

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	:	
DANIEL P. WERGIN, JR.,	:	FINAL DECISION AND ORDER
THOMAS V. WEBB, AND	:	89 REB 302
CHOICE, INC.,	:	
RESPONDENTS.	:	

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

Daniel P. Wergin, Jr.
1016 North 40th Street
Manitowoc, WI 54220

Thomas V. Webb
1242 Westwood Lane
Manitowoc, WI 54220

Choice, Inc.
935 South 8th Street
Manitowoc, WI 54220

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Daniel P. Wergin, Jr., ("Wergin"), 1016 North 40th Street, Manitowoc, Wisconsin 54220, is and was at all times relevant to the facts set forth herein a real estate broker licensed to practice in the State of the Wisconsin pursuant to license #5137, originally granted on April 19, 1967.

2. Thomas V. Webb ("Webb"), 1242 Westwood Lane, Manitowoc, Wisconsin 54220, is and was at all times relevant to the facts set forth herein a licensed real estate broker in the State of Wisconsin pursuant to license #32475, originally granted on June 21, 1984.

3. Choice, Inc. ("Choice"), 935 South 8th Street, Manitowoc, Wisconsin 54220, is and was at all times relevant to the facts set forth herein a licensed real estate corporation in the State of Wisconsin pursuant to license #9000, originally granted on October 27, 1965.

4. Wergin is the President of Choice, Inc.

5. At all times relevant to the facts set forth herein, Wergin and Webb were employed with Choice as real estate brokers.

6. At all times relevant to the facts set forth herein, Webb was supervised by Wergin.

7. On or before July 13, 1988, Steven Lauson and Vicki Lauson ("Lausons"), discussed with Wergin the sale of property owned by the Lausons located at 718 North Ford Street, Manitowoc, Wisconsin ("property").

8. Prior to July 13, 1988, the Lauson's discussions with Wergin consisted, in part, of the establishment of an asking price and a granting of authority to Choice for the limited marketing of the Lauson property.

9. Prior to July 13, 1988, Wergin informed Webb that the Lausons were thinking of selling their property and that Webb could pursue the sale of the Lauson property on behalf of the Lausons on a limited basis.

10. On or about July 13, 1988, an offer to purchase and several counter-offers were transmitted between the Lausons and the Gallaghers. All of said documents were drafted by staff at Choice and all called for the delivery of the accepted offer to the address of Choice in Manitowoc, Wisconsin as the address to reach the Gallaghers as buyers of the property.

11. The transaction between the Lausons and the Gallaghers closed on August 19, 1988 whereby the Gallaghers paid over to the Lausons the sale price of \$94,000 and were allowed into possession of the property.

12. Subsequent to closing, the Gallaghers discovered material and significant leaks in the roof of the Lauson property and water leakage into the basement of the property.

13. Some counter-offers drafted by the staff at Choice failed to call for or obtain the signatures of the buyer Joan Gallagher and the seller Vicki Lauson.

14. Subsequent to the closing of August 19, 1988, Wergin entered into a single party residential listing contract, back-dated to July 7, 1988, whereby Steven Lauson granted Choice the exclusive right to sell the Lausons property to the Gallaghers for the period between July 7, 1988 and September 7, 1988. This listing contract does not exhibit the signature of Vicki Lauson, a co-owner of the property.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to section 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to section 227.44(5), Wis. Stats.

3. Respondent Daniel P. Wergin, Jr., has violated:

a. Sections 452.14(3)(i) and (m), Wis. Stats. and sections RL 16.04(1) and 24.08, Wis. Adm. Code, by failing to properly reduce to writing the Lauson's agreement to list their property for sale with Choice, Inc., prior to the time Choice, Inc., and its staff marketed the property

b. Section 452.14(3)(i), Wis. Stats. and sections RL 17.08, 24.025, 24.03 and 24.08, Wis. Adm. Code by failing to obtain all necessary signatures on amendments to the contract of sale and on the listing contract and by failing to properly supervise employees of Choice, Inc.

