

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
: 95 REB 328  
JEFFREY T. MARLOW :  
RESPONDENT. :  
: LS 9906245 REB

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

Jeffrey T. Marlow  
3026 Wedge Ct  
Green Bay, WI 54313-5025

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

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. **Jeffrey T. Marlow** ("Marlow"), date of birth 10/28/63, is licensed in the State of Wisconsin as a real estate broker having license # 90-47279. This license was first granted to him on 1/13/94. Marlow's most recent address on file with the Department of Regulation and Licensing is, 3026 Wedge Ct, Green Bay, WI 54313-5025.

2. At all times relevant to the facts set forth below Marlow was a real estate broker for, and Vice President of, Fox Shore Realty Inc. (license # 91-834534) located at 1929 Gross St. Green Bay, WI 54304.

3. On or about January 27, 1995, Daniel A. Schmidt entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Fox Shore Realty Inc., for the sale of a 20-unit apartment building he owned at 1055 Lime Kiln Road, Green Bay, WI. A copy of this agreement is unavailable. An undated amendment to that agreement signed by Thomas J. Juza, as President of Fox Shore Realty Inc. is attached as **Exhibit 1** and is incorporated herein by reference. A second Amendment to the January 27, 1995, listing agreement signed by Marlow and dated August 1, 1995, is attached as **Exhibit 2** and is incorporated herein by reference.

4. On or about February 17, 1995, Janice Strahl, a Fox Shore Realty Inc. real estate salesperson, provided Mr. Jon P. Jensen, a potential buyer of the 1055 Lime Kiln Road property, a CASH FLOW ANALYSIS for that property. This Cash Flow Analysis was either prepared by or at the direction of Marlow. The Cash Flow Analysis presents the following monthly base line figures:

a.)	Total Gross Income	\$10,645.00
b.)	Total Expenses	\$2,905.00
c.)	Net Operating Income	\$7,740.00
d.)	Total Debt Service	\$6,705.00
e.)	Cash Flow	\$1,035.00

A copy of the Cash Flow Analysis is attached as **Exhibit 3** and is incorporated herein by reference.

5. In arriving at Total Expenses (paragraph 4, b, above) for the base line figures in the Cash Flow Analysis (Exhibit 3) the following specific expenses are listed, among others:

a.)	Building Insurance	\$40.00
b.)	Advertising	\$35.00
c.)	Maintenance & Repairs	\$100.00

6. On or about March 23, 1995, Mr. Jensen offered to purchase the Lime Kiln Road property for \$748,000.00. The Residential Offer to Purchase submitted was drafted by Janice Strahl. In making the Offer to Purchase, Mr. Jensen states that he relied upon the accuracy of the base line figures portrayed in the Cash Flow Analysis (paragraph 4 above) as provided by Strahl. A copy of pages 1 and 4 of the March 3, 1995, Residential Offer to Purchase is attached as **Exhibit 4** and is incorporated herein by reference.

7. On or about March 27, 1995, Mr. Schmidt countered Mr. Jensen's offer (Exhibit 4) with a selling price of \$768,000.00. On or about March 31, 1995, Mr. Jensen countered the counter with a purchase price of \$754,500.00. This last counter was accepted by Mr. Schmidt on or about April 3, 1995. A copy of Mr. Schmidt's Counter-Offer is attached as **Exhibit 5** and is incorporated herein by reference. A copy of Mr. Jensen's Counter-Offer to Mr. Schmidt's counter is attached as **Exhibit 6** and is incorporated herein by reference.

8. On or about April 3, 1995, in accordance with lines 9 and 10 of the Offer to Purchase (Exhibit 4), Mr. Jensen submitted check # 109 in the amount of \$10,000.00 as earnest money. The check was payable to Fox Shore Realty Trust. A copy of check # 109 is attached as Exhibit 7 and is incorporated herein by reference.

