effective ten (10) days following the date of its signing.

REAL ESTATE BOARD

By:


A Member of the Board

9/23/93
Date

GMS:lmf
ATY-2324

W-B-1 RESIDENTIAL LISTING CONTRACT - EXCLUS E RIGHT TO SELL

AGREEMENT made between the undersigned real estate Broker and the undersigned Seller

Seller gives Broker the sole and exclusive right to procure a purchaser for the property described below at the price and upon the terms set forth in this contract

If a purchaser is procured for the property by Broker, by Seller, or by any other person, at the price and upon the terms set forth in this contract, or at any other price or upon any other terms accepted by Seller during the term of this contract, or if a binding exchange agreement is entered into or an option which is subsequently exercised is granted during the term of this contract, Seller agrees to pay Broker a commission as set forth in this contract regardless when the transaction closes

If, as to the property or any part of it, a purchaser is procured, a binding exchange agreement is entered into, or an option which is subsequently exercised is granted within six months after the expiration of this contract to any person or to anyone acting for any person with whom Seller, Broker or any of Broker's agents negotiated or personally exhibited by showing the property prior to the expiration of this contract and in either case whose name Broker has submitted to Seller in writing by personal delivery or by depositing, postage or fees prepaid, in the United States mail or a commercial delivery system, not later than 24 hours after the expiration of this contract, Seller agrees to pay Broker the commission set forth in this contract. A written offer to purchase submitted to Seller or direct negotiation between Seller and purchaser during the term of this listing shall constitute the notice required on lines 7 to 11 without further notice to Seller

(Seller warrants) (Map dated . . . indicates) the property (is) (is not) located in a flood plain (Strike as applicable)

Seller warrants and represents to Broker and Buyer that Seller has no notice or knowledge of any

(a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the property

(b) government agency or court order requiring repair, alteration, or correction of any existing condition

(c) underground storage tanks or any structural, mechanical, or other defects of material significance affecting the property, including but not limited to inadequacy for normal residential use of mechanical systems, waste disposal systems and well, unsafe well water according to state standards, and the presence of any dangerous or toxic materials or conditions affecting the property

(d) wetland and shoreline regulations affecting the property (Caution: see maps)

EXCEPTIONS TO WARRANTIES AND REPRESENTATIONS STATED IN LINES 13 TO 20

WARNING IF SELLER WARRANTIES AND REPRESENTATIONS ARE NOT CORRECT, SELLER MAY BE LIABLE FOR DAMAGES AND COSTS

Seller shall promptly disclose to Broker any facts or circumstances that would modify the above representations and warranties. Seller is aware that Broker is required by state law to disclose material factors affecting the property to all interested parties

Any offer submitted shall be deemed to comply with the terms of this agreement if it includes, in addition to the terms herein contained, in substance, any of the provisions set forth on lines 96 to 133 of this agreement

In consideration for Seller's agreements herein Broker agrees to list and use reasonable efforts to procure a purchaser for the property, including but not limited to the following

Seller authorizes Broker and Broker agrees to cooperate with other Brokers, including allowing other Brokers to act as Seller's subagents, except

Seller agrees to include in the listing price such of the following items as may be on the property which will be delivered free and clear of encumbrances and fixtures, all garden bulbs, plants, shrubs and trees, screen doors and windows; electric lighting fixtures, window shades; curtain and traverse rods, blinds and shutters, central heating and cooling units and attached equipment; water heaters and softener; sump pump; attached or fitted floor coverings, awnings, exterior attached antennas and component parts; garage door opener and remote control; installed security systems

ADDITIONAL ITEMS INCLUDED IN THE SALE

ITEMS NOT INCLUDED IN THE SALE

Twenty thousand (\$20,000.00) down payment

Deposit \$450.00

pay \$450.00 - Security

The street address of the property is

County of

Wisconsin, more particularly described as

LISTED PRICE: Twenty Four Thousand + no. 1.00

MINIMUM EARNEST MONEY \$

WITHIN DAYS OF ACCEPTANCE WHICH WILL

BE RETAINED BY BROKER IN BROKER'S TRUST ACCOUNT, UNLESS OTHERWISE AGREED BY SELLER AND BUYER

CASH AT CLOSING OR

OCCUPANCY DATE

OCCUPANCY CHARGE IF SELLER OCCUPIES AFTER CLOSING \$

PER DAY

(CONVEYANCE OTHER THAN WARRANTY DEED, IF ANY)

