

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

WILLIAM A. MINGARI,
DOUGLAS C. RIEK,
RESPONDENTS.

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FINAL DECISION
AND ORDER
DOUGLAS C. RIEK
LS9009181REB

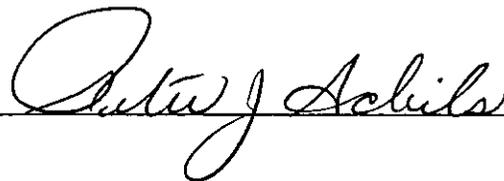
The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, 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 25TH day of APRIL, 1991.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION AS TO
WILLIAM A. MINGARI,	:	DOUGLAS C. RIEK
DOUGLAS C. RIEK,	:	LS 9009181 REB
RESPONDENTS.	:	

The parties to this proceeding for purposes of s. 227.53, Stats, are:

Douglas C. Riek
19120 Glen Kerry Drive
Brookfield, WI 53045

Wisconsin Real Estate Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above captioned matter on December 5, 1990. Respondent Riek appeared in person, without counsel. The Division of Enforcement was represented by Attorney Henry Sanders. The factual allegations of the complaint were admitted, but the legal conclusion that the facts of Mr. Riek's convictions are "substantially related" to the practice of real estate was disputed. On the basis of the entire record and arguments of the parties in this matter, the Administrative Law Judge recommends that the Real Estate Board adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in this matter.

FINDINGS OF FACT

1. Respondent Douglas C. Riek is licensed to practice as a real estate broker in the state of Wisconsin pursuant to a license issued August 21, 1984.
2. On January 12, 1989, in the United States District Court for the Eastern District of Wisconsin, Riek entered a plea of guilty to three counts of a criminal indictment charging conspiracy to defraud the United States Internal Revenue Service, filing a false and fraudulent tax return, and aiding and abetting the preparation of a false and fraudulent tax return. On his

plea, Riek was convicted of the offenses and sentenced to three concurrent terms of 3 years incarceration in a Federal Correctional Institution. In addition, he was fined a total of \$26,500 and ordered to make restitution in the amount of \$46,765.22. The restitution is an amount for which Riek is jointly and severally liable with a co-defendant, William Mingari.

3. As a result of these convictions, Riek's license to practice certified public accounting in Wisconsin was revoked.

4. The government's version of the offenses which formed part of the basis of Riek's plea, conviction, and sentencing on Count 1 of the Indictment shows that between 1980 and 1986, Riek engaged in the promotion and operation of fraudulent tax shelters in the form of limited partnerships for the sale of equipment. The investors' money was never used for the operation of equipment sales partnerships, but was instead deposited in accounts at financial institutions and converted to the benefit of Riek and his co-defendant Mingari. Substantially all the money invested was returned to the investors.

5. The government's version of the offenses which formed part of the basis of Riek's plea, conviction, and sentencing on Count 3 of the Indictment shows that Riek understated his income by approximately \$381,000 on his 1982 federal income tax return. Approximately \$131,000 of that amount was traced to Riek's gains on the limited partnership tax shelter fraud which formed the basis of Count 1 of the Indictment, described in the preceding paragraph. The remaining \$250,000 was attributable to Riek's misappropriation of funds from the estate of his great aunt, Elizabeth Riek. During late 1981 and continuing through at least June 16, 1982, Riek in excess of \$500,000 of Elizabeth Riek's assets, under a power of attorney notarized by William Mingari, and other authorizations bearing the forged signature of Elizabeth Riek. Riek, purporting to act as personal representative and administrator of Elizabeth Riek's estate, distributed approximately \$63,000 to the presumptive heirs of Elizabeth Riek, keeping the rest of the funds for himself and depositing them in a Swiss bank account. The estate was never probated, nor were any of the taxes ever paid. The heirs learned of the deception through the Internal Revenue Service in 1988, sued, and received a distribution of the assets converted by Riek.

