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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST :

FINAL DECISION AND ORDER

97 REB 157

EDWARD J. MOONEY
RESPONDENT.

LS9902257REB

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

Edward J. Mooney
40331 101st ST
Genoa City, WI 53128

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. **Edward J. Mooney** ("Mooney"), date of birth 6/23/32, is licensed in the State of Wisconsin as a real estate broker having license # 90-44910. This license was first granted to him on 3/6/91. Mooney's most recent address on file with the Department of Regulation and Licensing is, 40331 101st St., Genoa City, WI 53128.
2. At all times relevant to the facts set forth below Mooney was a real estate broker for, E. J. Mooney Real Estate Company.
3. On or about November 2, 1995, Randall Daubner entered into a Commercial Listing Contract-Exclusive Right To Sell agreement with Mooney d/b/a E. J. Mooney Real Estate Co., for the sale of a supper club he owned (Voight's Supper Club) located at 12010 Hwy. 42, Ellison Bay, WI. The listing price was \$580,000.00 with minimum earnest money of \$20,000.00 required with offer. Lines 49 and 50 of the listing agreement obligated Mooney to retain the earnest money in his broker's trust account unless otherwise agreed to by buyer and seller. A copy of the Commercial Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 1** and is incorporated herein by reference.

4. On or about April 9, 1996, the expiration date of the Commercial Listing Contract-Exclusive Right To Sell agreement (Exhibit 1), was changed from March 31, 1996, to May 29, 1996, by an Amendment to Listing Contract. A copy of the Amendment To Listing Contract as prepared by Mooney is attached as **Exhibit 2** and is incorporated herein by reference.
5. On or about April 9, 1996, a Commercial Offer To Purchase was drafted by Mooney on behalf of buyer Jesko Sadiku. At the time that this offer was drafted, and at all other times relevant to the facts set forth in this complaint, Mooney was Daubner's agent. The offered price was \$550,000.00, with closing to take place on May 15, 1996. Lines 158-160 indicate that Mooney received earnest money in the amount of \$10,000.00 as set forth on line 12 of the Offer To Purchase. A copy of the Commercial Offer To Purchase is attached as **Exhibit 3** and is incorporated herein by reference.
6. The \$10,000.00 in earnest money (paragraph 5 above) was tendered by Sadiku with check # 8214 dated April 9, 1996, with Ed Mooney as payee. What appears to be the words "ReTD. CK To JESSIE on 4/15/96" with the initials "EM" are also on the check. A copy of check # 8214 is attached as **Exhibit 4** and is incorporated herein by reference.
7. On or about April 18, 1996, Mooney faxed an Amendment to Contract of Sale document to Sadiku for his review and approval. This amendment was to the April 9, 1996, Commercial Offer To Purchase (Exhibit 1). Mr. Daubner signed this document on April 17, 1996. At the time of the signing, and at all times up until the scheduled closing date (May 15, 1996), Daubner was assured by Mooney that Sadiku was a qualified buyer and was financially ready to close the transaction on May 15, 1996. Prior to the April 17, 1996, signing, Daubner was not informed by Mooney that he had returned the \$10,000.00 earnest money to Sadiku on April 15, 1997. Sadiku signed the Amendment to Contract of Sale on April 20, 1996. A copy of the Amendment to Contract of Sale is attached as **Exhibit 5** and is incorporated herein by reference.
8. The Daubner/Sadiku transaction failed to close on May 15, 1996, as called for in the Commercial Offer To Purchase (Exhibit 1). On or about May 14, 1996, in anticipation of possible breach of contract by Sadiku, Daubner's attorney, Nina H. Martel demanded immediate release of the \$10,000.00 earnest money as liquidated damages. This demand was followed up by a letter to Mooney from Ms. Martel dated May 23, 1996, again demanding that the earnest money be forwarded immediately. A copy of Ms. Martel's May 23, 1996, demand letter is attached as **Exhibit 6** and is incorporated herein by reference.
9. Mooney alleges that he returned check #8214 in the amount of \$10,000.00 (Exhibit 4) to Sadiku on or about April 15, 1996, but never informed Daubner of this fact until after the liquidated damages issue arose, i.e. after the scheduled closing failed.
10. Sadiku has apparently left the country on exact date unknown and returned to his native Albania.
11. On or about August 26, 1997, Ralph Llanas, a Department of Regulation and Licensing auditor, obtained a ledger page from Mooney pertaining to the Daubner/Sadiku transaction. Pertinent entries on the ledger page are:

4-9 Jesko Sadiku - Jessies Fine Dining 8214 \$10,000.

