FILE COPY 58

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER LS9803311REB
ROBIN R. BABB	:	
RAYMOND C. BABB	:	
RESPONDENTS.	:	

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 21 th day of August 1998.

A Member of the Board

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

ROBIN R. BABB
RAYMOND C. BABB LS9803311REB

Respondents

PROPOSED DECISION

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

Robin R. Babb
408 Hill drive
Boscobel, WI 53805

Raymond C. Babb, Ed.D.
Route 1
Soldiers Grove, WI 54655

State of Wisconsin
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

State of Wisconsin
Real Estate Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

A Class 2 hearing was conducted in the above-captioned matter on May 9, 1998. Attorney Gerald M. Scanlan appeared for the department of Regulation & Licensing, Division of Enforcement. Attorney Thomas F. Peterson appeared for Both Robin and Raymond Babb. The transcript of the proceedings was received on June 15, 1998.

Based upon the entire record herein, the administrative law judge recommends that the Real Estate Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Robin R. Babb is licensed as a real estate broker in the State of Wisconsin by license #27573, granted on October 28, 1982. Robin Babb's address of record is 408 Hill Drive, Boscobel, WI 53805, and at all times relevant hereto he was employed as a real estate broker with Babb Real Estate of Gays Mills, Wisconsin.

2. Raymond C. Babb, Ed.D., is licensed as a real estate broker in the State of Wisconsin by license #18141, granted on May 20, 1977. Raymond Babb's address of record is Rural Route 1, Soldiers Grove, WI 54655, and at all times relevant hereto he was the broker/owner of Babb Real Estate of Gays Mills, Wisconsin, and the broker/employer of Robin Babb.

3. In late 1993 or early 1994, Raymond and Robin Babb purchased farm property located in Township 10 North, Range 4 west, County of Crawford, Wisconsin, consisting of approximately 500 acres. Raymond and Robin Babb thereafter divided the property into eight parcels. Five of the created parcels abutted a township road known as Delameter Road, and the Babbs staked the parcels created along delameter Road at what were intended by them to be the southeast and southwest corners of those parcels.

4. Michael J. Cross initially viewed one of the parcels, which was subsequently purchased by him, after picking up a flyer, or what was referred to at hearing as a "spec sheet," at the offices of Babb Real Estate. The spec sheet advertised the property as containing "22+" acres. The general description stated as follows:

> All wooded parcel great for hunting. Nice pine grove. Flat cabin site with south facing view. Additional land available. property lines are staked at the road. Real estate sign located approximately in the middle of the stakes.

5. On or about April 6, 1994, Michael J. Cross offered to purchase the parcel viewed by him for $14,000. The Vacant Land Offer to Purchase was prepared by Robin Babb, and contained the following legal description of the parcel in question:

> The West One-Half of the Southeast One-Quarter of the Southwest One-Quarter, Section 14, T 10N, R 4W; and all that portion of the Northeast One-Quarter of the Northwest One-Quarter, lying North of the town Rd. known as Delameter aka Brown Rd. in Sec. 23, T 10N, R 4W.

6. The Babbs had not had the parcels in question surveyed. Rather, they attempted, by utilizing an aerial view and plat map of the area, to establish the boundaries consistent with the legal description drafted by them.

7. It is Mr. Cross' recollection that at the time the Offer to Purchase was prepared, he asked Robin Babb if he was purchasing the legal description set forth in the Offer to Purchase rather than the parcel as established by the stakes, and that Robin Babb indicated that he was purchasing the parcel described by the legal description. Robin Babb's recollection is that he told Mr. Cross that the property lines were as staked and that the legal description on the Offer to Purchase was the best one possible without a survey.

8. Robin Babb's recollection is that he indicated to Mr. Cross that if Cross wanted the parcel surveyed stake to stake, Babb Real Estate would pay half the cost of the survey. Mr. Cross does not recall such an offer.