Seller shall, upon payment of the purchase price, convey the property by warranty deed, or other conveyance provided herein, free and clear of all liens and encumbrances, excepting municipal and zoning ordinances, recorded easements for public utilities serving the property, recorded building and use restrictions and covenants, general taxes levied in the year of closing and

provided none of the foregoing prohibit present use, and Seller shall complete and execute the documents necessary to permit recording the conveyance

(WARNING: Recorded building and use restrictions and covenants can have material impact on the use of or improvements to the property. Consideration should also be given to the requirements of DLHR's rental weatherization program if the property will not be occupied by Buyer.)

BROKER'S COMMISSION, PAYABLE IN FULL WHEN EARNED, BUT NO LATER THAN AT CLOSING, SHALL BE 3.50%

OF THE FOLLOWING OR

(a) The listed price

(1) if a purchaser is procured in accordance with the terms of this agreement, or,

(2) if the property is exchanged

(b) The sales price if an offer is accepted which creates an enforceable contract for the sale of all or any part of the property.

(c) The sales price set forth in an option if the option granted is exercised.

Within one week from the date of this agreement Seller will provide Broker a written list of all persons whose procurement as purchaser would earn another broker a commission under a prior listing contract. Broker is not entitled to a commission if the property is sold, exchanged, or optioned to any person on such list.

to the extent of the prior broker's rights, or to any of the following persons designated by Seller:

SPECIAL PROVISIONS

TERM OF CONTRACT FROM THE DAY OF

UP TO AND INCLUDING MIDDNIGHT OF THE DAY OF

EXCEPT THIS CONTRACT IS EXTENDED THROUGH THE CLOSING OR OTHER TERMINATION OF ANY TRANSACTION UNDER WHICH BROKER EARNED A COMMISSION UNDER LINES 3 TO 12 HEREOF FOR THE PURPOSE OF THAT TRANSACTION ONLY

THIS CONTRACT INCLUDES LINES 85 TO 95 ON THE REVERSE SIDE

Dated this

Broker/Firm

Licensee

Broker's Address and Phone Number

Seller's Address and Phone Number

EXHIBIT 1

Amendment To Listing Contract

It is hereby mutually agreed that the Residential Listing Contract - Exclusive Right To Sell dated June 22, 1990 between the undersigned Real Estate Broker and Seller regarding the property at 3847 N. 25th Milwaukee, Wisconsin. is hereby amended as follows:

Date of listing contract be extended
to Sept 1, 1991

All other terms of said contract shall remain unchanged and in full force and effect as though fully set forth at legal binding contract. This is a

DATED: Feb 23, 1991

La. Mas Realty

Bu Bennett Broker

DATED: Feb 23, 1991

Deborah M. Williams

Mary Williams SELLER

SELLER

WB-11 RESIDENTIAL OFFER TO PURCHASE

Milwaukee, Wisconsin, August 28, 1990

THE BROKER DRAFTING THIS OFFER IS THE AGENT OF (SELLER) (BUYER) (Strike as applicable).

IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT, BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY AND UNDERSTAND IT BEFORE SIGNING.

The undersigned Buyer, Walter Bank, FRANKIE

hereby offers to purchase the property known as (Street Address) 3847 N. 25th St

in the City of Milwaukee County of Wisconsin

more particularly described as Lot 1, Block 1, Kaywood #2, Sec 7-7-2nd

and on the terms and conditions as follows: M. O. to be paid within

earnest money of \$ 2,000.00 in the form of days of acceptance of this offer or

Failure of Buyer to make earnest money payment as provided voids offer at Seller's option. Earnest money, if held by broker, shall

be held in selling broker's trust account prior to acceptance of offer and thereafter in listing broker's trust account until applied to

the purchase price at closing or disbursed as provided herein or permitted by law.

~~TITLE OF THE OFFER AS TO ADDITIONAL EARNEST MONEY PAYMENT ACCEPTANCE OF REAL POSSESSION,~~

~~OCCUPANCY, DATE OF CLOSING AND AS TO ALL DATES INSERTED IN THIS OFFER EXCEPT~~

OF THE BUYER'S OBLIGATION TO CONCLUDE THIS TRANSACTION IS CONDITIONED UPON THE CONSUMMATION

Buyer to obtain a title of Milwaukee (CHRD) FHM plus MIP

1.14.90

30,000.00

For a term of 30 years at an Annual interest rate of 8.5% MTR. Payments including principal, interest,

1.10% of the real estate taxes to be approximately

insurable premium to be approximately 3547.10

Offer is subject to Buyer's ability to obtain financing

Seller agrees to be responsible for and make arrangements

as requested by FHM appraisal and Buyer to pay for all

costs other closing costs

Buyer agrees that unless otherwise specified, Buyer will, in good faith, pay all costs of securing any financing to the extent

permitted by law, and will perform all acts necessary to expedite such financing.

Included in the purchase price are such of the following items as may be on the property on the date of this offer, which will be

delivered free and clear of encumbrances: all fixtures; all garden bulbs, plants, shrubs and trees; screen and storm doors

and window; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and

cooling units and attached equipment; water heaters and softener; sump-pump; attached or fitted floor coverings; awnings;

exterior attached antennas and component parts; garage-door opener and remote control; installed security systems.

ADDITIONAL ITEMS INCLUDED IN THE SALE:

ITEMS NOT INCLUDED IN THE SALE:

Seller shall, upon payment of the purchase price, convey the property by warranty deed, or other conveyance provided herein,

free and clear of all liens and encumbrances, excepting: municipal and zoning ordinances, recorded easements for public utilities

servicing the property, recorded building and use restrictions and covenants, general taxes levied in the year of closing and

1989 taxes were 1165.78

provided none of the foregoing prohibit present use

and shall complete and execute the documents necessary to record the conveyance. (WARNING: Recorded building and use

restrictions and covenants can have material impact on the use of or improvements to the property.)

(Buyer) (Seller) will be responsible for compliance with DILHR's rental weatherization program requirements unless this

transaction is exempt from the requirements because it is residential property of 1 to 4 units which will be occupied by the

purchaser for at least one year after transfer or otherwise exempt because Buyer to occupy

This offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. mail

or by personal delivery of the accepted offer to Buyer on or before August 28, 1990

Otherwise, this offer is void and all earnest money shall be promptly returned to Buyer.

This transaction is to be closed at the office of Buyer's mortgagee or at the office of

on or before August 28, 1990 or at such other time and place as may be agreed in writing.

Legal possession of property shall be delivered to Buyer on date of closing.

It is understood the property is now occupied by tenants who pay \$150.00 a mo

under (oral lease) (written lease), which terms are: no to no landlord, seller is

Occupancy of no to no landlord, seller is

Occupancy of no to no landlord, seller is

If Seller is permitted to occupy property after closing, Seller shall prepay occupancy charge of \$ per day, which

(shall) (shall not) be refundable based on actual occupancy.

The sum of \$ 0 shall be withheld from the purchase price to be escrowed with

to guarantee delivery of occupancy to Buyer AND FOR NO OTHER PURPOSE, which sum upon Seller's failure to deliver

occupancy shall be paid to Buyer as liquidated damages or returned to Seller if occupancy is delivered to Buyer on the agreed date.

EXHIBIT 3

RIGHTS OF TENANTS

NO TO NO LANDLORD, SELLER IS

BUYER TO OCCUPY

1990

EXHIBIT "B" WITH Fm and man

(Seller warrants) (Map dated indicates) the property (is) (is not) located in a flood plain (Strike as applicable).
 Seller warrants and represents to Buyer that Seller has no notice or knowledge of any:
 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the property.
 (b) government agency or court order requiring repair, alteration or correction of any existing condition
 (c) underground storage tanks or any structural, mechanical, or other defects of material significance affecting the property, including but not limited to inadequacy for normal residential use of mechanical systems, waste disposal systems and well, unsafe well water according to state standards, and the presence of any dangerous or toxic materials or conditions affecting the property
 (d) wetland and shoreland regulations affecting the property (Caution: see maps).