6. The government's version of the offenses which formed part of the basis of Riek's plea, conviction, and sentencing on Count 96 of the Indictment shows that Riek prepared a false and fraudulent tax return for the tax year 1982, with the assistance of William Mingari, for one Gilbert Smith. The tax return purported to show a loss of \$23,194 due to depreciation of equipment in a limited partnership, when no equipment was ever purchased by the partnership. Riek was a principal figure, but not partner, in the limited partnership.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to s. 452.14, Stats.

2. The criminal convictions of Douglas Riek described in the Findings of Fact substantially relate to the practice of real estate, and are grounds for discipline against his real estate license pursuant to s. 452.14(3), Stats., and RL 24.17(2), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that all real estate licenses previously granted to Douglas C. Riek be and hereby are REVOKED.

IT IS FURTHER ORDERED that the assessable costs of this proceeding attributable solely to Respondent Riek, and one half of the costs remaining after subtraction of the costs attributable solely to Respondent Mingari, be imposed on Respondent.

OPINION

Respondent Riek was convicted of three separate federal felonies involving misrepresentation of material facts to persons for whom he was acting as agent, self-dealing, and conversion of the assets of others for whom he purported to be acting. The character of the crimes and the actions Riek took in carrying out his scheme are clearly substantially related to the practice of real estate, and are inconsistent with the honesty and fiduciary responsibility of a real estate licensee to his principal, and fairness to all interested parties in a real estate transaction.

Respondent argued that it is inappropriate to analogize his failure to honestly and accurately deal with tax forms to support a finding of proclivity to be less than honest and accurate when dealing with real estate documents. While that argument takes issue with the bare outlines of the State's argument, it completely misses the point about the character of real estate practice, and what the tax convictions (and theft from his great-aunt's estate) demonstrate of Mr. Riek's character.

Respondent further argued that the summary of the government's version of the offenses of which he was convicted, the summary which was made a part of the complaint in this proceeding and which Respondent admitted was accurate, said nothing about fraudulent dealings, forged documents, false filings, and theft. In fact, the summary of the government's version of the offenses does all of that in great detail. The summary states that Riek, through counsel, concurred with the summary prepared by the Assistant U.S. Attorney who prosecuted the federal criminal action. It seems extremely unlikely that respondent was unaware of the content of the summary, or that he forgot the substance of the document which was prepared as part of his sentencing.

The purposes of discipline are the protection of the public, the rehabilitation of the licensee, and the deterrence of others from similar activities. The protection of the public requires that Respondent not have the opportunity to hold himself out as one in whom a person can place trust, and with whom a person can engage in financial transactions with a minimum of risk. I am not convinced that the goal of rehabilitation is attainable at this time by a suspension or limitation of a license, given the substantial relationship between the character of the convictions and the character of the practice of real estate, and Respondent's unfounded arguments on the contents of the summary of the offenses. Deterrence of others from activity of similar character is also a strong reason for significant discipline in this case.

Dated this 4th day of April, 1991.



James E. Polewski
Administrative Law Judge

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 April 29, 1991.

WLD:dms
886-490

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 may be 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) 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. 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. 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) Copies 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 all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(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.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

WILLIAM A. MINGARI,
DOUGLAS C. REIK,
RESPONDENTS.

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:

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
WILLIAM A. MINGARI
LS 9009181 REB

STATE OF WISCONSIN,
COUNTY OF DANE, ss:

James E. Polewski, being first duly sworn on oath, deposes and says

1. That he is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in the course of that employment was appointed administrative law judge in the above captioned proceeding.

2. That in the course of that appointment, he expended the time specified below and has examined the invoice for services of the reporting services noted:

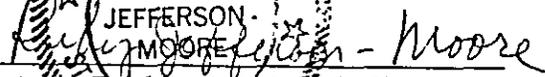
<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
10/23/90	Letter and Prehearing Notice	0.5 hours
11/6/90	Telephone Prehearing	0.25 hours
	Draft order	0.25 hours
12/5/90	Preside at hearing	2.25 hours
4/3/91	Draft decision	0.5 hours
4/4/91	Draft decision	<u>2.5 hours</u>
	TOTAL TIME	6.5 hours

