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**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**ROBIN R. BABB
RAYMOND C. BABB**
D/B/A BABB REAL ESTATE,
Respondents.

**FINAL DECISION
AND ORDER**
LS0411021REB

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

Robin R. Babb
d/b/a Babb Real Estate
16025 State Highway 131 North
Gays Mills, WI 54631

Raymond C. Babb
d/b/a Babb Real Estate
RR1 Box 1066
Soldiers Grove, WI 54655

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Board ("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. **Raymond C. Babb** (hereinafter "Raymond Babb"), is licensed as a real estate broker in the State of Wisconsin, pursuant to license # 90-18141, originally granted on May 20, 1977.
2. **Robin R. Babb** (hereinafter "Robin Babb"), is licensed as a real estate broker in the State of Wisconsin, pursuant to license # 90-27573, originally granted on October 28, 1982.
3. At all times relevant hereto, the Babbs were doing business as Babb Real Estate, with Raymond Babb as the supervising broker.
4. On August 2, 2000, Randall and Karen Kessenich of J. Ark, LLC entered into an exclusive listing contract with Babb Real Estate for the sale of their farm property in Crawford County, Wisconsin.
5. The Kessenichs' property consisted of approximately 175 acres in a valley setting with a trout creek, a large spring fed pond, hiking trails, rock outcroppings and 32 acres of tillable land and two bedroom house. The listing price was \$320,000.

6. Prior to listing the property for sale, the Kessenichs submitted an application to enroll their property in the Conservation Reserve Program (CRP), a federally subsidized program that provides assistance to owners who adhere to a land conservation plan.

7. On May 24, 2000, the Kessenichs received notice that their property was determined eligible for the CRP and they were given thirty days to notify the program of their acceptance so that the agency could begin the plan development.

8. On June 5, 2000, Randall Kessenich sent a written notice of acceptance to the CRP. The Kessenichs told the Babbs to make sure that cropland restrictions were made part of the condition for sale of the property, as the Kessenichs would remain financially liable if the buyer violated the conservation restrictions.

9. Within a few weeks after listing the property, two potential buyers expressed interest in the property: Matthew Kenseth and David Rasch.

10. On August 28, 2000, Robin Babb contacted Randy Kessenich and told him that he expected to receive two offers on the property. Robin Babb indicated that he would tell each buyer to make their best offer and that he would submit these offers to the Kessenichs.

11. On August 28, 2000, Robin Babb, acting as agent for the seller, prepared a WB-12 Farm Offer to Purchase on behalf of the buyer, David Rasch. The Rasch offer was for \$275,000, with no contingencies.

12. On the same day, Raymond Babb, acting as an agent for the seller, prepared a WB-12 Farm Offer to Purchase on behalf of the buyer, Matthew Kenseth. The Kenseth offer was for \$305,000, with no contingencies.

13. Prior to preparing the offers, the Babbs failed to provide agency disclosures to either buyer. Nor were the buyers given a Real Estate Property Condition Report. The Kessenichs had asked whether they should prepare such a report, but were told by the Babbs not to worry that it could be completed later, if necessary. Raymond Babb indicated that he typically does not give the agency disclosure form because he does feel it is necessary.

14. At approximately 5:00 p.m., on August 28, 2000, the offers from Matthew Kenseth and David Rasch were faxed to the Kessenichs, however, only the first and last pages of the offers were sent. Raymond Babb explained that it is his standard practice because it is more expedient.

15. The following morning, Karen Kessenich called Robin Babb and asked if he could send her a better copy of the Kenseth offer because the fax copy was not clear. She told Robin Babb that she was uncomfortable with not being able to read it and that she was waiting to hear back from her accountant before making any decision on the offers.

16. At approximately 11:00 a.m., Karen Kessenich called Robin Babb and told him that she had talked to her accountant and that they would probably accept the Kenseth offer because it was higher than the offer from Rasch. Karen Kessenich told Robin Babb that she remained concerned that the offer did not indicate that the land had been actually accepted into the CRP program and that those terms would be binding upon the buyer.

17. As a condition of the CRP Program, the Kessenich property needed to be seeded down to grasses or planted with hardwoods and could not be used for farming. If the landowner fails to comply with the CRP restrictions, the person who enrolled the property in the program will be penalized.

18. Robin Babb assured Karen Kessenich that he would prepare an amendment to the offer clarifying those requirements. Raymond Babb also spoke to Randy Kessenich and assured him that he had gone over everything with Kenseth, including the CRP requirements.