9. In April and May 1995, Jensen obtained quotes for costs of building insurance for the 1055 Lime Kiln property. The least expensive insurance that Jensen was able to find was \$1,479.00 per year (\$123.25 per month as opposed to \$40.00 as indicated in the Cash Flow Analysis for an additional expense of \$83.25 per month). When Mr. Jensen questioned Marlow as to where he could obtain building insurance for \$40.00 per month Marlow responded that he did not know.

10. Shortly after discovering the additional expenses relating to the building insurance, Mr. Jensen closely reviewed the other expenses contained in the Cash Flow Analysis (Exhibit 3). Becoming concerned that the Cash Flow Analysis was not accurate, Mr. Jensen requested Fox Shore Realty Inc. to provide him with documentation showing the net operating income for the Lime Kiln property. In response to this request, Fox Shore Realty Inc. provided Mr. Jensen with Transaction Ledgers for the months of January through May 1995. Marlow informed Mr. Jensen that these were the only records available. Copies of these Transaction Ledgers are attached as Exhibits 8 through 8d and are incorporated herein by reference.

11. A review of the Transaction Ledgers ( Exhibits 8-8d) as compared to the Cash Flow Analysis (Exhibit 3) , reveals the following discrepancies in expenses in addition to those relating to building insurance ( Paragraph 9 above):

a). ADVERTISING EXPENSES:

Dec. 10, 1994, through Jan. 9, 1995,	\$1,019.06 ( Exhibit 8)	vs. \$35.00 (Exhibit 3)
Jan. 11, 1995, through Feb. 8, 1995,	\$330.44 ( Exhibit 8a)	vs. \$35.00 (Exhibit 3)
Feb. 9, 1995, through Mar. 9, 1995,	\$260.51 ( Exhibit 8b)	vs. \$35.00 (Exhibit 3)
Mar. 10, 1995, through Apr. 10, 1995,	\$0.00 ( Exhibit 8c)	vs. \$35.00 (Exhibit 3)
Apr. 11, 1995, through May 10, 1995,	\$0.00 ( Exhibit 8d)	vs. \$35.00 (Exhibit 3)

The average monthly advertising expense was \$322.00 based upon available Transaction Ledgers, vs. \$35.00 as indicated in the Cash Flow Analysis.

b.) MAINTENANCE AND REPAIRS EXPENSES

Dec. 10, 1994, through Jan. 9, 1995,	\$858.58 ( Exhibit 8)	vs. \$100.00 (Exhibit 3)
Jan. 11, 1995, through Feb. 8, 1995,	\$1,337.40 ( Exhibit 8a)	vs. \$100.00 (Exhibit 3)
Feb. 9, 1995, through Mar. 9, 1995,	\$587.25 ( Exhibit 8b)	vs. \$100.00 (Exhibit 3)
Mar. 10, 1995, through Apr. 10, 1995,	\$988.10 ( Exhibit 8c)	vs. \$100.00 (Exhibit 3)
Apr. 11, 1995, through May 10, 1995,	\$671.10 ( Exhibit 8d)	vs. \$100.00 (Exhibit 3)

The average monthly Maintenance and Repairs expense was \$888.48 based upon available Transaction Ledgers, vs. \$100.00 as indicated in the Cash Flow Analysis.

12. The Transaction Ledgers (Exhibits 8-8d) indicate an expense not listed on the Cash Flow Analysis (Exhibit 3) titled "Misc. Supplies". This monthly expense is:

a.) MISC. SUPPLIES

Dec. 10, 1994, through Jan. 9, 1995,	\$946.56 (Exhibit 8)
Jan. 11, 1995, through Feb. 8, 1995,	\$188.86 (Exhibit 8a)
Feb. 9, 1995, through Mar. 9, 1995,	\$166.15 (Exhibit 8b)
Mar. 10, 1995, through Apr. 10, 1995,	\$0.00 (Exhibit 8c)
Apr. 11, 1995, through May 10, 1995,	\$150.00 (Exhibit 8d)

The average monthly Miscellaneous Supplies expense was \$290.31 based upon available Transaction Ledgers, vs. this expense not even being listed in the Cash Flow Analysis.