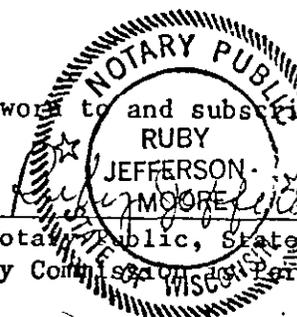
Costs for administrative law judge,
6.5 hours @ \$24.75 salary and benefits: \$160.88

Court reporters fee, Magne Script: \$181.50

TOTAL EXPENSES, OFFICE OF BOARD LEGAL SERVICES: \$342.38


James E. Polewski

Sworn to and subscribed before me this 30th day of April, 1991.
RUBY
JEFFERSON
MOORE

Notary Public, State of Wisconsin
My Commission Expires Permanent.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

WILLIAM A. MINGARI,
DOUGLAS C. REIK,
RESPONDENTS.

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AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
DOUGLAS C. REIK
LS 9009181 REB

STATE OF WISCONSIN,
COUNTY OF DANE, ss:

James E. Polewski, being first duly sworn on oath, deposes and says

1. That he is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in the course of that employment was appointed administrative law judge in the above captioned proceeding.

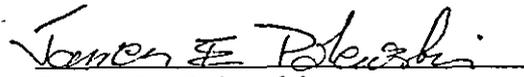
2. That in the course of that appointment, he expended the time specified below and has examined the invoice for services of the reporting services noted:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
10/23/90	Letter and Prehearing Notice	0.5 hours
11/6/90	Telephone Prehearing	0.25 hours
	Draft order	0.25 hours
12/5/90	Preside at hearing	1.25 hours
2/14/91	Draft decision	<u>3.5 hours</u>
	TOTAL TIME:	6.0 hours

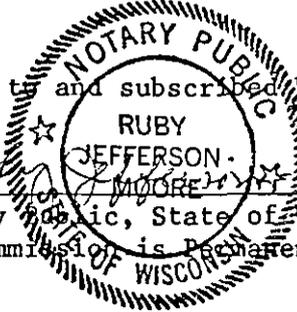
Costs for administrative law judge,
6.0 hours @ \$24.75 salary and benefits: \$148.50

Court reporters fee, Magne Script: \$118.80

TOTAL EXPENSES, OFFICE OF BOARD LEGAL SERVICES: \$267.30


James E. Polewski

Sworn to and subscribed before me this 30th day of April, 1991.


Ruby Jefferson Moore
Notary Public, State of Wisconsin
My Commission is Permanent.

10/3/90	Returned call to Attorney Bob Uecker	5 min.
10/6/90	Prehearing Conference	25 min.
10/11/90	Received/Reviewed Mingari's Answer to Complaint	10 min.
10/23/90	Received/Reviewed ALJ's Notice of Prehearing Conference with attached letter	10 min.
10/30/90	Reviewed Riek's letter re' postponement of Hearing	5 min.
11/6/90	Mingari's Prehearing Conference	25 min.
11/6/90	Received/Reviewed ALJ's Scheduling Order	2 min.
11/6/90	Telephoned Respondents' Attorney Gimbel	5 min.
11/6/90	Dictated letter to Respondent Riek and Attorney Gimbel	15 min.
11/9/90	Received/Reviewed Riek's Stipulation of Facts	5 min.
11/13/90	Dictated letter to Attorney Gimbel	10 min.
11/19/90	Telephone Conversation with Attorney Gimbell	5 min.
12/4/90	Hearing preparation	3 hours
12/5/90	Riek hearing	1 hr., 25 min.
12/5/90	Mingari hearing	2 hr., 25 min.
1/14/91	Reviewed Riek's hearing transcript	1 hour
3/26/91	Reviewed Mingari's Hearing transcript	1 hour
4/5/91	Received/Reviewed Riek's & Mingari's proposed Decisions	20 min.
4/16/91	Received/Reviewed Riek's Objections to Proposed Decision; copies made to Clete Hansen and Mike Berndt.	15 min.
4/29/91	Received/Review REB Final Decisions and Orders	30 min.
5/1-2/91	Preparation for and preparation for Affidavit of Assessment of Cost; Finalized Affidavit of Costs & to Glenda & files	6 hours

Prosecuting Attorney's costs for Henry E. Sanders based upon current salary and benefits at 17 hours and _____ minutes at \$30.17.