19. Raymond Babb recommended to the Kessenichs that it would be better to address any remaining issues concerning the CRP in a simple letter, rather than a formal amendment to the offer. Raymond Babb indicated that his approach was not to “muddy the waters” with amendments.

20. At approximately 11:15 a.m., Rasch called Robin Babb for the purpose of determining the status of his offer. Robin Babb told him that the Kessenichs had accepted the other offer. Rasch asked if he could submit another offer as he was prepared to pay more than his original offer for the property.

21. Robin Babb told Rasch that his clients had already accepted another offer, but he could submit a secondary offer. Robin Babb then offered to draft a secondary offer for Rasch and fax it to him. During their conversation, Robin Babb also told Rasch the amount of the Kessenich offer.

22. At the time that Robin Babb talked to Rasch about submitting a secondary offer, the Kessenichs had not signed the Kessenich offer and Robin Babb did not have possession of a signed offer from his clients.

23. Rasch continued to wait for Robin Babb to prepare a second offer and became concerned when he did not receive anything. Rasch then decided to amend his original WB-12 Farm Offer himself and fax a copy of that amended offer to Robin Babb. Rasch's amended offer was faxed to Babb Realty at approximately 11:56 a.m. on August 28th.

24. Following the fax transmission of his offer, David Rasch kept calling the Babb Real Estate office to make sure that his offer had been received and to find out whether the Kessenichs had considered it.

25. Karen Kessenich spoke to Robin Babb several times on the morning of August 28th, but failed to mention that David Rasch had called him and failed to inform her that Rasch wanted to submit a higher offer.

26. Later that afternoon at approximately 3:45 p.m., Rasch decided to try to locate the Kessenichs since he did not receive a response from the Babbs. After considerable effort, Rasch was able to obtain the Kessenichs telephone number. Rasch then called Karen Kessenich and asked her whether she had received his second offer of \$325,000.

27. Both Rasch and Karen Kessenich were surprised that the Robin Babb had not transmitted the offer or told the Kessenichs anything about Rasch's desire to submit a higher offer.

28. Rasch told Karen Kessenich that he thought something "fishy" was going on because Robin Babb was not returning his telephone calls and had not informed the Kessenichs about his second offer. Rasch asked Karen Kessenich if the other offer was from some type of important person or celebrity because he felt that the Babbs were favoring the other offer. Karen Kessenich confirmed that the other offer was submitted by Matthew Kessenich, who is a nationally recognized race car driver.

29. After receiving the phone call from Rasch, Karen Kessenich contacted her husband to inform him of the situation. She then called Robin Babb to ask about why they were not informed about the higher second offer from Rasch.

30. Randy Kessenich had talked to Raymond Babb earlier that afternoon and was told that the Babbs had not submitted the amendment because Kessenich was leaving the state for a race, and they could not obtain his signature. Raymond Babb also failed to mention that Rasch had made a second offer.

31. At approximately, 9:00 p.m., Robin Babb finally contacted the Kessenichs, explaining that he and his father had been out celebrating Raymond Babb's birthday. Robin Babb admitted that Rasch had contacted him earlier that morning and asked about the status of his offer. Robin Babb said that he told Rasch that his clients had accepted the other offer.

32. Robin Babb admitted to Karen Kessenich that he revealed the amount of the Kessenich offer to Rasch. He told her that although he should not have disclosed that information, he thought it would not cause any harm since she had already accepted the Kessenich offer.

33. Robin Babb further explained to Karen Kessenich that he told Rasch that it would have to be a secondary offer because his clients had already accepted another offer.

34. Robin Babb denied ever receiving an offer earlier that day for \$325,000. He said that he had talked to Rasch once in the morning and that was only in regard to drafting a secondary offer for him.

35. Karen Kessenich reminded Robin Babb that she and her husband had not actually signed and returned the Kenseth offer until later that afternoon, after Rasch had submitted his second offer. Karen indicated that there would have been time to consider Rasch's second offer, if they had been informed of it.

36. Karen Kessenich asked the Babbs and Rasch to print a fax machine transaction journal so that she could determine whether Rasch's second offer had been sent to the Babbs before she and her husband accepted the Kenseth offer. Robin Babb told Karen Kessenich that his fax machine could not print out such a report.

37. Rasch submitted a transaction journal from his fax machine which showed that his second offer was faxed to the Babb Real Estate office at 12:56 p.m., August 29, 2000. The Kessenichs faxed the signed Kenseth offer to Babb Real Estate at 1:20 p.m.

38. Robin and Raymond Babb adamantly deny that they received a second offer from Rasch. According to Robin Babb, their office fax machine often gets jammed in humid weather and other faxes cannot come through until the crumpled page is removed. Robin Babb indicated that he found a crumpled fax balled up inside of his fax machine on August 29th, but he threw it away without reading it.