9. The transaction closed on or about April 25, 1994. On or about that same date, a Warranty deed was prepared by Robin Babb whereby the parcel in question was granted to Mr. Cross in fee simple. The legal description on the warranty deed is identical to that set forth on the Offer to Purchase. On or about April 27, 1994, Mr. Cross was issued an American Land Title Association Owner's Policy through Chicago Title Insurance Company. Again, the legal description of the parcel set forth in the title policy is identical to that set forth in the Offer to Purchase and in the Warranty Deed.

10. In the late summer or early fall of 1994, a boundary dispute arose between Mr. Cross and the owner of the adjoining property to the west, Thomas Swiggum. In order to resolve the matter, Mr. Cross engaged Robert M. Lampman, Registered Land Surveyor, to survey the property. That survey, which was based upon the legal description set forth in the Warranty deed, was completed on December 13, 1994. Based upon the Lampman survey, which was confirmed by a survey subsequently commissioned by the Babbs, the west boundary of the Cross property lies approximately 20 feet west of the line established by the stakes set by the Babbs. The area of the land between the line established by the Babbs and the line established by the Lampman survey is approximately 3.7 acres.

11. A dispute continues to exist between Mr. Cross and Mr. Swiggum in that Mr. Swiggum allegedly continues to attempt to rely on the line established by the corner stake set by the Babbs. Accordingly, on December 15, 1995, Mr. Cross wrote to the agency which issued the Chicago title Insurance Company title insurance policy requesting that appropriate action be undertaken. That letter states in part as follows:

> . . . Mr. Tom Swiggum, who owns the property adjacent to mine in the Town of Clayton, is verbally and physically asserting claim to a portion of the property described in my warranty Deed and the [title policy]. He has interfered with my use and improvement of that portion by threatening to take me to court, remove the survey markers for which I contracted with Lampman and Associates and/or fence me out of there. Further he has, by his own admission, twice removed and destroyed the No Hunting, No Trespassing, etc., signs, Which I had posted in that area. . . . Therefore, I am herewith, also requesting . . . that you institute and prosecute whatever actions are necessary and appropriate to defend and secure my title and interest in the property you have insured that I own and

prevent any further loss or damage I might sustain from Mr. Swiggum's inordinate claim.

12. By letter dated January 15, 1996, Chicago title Insurance Company refused to pay any loss that Mr. Cross might incur arising from the boundary line dispute, based upon a provision in the policy excepting from coverage boundary line disputes which would have been disclosed by an accurate survey.

CONCLUSIONS OF LAW

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

2. In having created a legal description for a parcel of land that did not accurately describe the parcel intended to be conveyed, and in utilizing that legal description in the offer to purchase the parcel and in the warranty deed conveying the parcel prepared by him, and in thereby failing to accurately describe the parcel of land intended to be conveyed in the Offer to Purchase and the Warranty Deed prepared by him, Robin Babb has failed to detect an observable adverse fact material to the transaction and to disclose that adverse fact to the buyer, in violation of sec. RL 24.07, Code; has failed to create an offer to purchase and Warranty Deed expressing in writing the exact agreement of the parties, in violation of sec. 24.08, Code; and, pursuant to sec. RL 24.01(3), Code, Robin Babb has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. In having failed to ensure the correctness of the legal description set forth in the Offer to Purchase and the Warranty Deed prepared by his broker-employe, Robin Babb, Raymond Babb has failed in his responsibility for the correctness of entries on those real estate forms, in violation of sec. RL 17.08(2), Code, and has thereby violated sec. RL 24.17(3), Code. Pursuant to sec. RL 24.01(3), Code, Raymond Babb has also thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that Robin A. Babb be, and hereby is, reprimanded.

IT IS FURTHER ORDERED that Raymond C. Babb be, and hereby is, reprimanded.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Robin A. Babb.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Raymond C. Babb.