4-10 Jesko called & told me not to deposit ck. short funds. He would fly in on 4/12 with \$50,000.00 down pymt.

4-15 He showed up here on 4/15 and I gave him check and he promised to go to Door Cty and pay down pymt.

4-16 Was flying to Door County in investors' airplane.

A copy of the Daubner /Sadiku ledger page is attached as **Exhibit 7** and is incorporated herein by reference.
12. On or about June 7, 1996, a civil action was brought in Circuit Court, Door County by Daubner against Mooney and Sadiku seeking court award of the \$10,000.00 earnest money as liquidated damages plus punitive damages in the amount of \$20,000.00 as well as costs and disbursements incurred by Daubner. A copy of the Complaint, Case No. 96-CV-115 filed June 7, 1996, is attached as **Exhibit 8** and is incorporated herein by reference.
13. On or about January 15, 1997, an Order For Judgment was entered against Mooney in Circuit Court Branch 2 Door County for a total judgment of \$12,697.45. A decision as to punitive damages was deferred by the court to allow defendant time to prepare. A copy of Order for Judgment filed January 16, 1997, Case No. 96-CV-115 is attached as **Exhibit 9** and is incorporated herein by reference.
14. On or about March 31, 1997, Findings of Fact, Conclusions of Law Order for Judgment was entered against Mooney in Circuit Court Branch 2 Door County awarding Daubner \$20,000.00 for punitive damages. A copy of Finding of Fact, Conclusions of Law Order for Judgment filed March 31, 1997, Case No 96-CV-115 is attached **Exhibit 10** 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 **Edward J. Mooney** has violated:

a. Wis. Adm. Code secs. RL 18.031(1), RL 24.025(1) and RL 24.07(2), and Wis. Stats. secs 452.133(2)(a), 452.133(2)(b), 452.14(3)(i) and 452.14(3)(L) by failing to deposit the \$10,000.00 earnest money check (Exhibit 4) into a real estate trust account within 48 hours of receipt, and by failing to inform Daubner of his actions in regards to the return of the earnest money to Sadiku until after a demand was made by Daubner for receipt of the \$10,000.00 as liquidated damages.

b. Wis. Adm. Code secs. RL 24.025(1), and RL 24.07(3), and Wis. Stats sec. 452.133(2)(a), 452.133(2)(b), 452.14(3)(b), 452.14(3)(i) and 452.14(3)(L) by misrepresenting to Daubner that Sadiku was a qualified and financially able buyer after he knew that Sadiku was short on funds and after he also knew that Sadiku had failed to provide additional funds to secure the transaction as he had promised (Exhibit 7).

ORDER

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

IT IS FURTHER ORDERED, that **Edward J. Mooney's**, license to practice as a real estate broker in Wisconsin (license No. 44910) be, and hereby is, **SUSPENDED** for a period of four months, commencing on the effective date of this Order.

IT IS FURTHER ORDERED, that Respondent **Edward J. Mooney**, 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 two hour Contracts module - section RL 25.02(2)(a), of the Wisconsin Administrative Code.

b. The five hour Trust Accounts, Escrow, Closing Statement module - section

RL 25.02(2)(c), of the Wisconsin Administrative Code.

c. The four hour Business Ethics module - section RL 25.02(2)(g), of the Wisconsin Administrative 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 **Edward J. Mooney** 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 Edward J. Mooney, his real estate license shall continue under suspension 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 **Edward J. Mooney**, pay partial costs of this matter in the amount of \$500.00, 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 **Edward J. Mooney** fails to pay the \$500.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Edward J. Mooney**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 97 REB 157 be, and hereby is, closed.

Dated this 25th day of February, 1999.

WISCONSIN REAL ESTATE BOARD

By: Richard Hinsman

A member of the Board