TOTAL HOURS =: 17
TOTAL \$ = : \$512.89

INVESTIGATIVE COSTS FOR ANNE VANDERVORT

1/27/89	Telephone conversation with probation agent Mike Nissan; dictated related file memo	15 min.
10/6/89	Pulled licensure date for Respondents	15 min.
3/21/90	Reviewed related 88 ACC 17 case files and Decisions	1 hour
3/23/90	Phoned eastern district federal court for pleadings or certified documents and dictated related file memo	10 min.
4/11/90	Case summary draft for Board Advisor review	20 min.
4/17/90	Reviewed & finalized case summary for Board Advisor	20 min.
4/18/90	Copies of case files and submitted to Board Advisor for review	1 hour
4/24/90	Met with Board Advisor Idso re' course of action & related file memo; to prosecuting attorney for PIC review	20 min.
8/22/90	Located prison locations/addresses of Respondents	10 min.

Total Investigator's costs at \$17.53 per hour based upon current salary and benefits.

TOTAL HOURS =: 3 hrs & 50 min.
TOTAL \$ =: \$ 61.36

TOTAL ASSESSABLE COSTS=: \$ 574.25

Henry E. Sanders

Henry E. Sanders, Attorney
Division of Enforcement
(608) 266-8956

Subscribed and sworn to before
me this 2nd day of May, 1991.

[Signature]
Notary Public
My Commission is Permanent

HES:ej
ATY-1530

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

WILLIAM A. MINGARI,
DOUGLAS C. RIEK,
RESPONDENTS.

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FINAL DECISION
AND ORDER
WILLIAM A. MINGARI
LS9009181REB

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

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, 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 25TH day of APRIL, 1991.



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
WILLIAM A. MINGARI,	:	PROPOSED DECISION AS TO
DOUGLAS C. RIEK,	:	WILLIAM A. MINGARI
RESPONDENTS.	:	LS 9009181 REB

The parties to this proceeding for purposes of s. 227.53, Stats., are:

William A. Mingari
2000 Erin Court
Brookfield, WI 53005

Wisconsin Real Estate Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above captioned matter on December 5, 1990. Respondent Mingari appeared in person, with counsel Franklyn M. Gimbel, 2400 Milwaukee Center, 110 East Kilbourn Street, Milwaukee, WI 53202. The Division of Enforcement was represented by Attorney Henry Sanders. The factual allegations of the complaint were admitted, but the legal conclusion that the fact of Mr. Mingari's conviction is "substantially related" to the practice of real estate was disputed. On the basis of the entire record and arguments of the parties in this matter, the Administrative Law Judge recommends that the Real Estate Board adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in this matter.

FINDINGS OF FACT

1. William A. Mingari has been licensed as a real estate salesperson in Wisconsin since August 21, 1984.

2. Respondent Mingari was tried on four counts of a criminal indictment in the United States District Court for the Eastern District of Wisconsin, and convicted on three counts, on or about February 23, 1989. The three counts were one count of conspiring to defraud the United States Internal Revenue Service, in concert with Douglas Riek, and two counts of filing false and fraudulent income tax returns.

3. The conspiracy charged began in, or shortly before, 1980, and continued through some part of 1986. With Douglas Riek, Mingari engaged in the promotion and operation of fraudulent tax shelters in the form of limited partnerships for the sale of equipment. The investor's money was never used for the operation of equipment partnerships, but was instead deposited in accounts at financial institutions and converted to the benefit of Riek and Mingari. Substantially all the money invested was returned to the investors.

4. The two counts of filing fraudulent income tax returns are based upon Mingari's personal income tax returns for the tax years 1981 and 1982, filed in 1982 and 1983, respectively.

5. Mingari was acquitted of the allegation that he had intentionally filed a partnership tax return for a partnership operated by himself and Douglas Riek, knowing that the information on the return was not true.

6. The actions which led to Mingari's convictions for filing fraudulent tax returns pre-date the issuance of a real estate license to him. The actions which led to his conviction for conspiracy to defraud the Internal Revenue Service continued after he was issued a real estate license.

7. Mingari was sentenced to a term of incarceration in a Federal Correctional Institution, and served that term. During his incarceration, he distinguished himself as a model prisoner, and engaged in voluntary activities which were of significant benefit to the institution and the community in which the institution is located.

8. As part of the sentence imposed on his conviction, Mingari is required to make restitution to the United States, and owes the government \$46,765.22, for which he is jointly and severally liable with Douglas Riek. In addition, Mingari was fined a total of \$25,000.00 as part of the criminal sanctions imposed.

9. Mingari was not responsible for the planning or implementation of the fraudulent tax shelter scheme, but was instead a willing participant in a scheme conceived, planned, and directed by Douglas Riek. Douglas Riek was, at the time, a certified public accountant. Mingari has completed high school, three years of technical school education, and a course in preparation for the real estate broker's examination.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to s. 452.14, Stats.

2. The criminal convictions of William Mingari described in the Findings of Fact substantially relate to the practice of real estate, and are grounds for discipline against his license pursuant to s. 452.14(3), Stats., and RL 24.17(2), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that all real estate licenses previously granted to William A. Mingari be and hereby are SUSPENDED for six months.

IT IS FURTHER ORDERED that the assessable costs of this proceeding attributable solely to Respondent Mingari, and one half of the cost remaining after subtraction of the costs attributable solely to Respondent Riek, be imposed on Respondent Mingari.

OPINION

Respondent Mingari's participation in a fraud of investors, in which he at least assisted in misleading the investors as to the nature of the scheme, to his benefit and the benefit of his co-conspirator, is clearly substantially related to the practice of real estate in that it shows lack of honesty and a willingness to violate trust.

Mingari does not have an equal share of culpability for the tax shelter conspiracy with Douglas Riek, his co-conspirator, because it is clear from the details of the scheme that Riek, a certified public accountant at the time, was the person responsible for planning, implementing, and directing the scheme. Mingari simply does not have the education or professional credentials which are necessary for the successful planning and implementation of a tax shelter fraud. On the other hand, he knew what he was doing, and he knew that it was illegal and a fraud on the investors in the putative tax shelters. Mingari testified that he has sales skills, and, on the basis of the documents and testimony introduced during the hearing, I conclude that he is a personable, hard-working, self-motivating individual. All of these good qualities were undoubtedly useful in the sale of the tax shelter scheme to the individuals who were targeted by the scheme, even allowing for the possibility that those individuals suppressed whatever suspicions they may have had about the validity of the scheme in pursuit of potential gain.

The functions of discipline are protection of the public, rehabilitation of the licensee, and the deterrence of others from similar misconduct. Respondent here has a lesser need of rehabilitation than he would if he had developed the fraudulent tax shelter scheme. The protection of the public can never be total unless the Respondent is forever foreclosed from licensed real estate practice, and that seems out of proportion to the risk presented by this Respondent in the practice of real estate. There is also some consideration due to deterrent effect of license restrictions separate from the general deterrence of the criminal penalties previously imposed on this individual.

Dated this 4th day of April, 1991.

James E. Polewski

James E. Polewski
Administrative Law Judge

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 April 29, 1991.

WLD:dms
886-490

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 employe 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) 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. 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. 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) Copies 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 all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(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.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS
	:	OFFICE OF BOARD LEGAL SERVICES
WILLIAM A. MINGARI,	:	WILLIAM A. MINGARI
DOUGLAS C. REIK,	:	LS 9009181 REB
RESPONDENTS.	:	

STATE OF WISCONSIN,
COUNTY OF DANE, ss:

James E. Polewski, being first duly sworn on oath, deposes and says

1. That he is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in the course of that employment was appointed administrative law judge in the above captioned proceeding.
2. That in the course of that appointment, he expended the time specified below and has examined the invoice for services of the reporting services noted:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
10/23/90	Letter and Prehearing Notice	0.5 hours
11/6/90	Telephone Prehearing	0.25 hours
	Draft order	0.25 hours
12/5/90	Preside at hearing	2.25 hours
4/3/91	Draft decision	0.5 hours
4/4/91	Draft decision	<u>2.5 hours</u>
	TOTAL TIME	6.5 hours