13. The overall average actual monthly expense for building insurance and the other expenses as indicated in the Transaction Ledgers (Exhibits 9-9d) as shown in Paragraphs 9, 11, and 12 (above) are as follows:

	<u>BUILDING INSURANCE &amp; TRANSACTION LEDGERS</u>	<u>CASH FLOW ANALYSIS</u>
Building Insurance	\$123.25	\$40.00
Advertising	\$322.00	\$35.00
Maintenance Repairs	\$888.48	\$100.00
Miscellaneous Supplies	\$290.31	\$0.00
<b>Total</b>	<b>\$ 1,624.04</b>	<b>\$175.00</b>

The difference between the average monthly actual expense as depicted above and the expense shown in the Cash Flow Analysis also depicted above is \$1,449.04. (\$1,624.04 - \$175.00 = \$1,449.04).

14. The Cash Flow as indicated in the Cash Flow Analysis was \$1,035.00 ( Paragraph 4, e above). When subtracting the average monthly actual expenses as indicated in paragraph 13 above (\$1,449.04) an accurate Cash Flow Analysis based upon available documentation would have shown a NEGATIVE Cash Flow of \$414.04 per month.

15. The transaction failed, at least in part, because Mr. Jensen discovered that the purchase of the Lime Kiln property would present a negative cash flow.

16. Marlow contends that while the cost estimates in the Cash Flow Analysis cannot be substantiated by available documentation, that documentation is flawed because it includes costs for renovation work that is not likely to reoccur. Those cost are therefore not necessarily reflective of reasonable projected costs.

### 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 **Jeffrey T. Marlow** has violated:
  - a. Sections 452.133(1)(b), and 452.14(3)(i), of the Wisconsin Statutes, and sections RL 24.025(1), RL 24.03(2)(c), RL 24.07(2) and RL 24.07(3) of the Wisconsin Administrative Code by preparing of having prepared a Cash Flow Analysis which inaccurately depicted the amount of expenses associated with the ownership of the property known as 1055 Lime Kiln Road and in failing to disclose to Jensen that these estimated expenses were not based on available past documented expenses.
  - b. Sections 452.12(3)(a) and 452.14(3)(i) of the Wisconsin Statutes and section RL 17.08 of the Wisconsin Administrative Code by failing to adequately supervise Fox Shore Realty Inc. employee Janice Strahl in her capacity as selling agent in the failed Schmidt to Jensen , Lime Kiln Road real estate transaction. Specifically, Respondent JEFFREY MARLOW authorized JANICE STRAHL to provide Jon Jensen with a Cash flow Analysis which he knew or should have known contained inaccuracies thereby contributing to her careless representation of the actual expenses associated with ownership of the Lime Kiln property.

### ORDER

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

IT IS FURTHER ORDERED, that Respondent **JEFFREY T. MARLOW** license # 90-47279, be, and hereby is, issued a **Private Letter of Warning**.

IT IS FURTHER ORDERED, that Respondent **JEFFREY T. MARLOW**, within six months of the date of this Order, successfully complete the following course modules from the 36 hour pre-licensing real estate brokers' course at an educational institution approved by the Department of Regulation and Licensing:

- a. The four hour Business Ethics module - section RL 25.02(2)(g), of the Wisconsin Administrative Code.

b. The five hour Consumer Protection module - section RL 25.02(2)(h), of the Wisconsin Administrative Code.

c. The three hour Specialty Areas module - section RL 25.02(2)(i), 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 **JEFFREY T. MARLOW** 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 Jeffery T. Marlow, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **JEFFREY T. MARLOW**, pay partial costs of this matter in the amount of \$400.00, 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 **JEFFREY T. MARLOW** fails to pay the \$400.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Jeffrey T. Marlow**, 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 95 REB 328 be, and hereby is, closed.

Dated this 24 day of June, 1998. 9

**WISCONSIN REAL ESTATE BOARD**

By: 

A member of the Board