4. Respondent Thomas V. Webb has violated:

Section 452.14(3)(i), Wis. Stats. and sections RL 24.025, 24.03 and 24.08, Wis. Adm. Code by failing to obtain all necessary signatures on amendments to the contract of sale and by designating Choice, Inc., as the place of delivery for seller's acceptance of buyer's offer and counter-offer.

5. Choice, Inc., is subject to discipline pursuant to section 452.14(4), Wis. Stats.

ORDER

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

IT IS FURTHER ORDERED, that both Respondents, Daniel P. Wergin, Jr. and Thomas V. Webb, within six months of the date of this Order, successfully complete the five (5) hour Consumer Protection module from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that Respondents, Daniel P. Wergin, Jr., Thomas V. Webb, and Choice, Inc., jointly and severally, pay a forfeiture in the sum of \$400.00 within thirty (30) days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event any of the Respondents fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above, or fails to pay the forfeiture as set forth above, then the real estate broker's license of the licensee(s) so failing to comply with this Order, shall be immediately suspended, without further notice or hearing, until full compliance with the terms of this Order has been obtained.

IT IS FURTHER ORDERED, that investigative file 89 REB 302 be, and hereby is closed.

Dated this 22ND day of APRIL, 1993.

WISCONSIN REAL ESTATE BOARD

By: 

/cjh
ATY2-3053
3/26/93

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
DANIEL P. WERGIN, JR.,	:	STIPULATION
THOMAS V. WEBB, AND	:	89 REB 302
CHOICE, INC.,	:	
RESPONDENTS.	:	

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into as a result of the pending investigation of the licensure of Daniel P. Wergin, Jr., Thomas V. Webb and Choice, Inc., all referred to herein as the "Respondents", and the Department of Regulation and Licensing, Division of Enforcement, investigation file number 89 REB 302. This matter is now set for hearing before an administrative law judge on May 4, 1993. Respondents consent to the resolution of this investigation by Stipulation and without the necessity of a formal hearing.

2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the state has the burden of proving those allegations; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondents have had the opportunity to consult with legal counsel regarding this matter and have consulted with Attorney Keary W. Bilka regarding their legal rights and the legal implications of this Stipulation. Attorney Bilka represents the Respondents in this matter.

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

5. With respect to the attached Final Decision and Order, Respondents neither admit nor deny the facts as set forth in the Findings of Fact, however, Respondents agree that the Board may make the Findings of Fact and may reach the conclusions set forth in the Conclusions of Law and may enter the Order requiring education and imposing a forfeiture as set forth in the Order.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the

Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

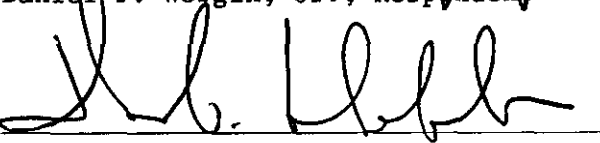
7. If the Board accepts the terms of the Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties and the hearing before the administrative law judge shall be cancelled.

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

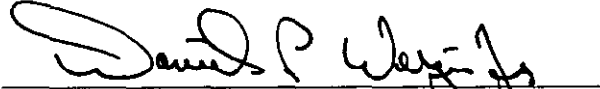
9. The Division of Enforcement joins the Respondents in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.


Daniel P. Wergin, Jr., Respondent

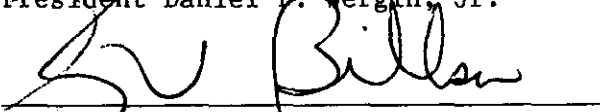
4-5-93
Date


Thomas V. Webb, Respondent

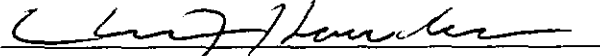
4-5-93
Date


Choice, Inc., Respondent, by its
President Daniel P. Wergin, Jr.

4-5-93
Date


Keary W. Bilka, Attorney for
Respondents
P.O. Box 1507
Manitowoc, WI 54221-1507

4-5-93
Date


Charles J. Howden, Attorney
Division of Enforcement

4-14-93
Date

/cjh
ATY2-3052

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 23, 1993.