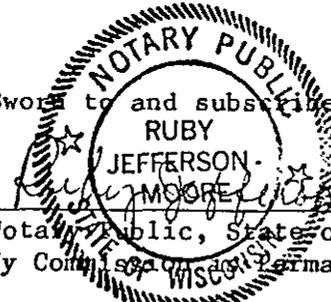
Costs for administrative law judge, 6.5 hours @ \$24.75 salary and benefits:	\$160.88
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Court reporters fee, Magne Script:	\$181.50
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TOTAL EXPENSES, OFFICE OF BOARD LEGAL SERVICES:	<u>\$342.38</u>
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James E. Polewski

Sworn to and subscribed before me this 30th day of April, 1991.

 RUBY JEFFERSON-MOORE
Notary Public, State of Wisconsin
My Commission Expires Permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS
	:	OFFICE OF BOARD LEGAL SERVICES
WILLIAM A. MINGARI,	:	DOUGLAS C. REIK
DOUGLAS C. REIK,	:	LS 9009181 REB
RESPONDENTS.	:	

STATE OF WISCONSIN,
COUNTY OF DANE, ss:

James E. Polewski, being first duly sworn on oath, deposes and says

1. That he is an attorney employed by the Office of Board Legal Services, Department of Regulation and Licensing, and in the course of that employment was appointed administrative law judge in the above captioned proceeding.

2. That in the course of that appointment, he expended the time specified below and has examined the invoice for services of the reporting services noted:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
10/23/90	Letter and Prehearing Notice	0.5 hours
11/6/90	Telephone Prehearing	0.25 hours
	Draft order	0.25 hours
12/5/90	Preside at hearing	1.25 hours
2/14/91	Draft decision	<u>3.5 hours</u>
	TOTAL TIME:	6.0 hours

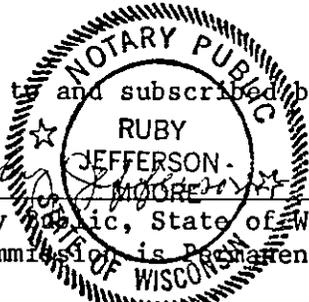
Costs for administrative law judge,
6.0 hours @ \$24.75 salary and benefits: \$148.50

Court reporters fee, Magne Script: \$118.80

TOTAL EXPENSES, OFFICE OF BOARD LEGAL SERVICES: \$267.30


James E. Polewski

Sworn to and subscribed before me this 30th day of April, 1991.


Ruby Jefferson Moore
Notary Public, State of Wisconsin
My Commission Expires _____

10/3/90	Returned call to Attorney Bob Uecker	5 min.
10/6/90	Prehearing Conference	25 min.
10/11/90	Received/Reviewed Mingari's Answer to Complaint	10 min.
10/23/90	Received/Reviewed ALJ's Notice of Prehearing Conference with attached letter	10 min.
10/30/90	Reviewed Riek's letter re' postponement of Hearing	5 min.
11/6/90	Mingari's Prehearing Conference	25 min.
11/6/90	Received/Reviewed ALJ's Scheduling Order	2 min.
11/6/90	Telephoned Respondents' Attorney Gimbel	5 min.
11/6/90	Dictated letter to Respondent Riek and Attorney Gimbel	15 min.
11/9/90	Received/Reviewed Riek's Stipulation of Facts	5 min.
11/13/90	Dictated letter to Attorney Gimbel	10 min.
11/19/90	Telephone Conversation with Attorney Gimbell	5 min.
12/4/90	Hearing preparation	3 hours
12/5/90	Riek hearing	1 hr., 25 min.
12/5/90	Mingari hearing	2 hr., 25 min.
1/14/91	Reviewed Riek's hearing transcript	1 hour
3/26/91	Reviewed Mingari's Hearing transcript	1 hour
4/5/91	Received/Reviewed Riek's & Mingari's proposed Decisions	20 min.
4/16/91	Received/Reviewed Riek's Objections to Proposed Decision; copies made to Clete Hansen and Mike Berndt.	15 min.
4/29/91	Received/Review REB Final Decisions and Orders	30 min.
5/1-2/91	Preparation for and preparation for Affidavit of Assessment of Cost; Finalized Affidavit of Costs & to Glenda & files	6 hours

Prosecuting Attorney's costs for Henry E. Sanders based upon current salary and benefits at 17 hours and _____ minutes at \$30.17.

TOTAL HOURS =: 17
TOTAL \$ = : \$512.89

INVESTIGATIVE COSTS FOR ANNE VANDERVORT

1/27/89	Telephone conversation with probation agent Mike Nissan; dictated related file memo	15 min.
10/6/89	Pulled licensure date for Respondents	15 min.
3/21/90	Reviewed related 88 ACC 17 case files and Decisions	1 hour
3/23/90	Phoned eastern district federal court for pleadings or certified documents and dictated related file memo	10 min.
4/11/90	Case summary draft for Board Advisor review	20 min.
4/17/90	Reviewed & finalized case summary for Board Advisor	20 min.
4/18/90	Copies of case files and submitted to Board Advisor for review	1 hour
4/24/90	Met with Board Advisor Idso re' course of action & related file memo; to prosecuting attorney for PIC review	20 min.
8/22/90	Located prison locations/addresses of Respondents	10 min.

Total Investigator's costs at \$17.53 per hour based upon current salary and benefits.

TOTAL HOURS =: 3 hrs & 50 min.
TOTAL \$ =: \$ 61.36

TOTAL ASSESSABLE COSTS=: \$ 574.25

Henry E. Sanders

Henry E. Sanders, Attorney
Division of Enforcement
(608) 266-8956

Subscribed and sworn to before
me this 2nd day of May, 1991.

[Signature]
Notary Public
My Commission is Permanent

HES:eaf
ATY-1536

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT OF BREAKDOWN OF
	:	INDIVIDUAL-ASSESSED COSTS
WILLIAM A. MINGARI,	:	(Wis. Stats. 440.22)
DOUGLAS C. RIEK,	:	88 REB 485
RESPONDENT.	:	

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Henry E. Sanders, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an Attorney licensed to practice law in the state of Wisconsin, and is employed by the state of Wisconsin, Department of Regulation and Licensing, Division of Enforcement.
2. In the course of his employment, your affiant was assigned to prosecute the above-captioned matter(s) and in that regard did render the services described below.
3. Anne Vandervort, an employer of the Division, was assigned as investigator in the captioned matters and performed the work described below.
4. The costs set forth below are the reasonable costs of these proceedings, separately assessed against the respective Respondents.

PROSECUTING ATTORNEY'S COSTS FOR MINGARI

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
8/16/90	Reviewed related 90 ACC 17 files	1 hr., 30 min.
10/11/90	Received/Reviewed Mingari's Answer to Complaint	10 min.
11/6/90	Mingari's Prehearing Conference	25 min.
12/5/90	Administrative hearing	2 hrs., 25 min.
3/26/91	Reviewed Mingari's Hearing transcript	1 hour

Prosecuting Attorney's Costs for Henry E. Sanders based upon current salary and benefits at 5 hours and 30 minutes at \$30.17.

TOTAL HOURS =:	<u>5 hrs 30 mins</u>
TOTAL \$ =	: <u>\$165.93</u>

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INVESTIGATIVE COSTS FOR ANNE VANDERVORT

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
3/21/90	Reviewed related 88 ACC 17 case files for Mingari	1 hour

Investigator's costs at \$17.53 per hour based upon current salary and benefits.

TOTAL HOURS =: 1 hr
TOTAL \$ = : \$17.53

PROSECUTING ATTORNEY'S COSTS FOR RIEK

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
10/3/90	Reviewed Riek's Answer to Complaint; checked with ALJ	30 min.
10/30/90	Reviewed Riek's letter re' postponement of Hearing	5 min.
11/6/90	Telephoned Respondents' Attorney Gimbel	5 min.
11/6/90	Dictated letter to Respondent Riek and attorney Gimbel	15 min.
11/9/90	Received/Reviewed Riek's Stipulation of Facts	5 min.
11/13/90	Dictated letter to Attorney Gimbel	10 min.
11/19/90	Telephone Conversation with Attorney Gimbel	5 min.
12/5/90	Riek hearing	1 hr., 25 min.
1/14/91	Reviewed Riek's hearing transcript	1 hour
4/16/91	Received/Reviewed Riek's Objections to Proposed Decision; copies made to Clete Hansen and Mike Berndt.	15 min.