OPINION

At hearing, Robin and Raymond Babb described the manner in which they created the parcel ultimately purchased by Mr. Cross: They utilized a plat map and an aerial map of the area, and set stakes at what they believed closely approximated the southeast and southwest corners established by the legal description assigned to that parcel.

> Q. (by Mr. Scanlan) What did you do to insure that that legal description coincided with how you marked this property?
>
> A. (by Mr. Robin Babb) We, Ray and I, went out and pounded stakes in the ground where we intended the property line to be. With the aid of the plat map and the aerial view, we tried to come as close as we could to where the property lines were. They were -- the property lines were intended to be marked from stake to stake. (transcript, p. 15)
>
> * * * *
>
> Q. (by Mr. Scanlan) And you were aware that a legal -- or that a formal survey had not been conducted on the property?
>
> A. (by Mr. Ray Babb) That's correct. We were using a 40 line and the road as best we could. I might just mention that when you use an aerial view, and if you're very careful, you can come pretty close. Obviously, we weren't in this case, and I'm frankly at a loss to know why that we weren't closer to the 40 line than what I thought we would be. We weren't. Part of it -- I can explain part of it that there's a ditch that runs there. You need to go one side or the other. We chose to go to the right instead of the left. That would have made it even closer. (transcript, p. 36)

Based on the foregoing, it is undisputed that the west boundary of the Cross parcel, as established by the stake they placed there, was intended by the Babbs to conform to the legal description which they placed on subsequent legal documents; that is, the west line of the southeast quarter of the southwest quarter of Section 14, Township 10 North, Range 4 West. That they failed in that attempt is also undisputed.

Which is not to say that there is no dispute as to other events relevant to this matter. Mr. Cross testified at hearing that on the day the Offer to Purchase was executed, he and Robin Babb drove out and viewed what was to become the Cross property. It was Mr. Cross' recollection that at that time he asked Robin Babb if he was purchasing the legal description set forth in the Offer to Purchase rather than the parcel as established by the stakes, and that Robin Babb indicated that Cross was purchasing the parcel set forth in the legal description. Robin Babb testified that the first time he actually met Mr. Cross in person was at the closing, and that all contacts prior to that time were by telephone or mail. he further testified that he told Mr. Cross that the property lines were as staked and that the legal description on the Offer to Purchase was the best one possible without a survey. He further testified that he indicated to Mr. Cross that if Cross wanted the

parcel surveyed stake to stake, Babb Real Estate would pay half the cost of the survey. Mr. Cross testified that he does not recall such an offer.

This would be a difficult case if this difference in testimony was important to the resolution of this matter. Both Cross and Robin Babb were credible witnesses, and neither version of the events in question is more or less likely than the other. It is not unlikely or unreasonable that Mr. Cross would have questioned whether he should rely on the legal description rather than the stakes in describing the boundaries of his property, and not unlikely or unreasonable that Babb would have indicated that the legal description in fact described the property. After all, he thought that it did. Conversely, it is not unreasonable or unlikely that Mr. Babb would have attempted to make Mr. Cross understand that the boundaries of the parcel were established by the stakes the Babbs had placed. After all, their intent was to place those stakes in conformance with the legal description they had created. While it is not possible to reconcile the difference in testimony as to whether or not Mr. Cross and Mr. Babb visited the property together on the day the Offer to Purchase was prepared, the difference in their versions of the conversation regarding the significance of the stakes may be, if not reconciled, at least explained as the result of probable miscommunication.