39. The transaction journals show that the Kessenichs sent a fax copy of their accepted Kenseth offer to Babb Real Estate on August 28th, approximately twenty minutes after Rasch faxed his amended offer to the Babbs. Robin Babb admits that he received the fax from the Kessenichs, but denies receiving any earlier fax from Rasch. The Babbs told the Kessenichs that even if they had received a second offer from Rasch, it would have been unfair to Kenseth since they had verbally indicated that they were going to accept his offer.

40. The Kessenichs decided to accept Rasch's amended offer for \$325,000. The Babbs wrote to the Kessenichs and explained how they had handled the offers, that they had explained the "ground rules" to each buyer - "make your best offer"- and that Robin Babb drafted the offer for Rasch and Raymond Babb drafted the offer for Kenseth. The Babbs then faxed both original offers to the Kessenichs. The Babbs claimed that they never received the amended offer by Rasch and insisted that the property must be sold to Kenseth.

41. Rasch then filed a Motion for a Temporary Restraining Order and Injunctive Relief to prevent the dosing on the sale of the property to Kenseth. *David S. Rasch v. J. Ark, LLC and Matthew Kenseth*, (Wisconsin Circuit Court Branch 17, Case No. 00-CV-2646) The Court found sufficient grounds existed to grant a Temporary Restraining Order and maintain the status quo.

42. On January 21, 2001, the Court ruled that the Kessenichs and Kenseth did not have a valid contract to purchase because a material term and condition of the sale of the property was not included in the offer, as the offer failed to state that a portion of the land was enrolled in the CRP Program. Because Kenseth did not have a contract to purchase the property, Rasch's contract was not subject to any rights of Kenseth and Rasch was declared as the only party to the action with a valid binding contract to purchase the property. The court then ordered the return of the earnest money deposited by Kenseth and declared Rasch as the party entitled to purchase the property.

43. The Babbs subsequently filed a lawsuit against the Kessenichs seeking their commission from sale of the property to Rasch. The Kessenichs defended and counterclaimed for damages on the basis that the Babbs had breached their agreement by failing to inform them of the second offer from Rasch.

44. After significant litigation costs were incurred by all parties, a settlement was finally reached. The Babbs agreed to pay Rasch damages in the amount of \$37,000.00. The Kessenichs agreed to dismiss their claims against the Babbs and the Babbs agreed to dismiss their action for a sales commission.

45. Robin Babb and Raymond Babb have further voluntarily agreed to resolve this complaint pursuant to the terms of the Order set forth below.

MITIGATING FACTORS

46. Raymond Babb has voluntarily, and for personal reasons independent of this action, decided to permanently retire from the practice of real estate. His last day of active practice was January 15, 2004. Raymond Babb understands that his license as a real estate broker will expire on December 31, 2004, voluntarily agrees not to renew his real estate brokers license, and voluntarily agrees to relinquish his right to renew his real estate brokers license.

47. Robin Babb has voluntarily agreed to surrender his broker's license and to apply for a real estate salesperson license, which application will not be opposed by the Board. After one calendar year, provided he has complied with the educational requirements of this Order, Robin Babb may apply for a broker's license. During the period in which he is working under the real estate salespersons license, Robin Babb will be under the supervision of Linda Babb, a licensed real estate broker. In addition, Robin Babb has further agreed to complete continuing education as prescribed and ordered by the Board. In addition to the supervision of Robin Babb by Linda Babb, as stated above, Robin Babb will, on a quarterly basis, send a roster of all real estate transactions in which he is involved to a licensed real estate broker to be determined by the Board. The real estate broker appointed by the Board will select three (3) files from the aforementioned roster of transactions which he shall review for compliance with applicable law. All expenses of said review shall be borne by Robin Babb. The appointed real estate broker shall then report to the Board that Robin Babb is or is not in compliance with applicable law.

48. Raymond and Robin Babb maintain that it was never their intent to defraud or harm any person, and that by adhering to the process of accepting one "best" offer from each potential purchaser it was their intent to act fairly and honestly in dealing with all parties.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stats. Sec. 452.14.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. Sec. 227.44(5).
3. Respondent **Robin Babb** has violated the following:

Wis. Admin. Code Sec. RL 24.13(2)(b), by failing to promptly present all offers received to the seller or seller's agent for consideration. Licensees shall not withhold any offer from presentation pending the sellers' action on an offer previously presented.

Wis. Admin. Code Sec. RL 24.12 (1), by disclosing the terms of one prospective buyer's offer to purchase to any other prospective buyer.