EXCEPTIONS TO WARRANTIES AND REPRESENTATIONS STATED IN LINES 81 to 90:

The following items shall be prorated as of the day of closing, general taxes, rents, water and sewer use charges, homeowners' association assessments, fuel, and
 Any income, taxes, or expenses through the day of closing accrue to Seller.
 General taxes shall be prorated at the time of closing based on the net general taxes for the current year, if known, otherwise on the net general taxes for the preceding year.
CAUTION: If property has not been fully assessed for tax purposes, or reassessment is completed or pending, tax proration shall

be on the basis of \$ estimated annual tax.
 Special assessments, if any, for work on site actually commenced or levied prior to date of this offer shall be paid by Seller. All other special assessments shall be paid by Buyer. (Caution: Consider a special agreement if area assessments or homeowners' association assessments are contemplated.)
 Seller shall provide to Buyer at Seller's expense at least three (3) business days before closing, Seller's choice of:

1. ~~An abstract of title prepared by an attorney or abstract company, or~~
 2. A commitment from a title insurance company licensed in Wisconsin to issue title insurance in the amount of the purchase price upon recording of proper documents;
- showing title to the property as of a date no more than 15 days before such title proof is provided to Buyer to be in the condition called for in this offer, and further subject only to liens which will be paid out of the proceeds of the closing and standard title insurance exceptions or abstract certificate limitations, as appropriate. Buyer shall notify Seller of any valid objection to title in writing by closing. Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections; and closing shall be extended as necessary for this purpose.

If this offer provides for a land contract, prior to execution of the land contract Seller shall provide the same evidence of title as required above and written proof, at or before execution, that the total underlying indebtedness, if any, is not in excess of the proposed balance of the land contract, and that the payments on this land contract are sufficient to meet all of the obligations of Seller on the underlying indebtedness.

- If the transaction fails to close and the parties fail to agree on the disposition of earnest money, then earnest money held by broker shall be disbursed as follows:
1. To Buyer, unless Seller notifies Buyer and broker in writing no later than 15 days after the earlier of the Buyer's written demand for return of the earnest money or the date set for closing, that Seller elects to consider the earnest money as liquidated damages or partial payment for specific performance.
 2. To Seller, subject to amounts payable to broker, provided the above notice is given and neither party commences a lawsuit on this matter within 30 days after receipt of the notice.

In making the disbursement, the broker shall follow procedures in Section RL 18.09(4), Wis. Adm. Code.
 Disbursement of earnest money does not determine the legal rights of the parties in relation to this agreement.

Both parties agree to hold the Broker harmless from any liability for good faith disbursement of earnest money in accordance with this agreement or present Department of Regulation and Licensing regulations concerning earnest money.
 If the property is damaged by fire or elements prior to time of closing in an amount of not more than five per cent of the selling price, Seller shall be obligated to repair the property and restore it to the same condition that it was on the date of this offer. If such damage shall exceed such sum, this contract may be cancelled at option of Buyer. Should Buyer elect to carry out this agreement despite such damage, Buyer shall be entitled to the insurance proceeds relating to damage to property; however, if this sale is by land contract or a mortgage to Seller, the insurance proceeds shall be held in trust for the sole purpose of restoring the property.

SPECIAL PROVISIONS:
 On Feb. 15 Subject to a prior offer (this contingency to be lifted) on or before 9/14/90
 Offer further subject to husband (presently married) obtaining a signed "RELEASE" of rights to property from his wife.

Seller and Buyer agree to act in good faith and use diligence in completing the terms of this agreement. This agreement binds and inures to the benefit of the parties to this agreement and their successors in interest.

Buyer: *Frankie Banks* (Buyer)
 FRANKIE BANKS (Buyer)
 Buyer's Social Security No. Buyer's Social Security No.

THIS OFFER IS HEREBY ACCEPTED, THE WARRANTIES AND REPRESENTATIONS MADE HEREIN SURVIVE THE CLOSING OF THIS TRANSACTION. THE UNDERSIGNED HEREBY AGREES TO SELL AND CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.

Dated: *August 31*, 19*90*. *Quincy McWilliams* (Seller)
 Offer is rejected (Seller initial.) Seller's Social Security No.
 Offer is countered (Seller initial.) *Mary E. McWilliams* (Seller)
 Seller's Social Security No.

This offer was drafted by (Licensee and firm) *Bernita Jacobson (LA-MAR REALTY) # 1133*.
 It was presented to Seller by *Bernita Jacobson* on, 19 at m.