Notwithstanding all that, the fact is that Cross did rely on the legal description set forth in his deed, and he had a perfect right to do so. First, where there is no ambiguity in the description used in a conveyance, it is to be taken as the conclusive evidence of the intention of the parties. LOWNDERS V. HUNTINGTON, 153 US 1, 23 (1894). Moreover, one dealing with a licensed broker has a right to rely upon the accuracy of legal documents created by the broker and a right to expect that any contractual documents created by the broker correctly set forth the agreement of the parties. It is not necessary to decide that the Babbs had any dishonest or fraudulent intent to conclude that they misrepresented the property being offered for sale; for they either misrepresented the parcel they created with the legal description they wrote, or they misrepresented the parcel described with the stakes they placed in the field. The fact that the misrepresentation was based on mistake rather than bad intent, and may therefore be thought of as "innocent misrepresentation,"[1] is largely irrelevant; for it was an almost inevitable mistake and one that a competent broker should have known was likely to occur. The variance between the legal description and the parcel staked by the Babbs was a material adverse factor in the transaction. It was also a factor that could easily have been discovered through a survey, and it should therefore have been discovered and disclosed to the buyer.

Based on the foregoing, it is concluded that in failing to accurately describe the parcel of land intended to be conveyed in the Offer to Purchase and the Warranty Deed prepared by him, Robin Babb failed to detect an adverse fact material to the transaction and to disclose that adverse fact to the buyer, failed to create an offer to purchase and Warranty Deed expressing in writing the exact agreement of the parties, and thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

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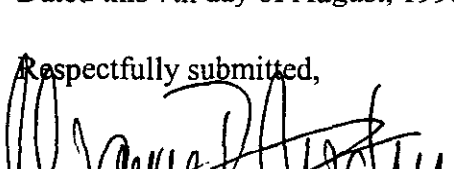
[1] "Misrepresentation through ordinary negligence or the expression of an opinion." FIRST NAT BANK & TRUST CO. v. NOTTE, 97 Wis.2d 207, 220, 293 N.W.2d 530 (1980).

Similarly, in having failed to ensure the correctness of the legal description set forth in the Offer to Purchase and the Warranty Deed prepared by his broker-employe, Raymond Babb has failed in his responsibility for the correctness of entries on those real estate forms, and has thereby also demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich,* 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968). That the act of misrepresentation committed by the Babbs arose from mistake rather than evil intent is certainly a mitigating factor. It does not excuse them, however, from having created an adverse factor in the transaction which could have been detected and corrected through the simple expedient of having the parcel in question surveyed. Moreover, the mistake they made was entirely foreseeable by them, because they were aware that their efforts to find the west quarter quarter line using a plat map and aerial view would at best come, in the words of Ray Babb, only "pretty close." On balance it is concluded that subserving the stated disciplinary objectives requires that discipline be imposed, and that reprimanding each respondent is sufficient discipline to accomplish those objectives.

Dated this 7th day of August, 1998.

Respectfully submitted,



Wayne R. Austin
Administrative Law Judge

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of Disciplianry Proceedings Against

Robin R. Babb
Raymond C. Babb,

Respondents.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On August 28, 1998, I served the Final Decision and Order dated August 27, 1998, LS9803311REB, upon the Respondents Robin R. Babb and Raymond C. Babb's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondents' attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 725.

Thomas F. Peterson, Attorney
110 E. Haydn Street
P.O. Box 430
Prairie du Chien WI 53821

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Subscribed and sworn to before me

this 28th day of August, 1998.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: THOMAS F PETERSON ATTY

You have been issued an Order. For purposes of service the date of mailing of this Order is 8/28/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN REAL ESTATE BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
ROBIN R. BABB AND,	:	LS9803311REB
RAYMOND C. BABB,	:	
RESPONDENTS.	:	

On August 27, 1998, the Real Estate Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondents. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on or about September 2, 1998, the Real Estate Board received the *Affidavit of Costs* in the amount of $1,852.58, filed by Attorney Gerald M. Scanlan. On or about September 4, 1998, the Real Estate Board received the *Affidavit of Costs of the Office of Legal Services* in the amount of $1,210.78, filed by Administrative Law Judge Wayne R. Austin. The total amount of the costs of the proceeding is $3,063.36. On September 24, 1998, the department received a check in the amount of $1,531.68, which has been credited toward payment of the assessed costs. The Real Estate Board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the remaining costs of this proceeding in the amount of $1,531.68 shall be payable by the respondents to the Department of Regulation and Licensing. **Failure of respondents to make payment on or before February 27, 1999, shall constitute a violation of the Order unless respondents petition for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Real Estate Board may not restore, renew or otherwise issue any credential to the respondents until respondents have made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 28th day of January, 1999.