Wis. Stats. Sec. 452.135(2), by providing brokerage services to a party to the transaction without providing a written agency disclosure form.

Wis. Stats. Sec. 452.133(2), by failing to loyally represent the client's interests by placing the clients interests ahead of the interests of any other party.

4. Respondent **Raymond Babb** has violated:

Wis. Admin. Code Sec. RL 24.08, by failing to put in writing any commitments regarding the transaction, expressing the exact agreement of the parties.

Wis. Stats. Sec. 452.12(3)(a), by failing to supervise the actions of any broker, salesperson or time-share salesperson employed by the broker.

ORDER

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

IT IS FURTHER ORDERED that the Real Estate Broker license of Raymond C. Babb (lic.# 90-18141), at 11:59 p.m., on the effective date of this order, is REPRIMANDED.

IT IS FURTHER ORDERED that Raymond Babb shall not attempt to practice real estate in the state of Wisconsin under his current license after December 31, 2004, and shall not renew his license to practice real estate in the state of Wisconsin at any time in the future.

IT IS FURTHER ORDERED that Raymond Babb shall advise his clients of his retirement as of January 1, 2005, in a timely manner in order to allow those clients to arrange for other real estate services or transfer their listings to another broker. The notice of Raymond Babb's retirement shall also include the placement of an advertisement in the local paper informing the general public of his retirement. A copy of the advertisement and any direct correspondence with existing clients shall be provided to the Department Monitor within thirty (30) days of publication and distribution of said notices.

IT IS FURTHER ORDERED that the VOLUNTARY SURRENDER of the Real Estate Broker license of Robin Babb (lic. # 90-27573) shall be accepted. Upon surrender of his real estate broker's license, Robin Babb, shall be allowed to apply for a license as real estate salesperson without objection of the board.

IT IS FURTHER ORDERED that Respondent Robin Babb shall be subject to close supervision for a period of one (1) year during his practice as a real estate salesperson. Linda Babb of Gays Mills, Wisconsin, a licensed real estate broker in good standing, is approved by the Board as the supervising broker. The supervising broker shall submit quarterly supervision reports to the Board which describe the Respondent's sales activities and verify that he is in compliance with the laws governing the practice of real estate and the terms of this order.

IT IS FURTHER ORDERED that upon the successful completion of the period of supervision, the Respondent may reapply for a real estate broker's license, provided that he has first taken and passed the broker's license examination.

IT IS FURTHER ORDERED that Respondent Robin Babb shall attend the following continuing education modules listed in Wis. Admin. Code Sec. RL 25.02(2), Educational Requirements for an Original Brokers License:

Contracts Module (2 hours)
Approved Forms (4 hours)
Business Ethics (4 hours)

The continuing education must be provided by an accredited school approved by the Board to offer real estate educational programs and may be taken through a 'distance' education program, if offered. Proof of successful completion of the continuing education must be submitted to the Board or its designee within one (1) year from the effective date of this Order.

IT IS FURTHER ORDERED that Respondent Robin Babb shall pay costs of this matter in the amount of five thousand dollars (\$5,000.00). The costs may be paid in four quarterly installments. The costs must be paid in full within one (1) year from the date of this order.

IT IS FURTHER ORDERED that the Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all payments of costs, quarterly supervision reports, proof of continuing education and any petitions or other notices or correspondence to the Board. The Department Monitor may be contacted at **Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935, FAX (608) 266-2264, TEL. (608) 261-7938.**

IT IS FURTHER ORDERED that in the event the Respondent Robin Babb fails to fully and timely comply with the requirements set forth in the paragraphs above, his Wisconsin real estate salesperson license shall be SUSPENDED, without further notice or hearing, until compliance with the terms of this Order has been shown. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may also result in a SUMMARY SUSPENSION of Respondents licenses pursuant to the procedures set forth in Wis. Stats. Sec. 448.02(4) and Wis. Admin.

Code Sec. RL Ch. 6. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

IT IS FURTHER ORDERED that upon satisfactory completion of the requirements of this Order, the Respondent Robin Babb may petition the Board to reapply for his broker's license.

IT IS FURTHER ORDERED that file 01 REB 070 be, and hereby is closed.

IT IS FURTHER ORDERED that in accordance with paragraphs 9 through 11 inclusive of the Stipulation between the Respondents, their attorney, and the attorney for the Division of Enforcement, File 03 REB 003, be and hereby is closed under administrative complaint tracking closing code Prosecutorial Discretion, P7.

This Order shall become effective upon the date of its signing.

Dated this 24th day of February, 2005.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger