WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST

FINAL DECISION AND ORDER 93 REB 082

TIMOTHY J. BESAW, RESPONDENT.

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

Timothy J. Besaw 1374 Eminence Street Green Bay, WI 54313

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

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



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

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

- 1. Timothy J. Besaw (D.O.B. March 24, 1961) is duly licensed in the state of Wisconsin as a real estate salesperson (license #32952). This license was first granted on March 30, 1990.
- 2. Timothy J. Besaw's latest address on file with the Department of Regulation and Licensing is 1374 Eminence Street, Green Bay, Wisconsin 54313.
- 3. On or about August 26, 1992, Timothy J. Besaw, hereinafter the Respondent, while acting as a selling broker prepared a Commercial Offer to Purchase document on behalf of his brother-in-law, Daniel A. Farah, for some property known as 1900 Velp Avenue. This property was owned by Gerald L. Hansen and was listed with Greg Krumholz of Century 21-Gilson Real

Estate of Green Bay, Wisconsin. Respondent was acting as a sub-agent for Gerald Hansen when he prepared the Commercial Offer to Purchase document. Mr. Hansen was in turn his principle. A copy of the August 26, 1992 Commercial Offer to Purchase document as prepared by Respondent is attached as Exhibit 1 and is incorporated herein by reference.

- 4. A contingency at lines 24 through 26 of the August 26, 1992 Commercial Offer to Purchase (Exhibit 1) reads as follows: "Subject to buyer obtaining financing within 30 days for purchase of said property plus an addition TBD."
- 5. Two counter-offers were made to the August 26, 1992 Commercial Offer to Purchase (Exhibit 1) but they were not accepted and the transaction never closed.
- 6. On or about October 2, 1992, Respondent prepared a second Commercial Offer to Purchase document on behalf of Daniel A. Farah for the 1900 Velp Avenue property. Again Respondent was acting as a sub-agent for Gerald Hansen when he prepared this Commercial Offer to Purchase. Mr. Hansen was again Respondent's principal. A copy of this Commercial Offer to Purchase document is attached as Exhibit 2 and is incorporated herein by reference.
- 7. A contingency at lines 24 and 25 of the October 2, 1992 Commercial Offer to Purchase (Exhibit 2) reads as follows: "Subject to buyer obtaining within 30 days commitment of financing at Valley Bank."
- 8. The October 2, 1992 Commercial Offer to Purchase (Exhibit 2) was accepted by Gerald L. Hansen on or about October 5, 1992.
- 9. Daniel A. Farah's loan application was not approved by Valley Bank so the October 2, 1992 contract never closed.

CONCLUSIONS OF LAW

- 1. By the conduct described above, Respondent is subject to disciplinary action against his license to practice as a real estate salesperson in the state of Wisconsin, pursuant to Wis. Stats. sec. 452.14, and Wis. Adm. Code Chapters RL 16 and 24.
- 2. That the Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).
- 3. That the Respondent Timothy J. Besaw by drafting an indefinite financing contingency in the August 26, 1992 Commercial Offer to Purchase (Exhibit 1, lines 24 through 26) so as to make any contract, had one been entered into, legally unenforceable has violated Wis. Stats. sec. 452.14(3)(i) and Wis. Adm. Code secs. RL 16.08(8), RL 24.025 and RL 24.08.
- 4. That the Respondent Timothy J. Besaw by drafting an indefinite financing contingency in the October 2, 1992 Commercial Offer to Purchase (Exhibit 2, lines 24 and 25) so

as to make the contract legally unenforceable has violated Wis. Stats. sec. 452.14(3)(i) and Wis. Adm. Code secs. RL 16.08(8), RL 24.025 and RL 24.08.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- 1. The attached Stipulation is accepted.
- 2. That Respondent Timothy J. Besaw be, and hereby is, reprimanded.
- 3. It is further Ordered that within nine (9) months of the effective date of this Order, Respondent Timothy J. Besaw shall successfully complete fifteen (15) hours of real estate education from an educational institute approved by the Board. Specifically, Respondent shall successfully complete the following course from the real estate salesperson's 72 hour pre-licensing program:
 - a. Real estate contracts 15 hours.
- 4. Proof of successful completion of the above course shall be provided to the Board by verification from the institution providing the education. Said proof to be delivered to the Department of Regulation and Licensing within ten (10) months of the date of this Order. 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.
- 5. That in the event Respondent Timothy J. Besaw fails to complete the required fifteen (15) hours of education as set forth above within nine (9) months of the date of this Order and/or fails to verify the same to the Department of Regulation and Licensing within ten (10) months of the date of this Order, then his real estate salesperson's license #32952 shall be indefinitely suspended until he has complied with the terms of this Order.
 - 6. It is further Ordered that investigative file 93 REB 082 be, and hereby is, closed.

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

This Order shall become effective ten (10) days following the date of its signing.

WISCONSIN REAL ESTATE BOARD

A Member of the Board

MARCH 23, 1995
Date

GMS:lmf

ATY-BLG1064

•/ -	Approved by Wisconsin Department of Regulat (3 d Licensing 10-26-87 (optional use date) 3-1-88 (mandatur) use date) 4801 Hayes Road, Madison, Wisconsin 53704
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2 3 4	THE BROKER DRAFTING THIS OFFER IS THE AGENT OF (SELLER) (BUYER) (Strike as applicable). IF ACCEPTED AT HIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY AND UNDERSTAND IT BEFORE SIGNING.
6	The undersigned Buyer. A FROAT LEFF ALLE PROPERTY Known as (Street Address) 11 1900 Leff ALLE
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10	at the price of Orl Access Dollars (\$/05,000 -), and on the terms and conditions as follows:
3	Earnest money of \$201 - 202 in the form of to be paid within days of acceptance of this offer or
9	And the balance in cash at closing. Failure of Buyeri to make earnest money payment as provided voids offer at Seiler's option. Earnest money, if held by broker, shall be held in selling broker's trust account prior to acceptance of offer and threather in listing broker's trust account or until applied to the purchase price at closing or disbursed as provided herein or permitted by law. TIME_IS_OF_THE_ESSENCE_AS_ITO: ADDITIONAL_EARNEST_MONEY_PAYMENT, ACCEPTANCE, LEGAL POSSESSION, OCCUPANCY, DATE OF CLOSING AND AS TO ALL DATES INSERTED IN THIS OFFER EXCEPT.
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8 9 1	Buyer agrees that unless otherwise specified; Buyer will, "In good faith, pay all costs of securing any financing to the extent permitted by law, and will perform all acts necessary to expedite such financing. PERSONAL PROPERTY INCLUDED IN THE SALE:
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3 4 5 6 7	Seller shall, upon payment of the purchase price, convey the property by warranty deed, or other conveyance provided herein, free and clear of all liens and encumbrances, excepting; municipal and zoning ordinances, recorded easements for public utilities serving the property, recorded building and use restrictions and covenants; general taxes levied in the year of closing and provided none of the foregoing prohibit present use, and Seller shall optimize and execute the documents necessary to record the conveyance. (WARNING: Recorded building and use
3	restrictions and covenants can have material impact on the use of or improvements to the property.) "" (Buyar) (Sallar) will be responsible for compliance with DILHR's rental weatherization program requirements unless this
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?	1. This offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. mall of a dominiercial delivery system addressed to Buyer at
ļ j	or by personal delivery of the accepted offer to Buyer on or before
7	nali. This transaction is to be closed at the office of Buyer's mortgagee or at the office of
3	Legal possession of property shall be delivered to Buyer on date of closing.
)	It is understood the property is now occupied by
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3 4	If Seller is permitted to occupy property after closing, Seller shall prepay occupancy charge of \$
'5 '6	The sum of \$ shall be withheld from the purchase price to be escrowed with
7 8	to guarantee delivery of occupancy to Buyer, AND FOR NO OTHER PURPOSE, which sum upon Seller's lailure to deliver occupancy shall be paid to Buyer as liquidated damages or returned to Seller if occupancy is delivered to Buyer on the agreed date.