REAL ESTATE BOARD

By: _____
A Member of the Board

Department of Regulation & Licensing

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State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529 impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On August 27, 1998, the Real Estate Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $3,063.36 Case #: LS9803311REB

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $1,531.68 ($1,531.68 paid 9/14/98)

The costs and/or forfeitures are due: February 27, 1999

NAME: Robin and Ray Babb LICENSE NUMBER: 18141, 27573

STREET ADDRESS: 600 Main Street

CITY: Gays Mills STATE: WI ZIP CODE: 54631

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBIN R. BABB and
RAYMOND C. BABB,

LS9803311REB

Respondents

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Wayne R. Austin, 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 Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter. Unless otherwise noted, all times for the preparation of documents reflect the actual document preparation and editing time as reflected in the statistical summary program included with Microsoft Word for Windows version 6.0. All times for conferences and hearings are calculated commencing at the start of the first five minute period following actual start of the activity, and terminating at the start of the first five minute period prior to the actual end of the activity.

ADMINISTRATIVE LAW JUDGE EXPENSE
Wayne R. Austin

DATE & TIME SPENT	ACTIVITY
5/6/98 13 minutes	Prepare Prehearing Memo

5/19/98 2 hours, 36 minutes	Conduct Hearing
6/9/98 to 8/7/98 11 hours, 29 minutes	Prepare Proposed Decision

Total Time Spent.....14 hours 18 minutes

Total administrative law judge expense for Wayne R. Austin:
14 hours, 18 minutes @ $48.72, salary and benefits:.....$696.68

REPORTER EXPENSE
Textnet Internet Court Reporters

DATE & TIME SPENT	ACTIVITY
5/19/98 2 hours, 36 minutes	Attend Hearing
6/15/98	Prepare Transcript

Total Reporter Cost (Invoice #11335, dated 6/15/98).....$514.10

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $1210.78

Wayne R. Austin
Administrative Law Judge

Sworn to and subscribed before me this 4th day of September, 1998.

Donald R. Rittel

Notary Public, State of Wisconsin
My commission is permanent

WRA:9809037.doc

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

AFFIDAVIT OF COSTS

RAYMOND CHARLES BABB, AND ROBIN R BABB

LS9803311REB

RESPONDENT

96REB036

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Being duly on affirmation, the undersigned employee of the Department of Regulation and Licensing, upon information and belief, deposes and states as follows.

That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter. based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE — GERALD M. SCANLAN

DATE	ACTIVITY	HOURS	MINUTES
09/15/1997	reviewed file & stip/final	2	0
02/12/1998	drafted complaint	1	30
03/10/1998	finished complaint/dictate	1	0
03/19/1998	finalized complaint	0	50
03/30/1998	dispatched complaint	0	30
05/06/1998	Prehearing Conference	0	15
05/07/1998	Hearing Preparation	1	30
05/11/1998	Meeting w/expert witness	1	0
05/13/1998	Hearing Preparation	1	50
05/14/1998	Interview Witness	3	0
05/18/1998	Hearing Preparation	1	50
05/19/1998	Prepare for & Conduct Hearing	4	0

TOTAL PROSECUTING ATTORNEY EXPENSE — 19 HOURS AND 15 MINUTES

(Based on their average salary and benefits at the Division of Enforcement)

AT $41.00 PER HOUR = $789.25

	HOURS	MINUTES
TOTALS	19	15

INVESTIGATOR EXPENSE — BETSY A. WOOD

DATE	ACTIVITY	HOURS	MINUTES
04/17/1996	Receive / review case file	0	20
04/30/1996	FM / adress change / file review	0	15
05/01/1996	Phone call w/ atty Peterson -ext to 6/3	0	5
06/04/1996	Response rec'd, filed	0	5
06/12/1996	Consult w/ atty GMS	0	20
07/31/1996	GL20 sent	0	10
08/14/1996	Response rec'd / file review	0	20
09/20/1996	Consult w / atty GMS	0	5
10/11/1996	Phone call w/ R - dictate memo	0	20
10/24/1996	Edit memo, file	0	10
12/17/1996	Atty form done	0	5
02/20/1997	File review / research	0	30
07/16/1997	File review / dictate CS	1	45
07/25/1997	Edit CS	0	30
07/31/1997	Copy file / send to BA	0	15
08/18/1997	BA recommendation rec'd	0	10
08/22/1997	Draft stip	2	30
09/19/1997	revise order / stipulation / letter	2	0
09/22/1997	final revisions done	0	30
02/20/1998	Follow up contacts per GMS	0	30

INVESTIGATOR EXPENSE — BETSY A. WOOD

DATE	ACTIVITY	HOURS	MINUTES
05/07/1998	Consult w/ Atty	0	15
05/18/1998	Prep for hearing	0	40
05/19/1998	Assist w/ hearing	1	0

TOTAL INVESTIGATOR EXPENSE — 12 HOURS AND 50 MINUTES

(Based on their average salary and benefits at the Division of Enforcement)

	HOURS	MINUTES
TOTALS	12	50

AT $20.00 PER HOUR = $256.67

INVESTIGATOR EXPENSE — MARSHA DAVIDSON

DATE	ACTIVITY	HOURS	MINUTES
04/19/1996	Initial letters done	0	20

TOTAL INVESTIGATOR EXPENSE — 0 HOURS AND 20 MINUTES

(Based on their average salary and benefits at the Division of Enforcement)

	HOURS	MINUTES
TOTALS	0	20

AT $20.00 PER HOUR = $6.67

LEGAL ASSISTANT EXPENSE — PAMILA J MAJEWSKI

DATE	ACTIVITY	HOURS	MINUTES
04/23/1998	reviewed file	0	30
04/24/1998	reviewed file	3	0
04/30/1998	copied file & exprtwtns ltr	2	0
05/01/1998	drafting exptwtns ltr	8	0
05/04/1998	drafted exptwtns ltr	2	0
05/05/1998	finished exptwtn ltr	2	0
05/11/1998	subp,wtns ID list & ltr	3	30
05/19/1998	hearing participant	4	0

TOTAL LEGAL ASSISTANT EXPENSE — 25 HOURS AND 0 MINUTES

(Based on their average salary and benefits at the Division of Enforcement)

	HOURS	MINUTES
TOTALS	25	0

AT $20.00 PER HOUR = $500.00

EXPERT WITNESS EXPENSE — DENNIE PETERSEN

DATE	ACTIVITY
05/29/1998	expert witness - minter

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	EXPENSE SUMMARY	
PROSECUTING ATTORNEY EXPENSE —	GERALD M. SCANLAN	$789.25
INVESTIGATOR EXPENSE —	BETSY A WOOD	$256.67
INVESTIGATOR EXPENSE —	MARSHA DAVIDSON	$6.67
LEGAL ASSISTANT EXPENSE —	PAMILA J MAJEWSKI	$500.00
EXPERT WITNESS EXPENSE —		$300.00
	TOTAL ASSESSABLE COST >>>>	$1,852.58

Gerald M. Scanlan

Gerald M Scanlan, Attorney

Subscribed and affirmed to before me this
02th of September, 1998

Notary Public
My commission is Permanent

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G Thompson
Governor

Marlene A Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
E-Mail: dorl@mail.state.wi.us
(608) 266-2112
FAX#: (608) 267-0644

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October 22, 1998

THOMAS F. PETERSON, ATTORNEY
110 EAST HAYDN STREET
PO BOX 430
PRAIRIE DU CHIEN WI 53821

RE: In The Matter of Disciplinary Proceedings Against Robin R. Babb and Raymond C. Babb, Respondents, LS9803311REB, Assessment of Costs

Dear Mr. Peterson:

This is to confirm our telephone conversation of yesterday afternoon in which I informed you that there appeared to be an ambiguity in the information previously provided respecting the costs to be assessed in the above-captioned matter.