Prosecuting Attorney's costs for Henry E. Sanders based upon current salary and benefits at 3 hours and 55 minutes at \$30.17.

TOTAL HOURS =: 4 hrs
TOTAL: \$ = : \$120.68

PROSECUTING ATTORNEY'S COST FOR MINGARI AND RIEK

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
12/15/88	Respondents' licensure checks per 11/29/88 Milwaukee Journal Newspaper article: opened informal complaints	20 min.

8/7/90	Primary investigation complete (PIC) review	30 min.
8/17/90	Drafted Complaints and Notice of Hearing	30 min.
8/20/90	Returned phone call to federal probation agent to locate Respondents	5 min.
9/15/90	Finalized Notice of Hearing & Complaint; ready for filing	2 hours
10/3/90	Returned call to Attorney Bob Uecker	5 min.
10/6/90	Prehearing Conference	25 min.
10/23/90	Received/Reviewed ALJ's Notice of Prehearing Conference with attached letter	10 min.
11/6/90	Received/Reviewed ALJ's Scheduling Order	2 min.
12/4/90	Hearing preparation	3 hours
4/5/91	Received/Reviewed Riek's & Mingari's proposed Decisions	20 min.
4/29/91	Received/Reviewed REB Final Decisions and Orders	30 min.
5/1-2/91	Preparation for and preparation of Affidavit of Assessment of Cost; Finalized Affidavit of Costs & to Glenda & files	6 hours

Prosecuting Attorney's costs for Henry E. Sanders based upon current salary and benefits at 14 hours and _____ minutes at \$30.17.

TOTAL HOURS =:	<u>14 hrs</u>
TOTAL \$ =	: <u>\$422.38</u>

INVESTIGATIVE COSTS FOR ANNE VANDERVORT

1/27/89	Telephone conversation with probation agent Mike Nissan; dictated related file memo	15 min.
10/6/89	Pulled licensure data for Respondents	15 min.
3/23/90	Phoned eastern district federal court for certified pleading documents and dictated related file memo	10 min.
4/11/90	Case summary draft for Board Advisor's review	20 min.
4/17/90	Reviewed & finalized case summary for Board Advisor	20 min.

4/18/90 Made copies of case files and submitted to Board 1 hour
Advisor for review

4/24/90 Met with Board Advisor Idso re' course of action 20 min.
& dictated related file memo; to prosecuting attorney
for PIC review

8/22/90 Located prison locations/addresses of Respondents 10 min.

Total Investigator's costs at \$17.53 per hour based upon current salary and
benefits.

TOTAL HOURS =: 2 hrs 50 mins

TOTAL \$ = : \$44.00

TOTAL ATTORNEY'S AND = : \$466.38
INVESTIGATOR'S COST FOR
MINGARI AND RIEK

TOTAL ASSESSABLE COSTS FOR MINGARI

Attorney's Costs:	<u>\$165.93</u>
Investigator's Costs:	<u>\$ 17.53</u>
Equally Assessable Costs (1/2 of \$466.38):	<u>\$233.19</u>
TOTAL =:	<u>\$416.65</u>

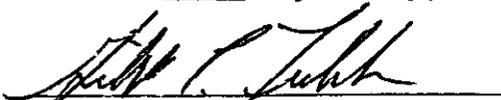
TOTAL ASSESSABLE COSTS FOR RIEK

Attorney's Costs:	<u>\$120.68</u>
Equally Assessable Costs (1/2 of \$466.38):	<u>\$233.19</u>
TOTAL =:	<u>\$353.87</u>



Henry E. Sanders, Attorney
Division of Enforcement
(608) 266-8956

Subscribed and sworn to before
me this 29th day of May, 1991.



Notary Public
My Commission is Permanent

HES:pp
DOEATTY-1581