EARNEST MONEY RECEIPT
 Broker acknowledges receipt of initial earnest money as per line 12 of the above offer.
Aug 28 1990
 LA-MAR REALTY Co. Broker
Bernita Jacobson

AMENDMENT TO CONTRACT OF SALE

1 It is hereby mutually agreed that the offer dated August 28, 1990
2 and accepted August 31, 1990 between the undersigned for the sale and
3 purchase of the real estate at 3847 N. 22nd St
4 is hereby amended as follows

- 5 () Closing date is changed from November 1, 1990 to Dec 15, 1990
- 6 ~~() Purchase price is changed from \$ to \$~~
- 7 ~~() Occupancy of the property is changed from to~~
- 8 ~~() Occupancy charge is changed from \$ per day to \$ per day~~
- 9 ~~() Buyer is aware there are contemplated special assessments in the estimated amount of \$ for the~~
10 ~~installation of. and agrees to pay for same.~~
- 11 ~~() Seller agrees to pay \$ to Buyer at closing for contemplated special assessments~~
12 ~~for the installation of~~
- 13 ~~() Seller shall provide title insurance per contract printed provisions in the amount of purchase price and Buyer agrees to pay the difference~~
14 ~~in cost between the title policy and extension of the existing abstracts.~~
- 15 ~~() The financing contingency is changed as follows: loan amount from \$ to \$~~
16 ~~interest rate from % to %; due date from years to years, monthly payment from~~
17 ~~\$ to \$; and~~
- 18 ~~() The following item(s) of personal property are excluded from sale:~~
- 19 ~~() The following item(s) of personal property are included in sale:~~
- 20 ~~() Buyer and/or Seller waive the following contingencies:~~

24 Line 13 - To read balance of down payment
25 of \$850.00 to be paid on or before
26 October 16, 1990

29 All other terms of said contract shall remain unchanged and in full force and effect as though fully set forth at length in this amendment. THIS
30 IS A LEGALLY BINDING AMENDMENT TO SAID CONTRACT.

31 Dated October 14, 1990

32 *[Signature]*
33 (Buyer)

[Signature]
(Seller)

34
35 (Buyer)

[Signature]
(Seller)

36 THIS AMENDMENT SHOULD BE ATTACHED TO THE OFFER TO PURCHASE.

EXHIBIT Y

1-12-91

To whom it may concern from Beatrice
Boyle I do not wish to proceed with
the purchase of the property located
at 34 2nd north 25th St. as the
the seller has my permission to
close property back on open
market.

Beatrice Boyle

Dated: 1/12/91

EXHIBIT 5

MAILED BY CERTIFIED MAIL

Feb 6, 1991

TO: Quincy McWilliams and
Mary K. Mc Williams - Seller

AND

Frankie Banks - Buyer

Since it appears that the buyer is not going to carry out the agreement as set forth in the Sales Contract, I refer you to Lines 118 through 125 (on said Contract), which provides for disbursement of earnest money deposits under the law when this occurs and the contract is breached - in accordance with:

".....(RL 18.09(d) - WISCONSIN
ADMINISTRATIVE CODE....."

If you have any questions, please contact me.

LA MAR REALTY CO.

By Berita Jacobson

Copy Received
Mary McWilliams
seller

EXHIBIT 6

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
BERNITA JACOBSON,	:	91 REB 046
RESPONDENT	:	

It is hereby stipulated between Bernita Jacobson, personally on her own behalf and Gerald M. Scanlan, 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 Bernita Jacobson's licensure by the Division of Enforcement. Bernita Jacobson consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Bernita Jacobson understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, 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 her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Bernita Jacobson is aware of her right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.

4. Bernita Jacobson agrees to the adoption of the attached Final Decision and Order by the Real Estate 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 be returned to the Division of Enforcement for further proceedings. In the event that this 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 for the Division of Enforcement and the member of the Real Estate Board assigned as an advisor in this investigation may appear before the Real Estate Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

7. The Division of Enforcement joins Bernita Jacobson in recommending the Real Estate Board adopt this Stipulation and issue the attached Final Decision and Order.

Bernita Jacobson
Bernita Jacobson

Sept 10, 1993
Date

Gerald M. Scanlan
Gerald M. Scanlan, Attorney
Division of Enforcement

9/15/93
Date

GMS:lmf
ATY-2323

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 September 24, 1993.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as possible to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the banking review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.