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	WB-15 COMMERCIAL OFFER TO PURCHASE	^		95
1	Wesconsin, October	صد		,19 <i>[</i> =\
3	THE BROKER DRAFTING THIS OFFER IS THE AGENT OF (SELLER) (BUYER) (SIIKE & applicable). THE BROKER DRAFTING THIS OFFER DAN CREATE A LEGALLY ENFORCEABLE CO. SHOULD READ THIS DOCUMENT CAREFULLY AND UNDERSTAND IT BEFORE SIGNING.	NTRACT.	вотн	PARTIES
5	5 The undersigned Buyer, Davish A. Farakt	John	Juse	بد
-6 7	6 hereby cifers to purchase the property known as (Street Address)	e Nue		Wisconsin.
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9			ars (\$/05	000
10 11	11 and on the terms and conditions as follows:		•	•
12	12 Earnest money of \$in the form oftendered	d with this of		
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14 15	15 Failure of Buyer to make earnest money payment as provided voids offer at Seller's option. Ea	rnest mone	y, if hela	by broker,
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18	18 TIME IS OF THE ESSENCE AS TO: ADDITIONAL EARNEST MONEY PAYMENT, ACCEPT	ANCE, LE	GAL POS	SESSION.
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21 22	21 THE BUYER'S OBLIGATION TO CONCLUDE THIS TRANSACTION IS CONDITIONED U	IPON THE	CONSU	MOITAMN
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27 28			-0101	<u> </u>
29	29 (D) Siller to provide copies OF All Re	Tal/	Lead	e
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47	47 free and clear of all tiens and encumbrances except:			
48		CAL	ore	party
49 50			**	-
51	51			
52 53				
54 55	54 free and clear of all liens and encumbrances, excepting; municipal and zoning ordinances, record 55 serving the property, recorded building and use restrictions and covenants, general taxes lev	led easeme ried in the	nis for pu year of c	olic utilities losing and
5 6 57	57 and Seller shall complete and execute the documents necessary to record the conveyance. (WARN	the foregoin	g prohibit p ded buildi	resentuse,
58	58 restrictions and covenants can have material impact on the use of or improvements to the property.)			-
59 60	and the second s	dısı tedni	rements (iniess this
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63 64	00./- 0./- 10.		calla	CU511
65	65 Otherwise, this offer is void and all earnest money shall be promptly returned to Buyer.		<u>-</u>	
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38 38		piace as ma	y ne agree	a in writing.
ô9	39 It is understood the property is now occupied by # #################################			
70 71				
72		tennal	Jr D.	dete
73			* .	day, which
74	74 (shall) (shall not) be refundable based on actual occupancy.		Í	•
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79	(Seller warrants) (Map dated indicates) the property-(is) (is not) located in a flood plain (Strike as applicable).
80 ~	Seller represents that the property is 7 ad
81*	Seller warrants and represents to Buy what Seller has no notice or knowledge of any:
82 • 83	OVER PORTY.
84	(b) any existing conducting requiring repair, alteration or correction of any existing condition.
85	(c) underground storage tanks or any structural, mechanical, or other defects of material significance attention the property of the content
86 87	well water according to state standards, and the presence of any dangerous or toxic materials or conditions affecting the
88	property.
89	(d) wetland and shoreland regulations affecting property (Caution; see maps).
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93 94	
95	The following items shall be prorated as of the day of closing: general taxes, rents, water and sewer use charges, property
96	association assessments fuel and
97	Any income, taxes, or expenses through the day of closing accrue to Seller,
98	General taxes shall be prorated at the time of closing based on the net general taxes for the current year, it known, otherwise
99	on the net general taxes for the preceding year. Personal property taxes shall be prorated as follows:
100	CAUTION: If property has not been fully assessed for tax purposes, or reassessment is completed or pending, tax proration shall
101 102	be on the basis of \$ estimated annual tax.
103	Special assessments, if any, for work on site actually commenced or levied prior to date of this offer shall be paid by Seller. All
104	other special assessments shall be paid by Buyer. (Caution: Consider a special agreement it area assessments or property owners'
105	
106	Seller shall provide to Buyer at Seller's expense at least five (5) business days before closing, Seller's choice of:
107 108	1. An ebstract of little prepared by arrestorney or abstract company; or 2. A commitment from a title insurance company licensed in Wisconsin to Issue title insurance in the amount
109	of the purchase price upon recording of proper documents:
110	showing title to the property as of a date no more than 15 days before such title proof is provided to Buyer to be in the condition
111	called for in this offer, and further subject only to liens which will be paid out of the proceeds of the closing and standard title insurance exceptions or abstract certificate limitations, as appropriate. Buyer shall notify Seller of any valid objection to title in
113	
114	extended as necessary for this purpose.
115	If this offer provides for a land contract, prior to execution of the land contract Seller shall provide the same evidence of title as
	required above and written proof, at or before execution, that the total underlying indebtedness, if any, is not in excess of the proposed balance of the land contract, and that the payments on this land contract are sufficient to meet all of the obligations of
117	
119	If the transaction fails to close and the parties fail to agree on the disposition of earnest money, then earnest money held by
120	broker shall be disbursed as follows:
121	1. To Buyer, unless Seller notifies Buyer and broker in writing no later than 15 days after the earlier of the Buyer's written
122 123	demand for return of the earnest money or the date set for closing, that Seller elects to consider the earnest money as liquidated damages or partial payment for specific performance.
: 23	
124	To Seller, subject to amounts payable to broker, provided the above notice is given and neither party commences a lawsuit
125	on this matter within 30 days after receipt of the notice.
125 126	on this matter within 30 days after receipt of the notice. In making the disbursement, Broker shall follow procedures in Section RL 18.09(4), Wis. Adm. Code.
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STATE OF WISCONSIN BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

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STIPULATION

TIMOTHY J. BESAW, RESPONDENT. 93 REB 082

It is hereby stipulated between Timothy J. Besaw, personally on his own behalf and Gerald M. Scanlan, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

- 1. This Stipulation is entered into as a result of a pending investigation of Timothy J. Besaw's licensure by the Division of Enforcement. Timothy J. Besaw consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
- 2. Timothy J. Besaw understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
- 3. Timothy J. Besaw is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.
- 4. Timothy J. Besaw agrees to the adoption of the attached Final Decision and Order by the Real Estate Board. 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. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
- 5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this 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.
- 6. The parties to this Stipulation agree that the attorney for the Division of Enforcement and the member of the Real Estate Board assigned as an advisor in this investigation may appear before the Real Estate Board for the purposes of speaking in support of

this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

7. The Division of Enforcement joins Timothy J. Besaw in recommending the Real Estate Board adopt this Stipulation and issue the attached Final Decision and Order.

Timothy J. Besaw

Date

Gerald M. Scanlan, Attorney

Division of Enforcement

Date

GMS:lmf

ATY-BLG1063