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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

THOMAS W. FRUIT, and
WHITE PINE REALTY, INC.,
RESPONDENTS

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FINAL DECISION AND ORDER
LS 9309241 REB
91 REB 445

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

Thomas W. Fruit
3973 Redwood Drive
Pulaski, WI 54162

White Pine Realty, Inc.
3973 Redwood Drive
Pulaski, WI 54162

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

Wisconsin 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 Real Estate Board ("Board"). The Board has reviewed the
Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the
following:

FINDINGS OF FACT

1. Thomas W. Fruit ("Fruit"), 3973 Redwood Drive, Pulaski, Wisconsin
54162, is and was at all times relevant to the facts set forth herein a real
estate broker licensed to practice in the State of the Wisconsin pursuant to
license #30230, originally granted on December 5, 1966.

2. White Pine Realty, Inc., ("White Pine"), 3973 Redwood Drive, Pulaski, Wisconsin 54162, is and was at all times relevant to the facts set forth herein a Wisconsin real estate corporation licensed to practice as a real estate broker in the State of Wisconsin pursuant to license #1292, originally granted on May 17, 1968.

3. At all times relevant hereto and at the present time, the president of White Pine Realty, Inc., is and was Thomas W. Fruit.

4. During August of 1990, David G. Fritsch ("Fritsch"), contacted White Pine for the purpose of locating property to view and potentially purchase as his personal residence.

5. During August of 1990, Fritsch spoke with Fruit, who represented White Pine, and learned that Fruit had for sale the property known as 2380 Pine Crest Lane, Town of Suamico, County of Brown, Wisconsin. This property was the personal residence of Fruit and Fruit's spouse, Alice T. Fruit and was also the location of the offices of White Pine Realty, Inc.

6. On or about September 1, 1990 Fruit drafted a WB-11 Residential Offer to Purchase for the signature of Fritsch wherein Fritsch offered to purchase the Fruit residence for the price of \$95,000.00.

7. The Offer to Purchase made no disclosure of any defects in the property and did not condition the purchase of the property upon a third party inspection.

8. The Fritsch Offer to Purchase was accepted by Fruit and the transaction proceeded to close on September 28, 1990.

9. The earnest money paid by Fritsch to Fruit on or about September 1, 1990, in the amount of \$5000.00 was not deposited into a Real Estate Trust Account, but was instead deposited into the personal account of Fruit.

10. At the time of closing, Fruit prepared the Warranty Deed, the Transfer Return and the Closing Statement for use in closing the transaction.

11. Subsequent to closing and upon taking occupancy of the property, Fritsch discovered the following defects in the property:

- a. Leaks in the roof and flashing around the roof which had been repaired numerous times and which continued to leak;
- b. A damaged water heater;
- c. A damaged furnace; and
- d. General disrepair around windows and porches.
- e. Trash and rubbish on the property requiring cleanup and removal.

12. All of the above defects in the property are material, adverse facts relating to the property.

13. All of the above require repair, replacement or removal by Fritsch at a total cost in excess of \$12,000.00.

14. No condition report was completed by Fruit, or given to Fritsch, during the course of the transaction.

15. At the time that Fritsch viewed the property with Fruit for the purpose of considering it for purchase, Fruit informed Fritsch that Fruit was unaware of any defects in the property.

16. At the time Fruit drafted the Offer to Purchase, Fruit told Fritsch that all trash and rubbish would be removed from the property by Fruit at the time of closing.

17. At the time that Fritsch purchased the property, Fruit discouraged Fritsch from having the property inspected by a third party.

18. At the time that Fruit showed the property to Fritsch, Fruit represented to Fritsch that the roof on the house was ten years old and in good condition.

19. At the time that Fruit showed the property to Fritsch, Fruit informed Fritsch that the property had two underground fuel storage tanks located on it.

20. At the time that Fruit showed the property to Fritsch, Fruit told Fritsch that Fruit did not want anything written in the Offer regarding the existence of the underground tanks and that Fruit would remove one of the tanks prior to closing.

21. During the period of September 1, 1990 to September 28, 1990, Fruit removed one underground fuel storage tank from the property.

22. Nothing in the Offer to Purchase drafted by Fruit for the transaction refers to the trash and rubbish or to Fruit's agreement to remove trash and rubbish from the property.

23. The Offer to Purchase does not disclose the existence of underground fuel tanks and does not set forth Fruit's agreement to remove one of the two tanks prior to closing.

24. Neither the Offer to purchase nor the closing statement were signed by Fruit's wife, Alice T. Fruit, a co-owner of the property and a necessary party to the sale.

25. Subsequent to the closing, inspection of the property by contractors revealed that the furnace in the property was approximately 30 years old and in need of immediate replacement.

26. Subsequent to the closing, inspection by contractors on behalf of Fritsch revealed that the roof had been repaired numerous times and that leaks had damaged the structure to the roof and that the roof needed total replacement.

27. Subsequent to the closing, contractors on behalf of Fritsch inspected the water heater and determined that the water heater was in need of total replacement.

28. Fruit failed to remove the trash and rubbish he had verbally agreed to remove.

29. At the time of the transaction, no listing agreement was drafted between the corporation known as White Pine and its employe and president Fruit or between the corporation and Fruit's wife or between Fruit and his wife, Alice T. Fruit.

30. Neither the Offer to Purchase not the closing statement in this transaction set forth terms that allocate any part of the \$95,000.00 purchase price to personal property.

31. The transfer return shows an allocation of the \$95,000.00 purchase price between real estate and personal property, with \$5,000.00 allocated to personal property and a transfer fee was paid on only \$90,000.00.