As you recall, the Real Estate Board issued a Final Decision and Order on August 27, 1998. That order provided in part as follows:

> "IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Robin A. Babb.
>
> "IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Raymond C. Babb."

By correspondence dated September 8, 1998, you were informed that the costs in this matter were $3,063.36, pursuant to the affidavits enclosed with that letter. The board's Order requires that Robin and Raymond Babb each pay half of those costs, or $1,531.68 each.

Unfortunately, the letter of September 8, 1998 might be read as indicating that the total costs ordered by the board was $1,531.68. Of course, that is not a correct restatement of the board's Order.

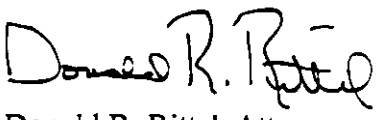
Given these circumstances, you requested an opportunity to file any objections you may have to the affidavits of costs in this case. That is an appropriate request.

Accordingly, under sec. RL 2.18, Wis. Adm. Code, objections to the affidavits of costs shall be filed in writing. Your objections must be received at the office of the Real Estate Board, Room 281, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before November 9, 1998. After reviewing the objections, if any, the Real Estate Board will issue an

Order Fixing Costs. Under sec. 440.23, Wis. Stats., the board may not restore or renew a credential until the holder has made payment to the department in the full amount assessed.

If you have any questions regarding this letter or from our telephone discussion yesterday, please contact me.

Sincerely yours,



Donald R. Rittel, Attorney
Office of Board Legal Services
(608) 267-7217

drr:reb\ltr\babb

BABB REAL ESTATE

"BY THE DAM"
600 MAIN STREET
GAYS MILLS, WI 54631

State of Wisconsin
Department of Regulation and Licensing
Attorney Donald R. Rittel
1400 E. Washington Ave.
PO Box 8935
Madison, WI 53708-8935

RE: In the Matter of the Disciplinary Proceedings Against Robin R. Babb & Raymond C. Babb Case No. LS 98 03311 REB Reference 96 REB 036

Dear Attorney Donald Rittel,

We are in receipt of your latest correspondence. Ray & I would have accepted the initial reprimand and pay, what we understood to be ½ the costs, rather than incur additional attorney's fees. However, if you are requesting the full amount be paid by both of us (½ each) then we request the $1531.68 previously paid by us to be refunded and we may choose to appeal the disciplinary actions assessed.

Please consider and let us know your findings.

As a side note Ray & I feel uncomfortable with the idea than anyone can file a complaint with the the Dept. and the licensee must then defend themselves, most of the time with the aide of an attorney and incur costs while the complainant pays nothing.

Thank you,
Robin & Ray Babb

BUSINESS (608) 735-4391

FAX: (608) 735-4500
FARMS, RESIDENTIAL, COMMERCIAL, RECREATIONAL PROPERTIES

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of Disicplinary Proceedings Against

Robin R. Babb and Raymond C. Babb,

Respondents.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On January 29, 1999, I served the Order Fixing Costs dated January 28, 1999, LS9803311REB, upon the Respondents Robin R. Babb and Raymond C. Babb by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondents and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 821 090.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondents' last-known address and is·

Robin R. Babb and Raymond C. Babb
600 Main Street
Gays Mills WI 54631

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 29th day of January, 1999.

John Schweiter
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: ROBIN R BABB and RAYMOND C BABB

You have been issued an Order. For purposes of service the date of mailing of this Order is 1/29/99 Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227 57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935