32. Under Wisconsin Administrative Code Section RL 24.07 Fruit had an obligation to disclose in writing material facts, adverse to the transaction, to Fritsch at or prior to the time that the offer was signed by Fritsch.

33. Under Wisconsin Administrative Code Section RL 24.08, Fruit had an obligation to set forth in a written agreement all commitments regarding the transaction, expressing the exact agreement of the parties.

34. Under Wisconsin Administrative Code Section Chapter RL 18, Fruit had an obligation to deposit the earnest money received from Fritsch into a real estate trust account.

35. Under Wisconsin Administrative Code Sections RL 24.025 and 24.03, Fruit had an obligation to treat Fritsch fairly and not discourage an independent inspection of the property by a purchaser.

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 Thomas W. Fruit has violated the following:

a. Section 452.14(3)(i), Wis. Stats., and sections RL 18.02(3)(b), 18.03(1)(a) and 18.03(1)(b), Wis. Adm. Code, by failing to deposit the earnest money in this transaction into a real estate trust account.

b. Sections 452.14(3)(i), 452.14(3)(b) and 452.14(3)(k), Wis. Stats., and secs. RL 24.025, 24.07(1), 24.07(2)(d), Wis. Adm. Code by failing to disclose adverse material facts in the practice of real estate to a buyer of Fruit's personal residence and by concealing certain material facts, which concealment resulted in injury to the purchaser of the property.

c. Section 452.14(3)(i), Wis. Stats., and secs. RL 24.025, 24.03(2)(b) and 24.03(2)(c), Wis. Adm. Code by discouraging the purchaser in the above-described transaction from having an independent third party inspection of the property.

d. Section 452.14(3)(i), Wis. Stats., and sec. RL 24.08, Wis. Adm. Code by failing to obtain a listing contract between White Pine Realty, Inc., and Thomas W. Fruit and his wife, failing to obtain the signature of Fruit's spouse on the Offer and the Closing Statement and by failing to place into writing Fruit's agreement to clean up the trash and rubbish, allocate the purchase price and remove an underground storage tank.

4. Respondent White Pine Realty, Inc., is subject to discipline pursuant to Sec. 452.14(4), Wis. Stats.

ORDER

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

IT IS FURTHER ORDERED, that the real estate broker license of Respondent Thomas W. Fruit, license #30230, is hereby SUSPENDED for a period of Six months commencing ten (10) calendar days from the date of this Order.

IT IS FURTHER ORDERED, that Respondent Thomas W. Fruit, within six months of the date of this Order, successfully complete the following course modules from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The five (5) hour Consumer Protection module; and
- b. The four (4) hour Business Ethics for real estate brokers module,

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, Wisconsin 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 Thomas W. Fruit fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above, then his real estate broker's license shall remain suspended, without further notice, hearing or Order of the Board, until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that Respondent White Pine Realty, Inc., license #1292, is hereby REPRIMANDED.

IT IS FURTHER ORDERED, that Division of Enforcement file No. 91 REB 445 and formal complaint file LS 9309241 REB, are hereby closed as to all Respondents.

Dated this 27TH day of MARCH, 1994.

WISCONSIN REAL ESTATE BOARD

BY:

/CJH:
ATY2-5688

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

THOMAS W. FRUIT, and
WHITE PINE REALTY, INC.,
RESPONDENTS.

STIPULATION
LS9309241REB
91 REB 445

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving this matter known as investigative file 91 REB 445 and Administrative Proceeding #LS9309241REB. Respondent THOMAS W. FRUIT, personally, and Respondent WHITE PINE REALTY, INC., by Thomas W. Fruit, president, ("Respondents"), and both Respondents by their attorney Donald B. Bruns, and the Complainant, Division of Enforcement, Department of Regulation and Licensing by its attorney Charles J. Howden, consent to the resolution of this matter pursuant to the terms of this Stipulation and the attached Final Decision and Order.

This matter is now scheduled for hearing before Administrative Law Judge James Polewski. This hearing shall be cancelled and this Stipulation shall be presented to the Real Estate Board at the earliest opportunity, for the Board's consideration.

2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Both Respondents have had the opportunity to consult with legal counsel regarding this matter and the legal implications of this Stipulation. Respondents are represented by Attorney Donald B. Bruns, 7 North Pinckney Street, #300, Madison, WI 53703.

4. Respondents voluntarily and knowingly waive the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

5. With respect to the attached Final Decision and Order, Respondents ~~neither admit nor~~ deny the facts as set forth in the Findings of Fact, however, they both agree that the board may make the Findings of Fact and may reach the conclusions set forth in the Conclusions of Law and may enter the Order attached hereto.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Administrative Law Judge for scheduling of a hearing in this matter. In the event that the Stipulation is not accepted by the Board the parties agree not to contend that the Administrative Law Judge or the Board have been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. 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.

8. Respondents agree that Complainant's attorney, Charles J. Howden, may appear at any meeting with the Board with respect to the Stipulation but that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondents waive their rights to have notice of that meeting and to be present at the meeting with the Board.

9. The Division of Enforcement joins Respondents in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Thomas W. Fruit
THOMAS W. FRUIT, Respondent

MARCH 23 1994
Date

Thomas W. Fruit
WHITE PINE REALTY, INC.
by Thomas W. Fruit, its President,
Respondent

MARCH 23 1994
Date

Donald B. Bruns
DONALD B. BRUNS, Attorney
for Respondents

March 24, 1994
Date

Charles J. Howden
CHARLES J. HOWDEN, Attorney
Division of Enforcement

March 24, 1994
Date

/cjh
ATY2-5686
3-94

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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

MARCH 25, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)