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**STATE OF WISCONSIN
BEFORE THE AUCTIONEER BOARD**

0001937

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

**FINAL DECISION AND ORDER
ON REMAND WITH VARIANCE**

**DEAN K. GEORGE,
RESPONDENT.**

DHA Case No. SPS-11-0069

**DIVISION OF LEGAL SERVICES AND COMPLIANCE CASE NOS.
08 AUC 017 AND 09 AUC 006**

BACKGROUND

On July 20, 2012, a Final Decision and Order was issued by the State of Wisconsin Auctioneer Board (Board) finding that Dean K. George (Respondent) violated Wis. Stat. § 440.24(2)(b) and Wis. Admin. Code § SPS 126.02(8) and imposing discipline and costs against Respondent.

On October 11, 2012 Respondent filed a Petition for Review in Rock County Circuit Court (Court) and on March 15, 2013, filed a Motion to Stay Proceedings pursuant to Wis. Stat. § 227.54 and for Leave to Present New Evidence pursuant to Wis. Stat. § 227.56.

On July 1, 2013 Rock County Circuit Court Judge Barbara McCrory issued an order staying implementation of the Board's Final Decision and Order of July 20, 2012, and remanded the matter to the Administrative Law Judge for further review and proceedings with regard to the finding of a violation of Wis. Admin. Code § SPS 126.08. As part of those proceedings the Court ordered that Respondent be allowed to present new evidence challenging the credibility of the State's witnesses with regard to this count. The findings made by the Board with regard to the four remaining Counts were deemed final and not subject to further review and/or proceedings.

A hearing on remand was held before Administrative Law Judge Jennifer Nashold (ALJ), State of Wisconsin, Division of Hearings and Appeals who then issued a Proposed Decision and Order on Remand on March 4, 2014. Both parties filed objections and responses to the ALJ's Proposed Decision and Order.

DECISION

Pursuant to Wis. Stat. §§ 440.035(1) and 448.02, the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The pending matter is a class 2 proceeding pursuant to Wis. Stat. § 227.01(3). The Board may make modifications to the proposed decision and order, a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2).

The Board considered the Proposed Decision and Order on Remand along with the objections and responses of the parties at its meeting on April 14, 2014. After deliberation the Board voted to adopt the ALJ's proposed Findings of Fact and Conclusions of Law. The Board further voted to adopt the ALJ's proposed Order on Remand with regard to the discipline to be imposed but varied the Order with regard to imposition of costs. The Board finds that costs as set forth in the Board's original Final Decision and Order dated July 20, 2012 shall be imposed as well as all costs incurred as a result of the proceedings conducted on the Court ordered remand. The Proposed Decision and Order on Remand is attached hereto and incorporated in its entirety into this Final Decision and Order on Remand with Variance.

DISCUSSION AND EXPLANATION OF VARIANCE

Wis. Stat. § 440.22 and Wis. Admin. Code § SPS 2.18 govern the imposition of costs incurred as part of disciplinary proceedings against a licensee when discipline is imposed. The Board interprets the above cited statutory and code sections to apply to all of the disciplinary

proceedings in this matter. The Court ordered a remand for further proceedings in the original matter and the taking of additional testimony which was done at hearing on January 8, 2014. This hearing was an extension of the original disciplinary matter and the evidence presented was considered by the Board in reaching its final decision on remand. All costs incurred in preparation for the January 8, 2014 hearing, in the hearing itself, and in filing objections and responses to the ALJ's proposed decision on remand are part of the extended original disciplinary proceedings and as such, may be imposed against Respondent. The Board therefore varies the order on remand as follows:

ORDER ON REMAND

1. The July 20, 2012 Final Decision and Order in this matter is hereby reinstated.
2. Dean K. George shall fulfill all of the remaining conditions of his discipline and pay all of the remaining costs ordered by the Board's July 20, 2012 Final Decision and Order.
3. Dean K. George shall pay all costs of the further disciplinary proceedings conducted after this matter was remanded on July 1, 2013. The amount of costs is to be established pursuant to Wis. Admin. Code § SPS 2.18.
4. Dean K. George shall pay all costs set forth in paragraphs 2 and 3 of this Order within ninety (90) days of the Order Fixing Costs under paragraph 2 above. Payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53708-7190
Telephone 608-267-3817 FAX 608-266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Dean K. George.

IT IS FURTHER ORDERED that this Final Decision and Order on Remand is effective on the date of its signing.

Dated at Madison, Wisconsin on April 28, 2014

STATE OF WISCONSIN
AUCTIONEER BOARD

Gerry Thiel
A Member of the Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against DEAN K. GEORGE, Respondent

SUPPLEMENTAL PROPOSED
DECISION AND ORDER ON REMAND
DHA Case No. SPS-11-0069

Division of Legal Services and Compliance Case Nos. 08 AUC 017 and 09 AUC 006

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Dean K. George, by:

Attorney Troy Klarkowski
Klarkowski Law Office
P.O. Box 259552
Madison, WI 53725

Wisconsin Auctioneer Board
P. O. Box 8935
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Department of Safety and Professional Services, Division of Legal Services and
Compliance, by:

Attorneys Sarah Norberg and Aloysius Rohmeyer
Department of Safety and Professional Services
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P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On May 18, 2012, the undersigned administrative law judge (ALJ) issued a Proposed Decision and Order concluding that Respondent Dean George, an auctioneer, had engaged in conduct evidencing a lack of knowledge or ability to apply professional principles or skills within the meaning of Wis. Stat. § 480.24(2)(b) by "knowingly escalating or attempting to escalate bidding through false bids, shills or through collusion with another," in violation of Wis. Admin. Code § SPS 126.02(8). Specifically, the ALJ concluded that Mr. George had requested

Janice Farmer and Glen Neuenschwander, Jr. (*hereinafter*, Mr. Neuenschwander), both relatives of Carla and Glen Neuenschwander, Sr., whose real estate was being auctioned, to bid on the real estate in order to get a better price for it. As a result, both Ms. Farmer and Mr. Neuenschwander bid on the property, with no intention of purchasing it, with Ms. Farmer opening the bidding and Mr. Neuenschwander bidding several times.

The ALJ found no violation with respect to the four remaining violations alleged by the Department of Safety and Professional Services, Division of Legal Services and Compliance (*hereinafter*, Division). The ALJ recommended discipline of a one-year suspension of Mr. George's auctioneer registration, a requirement that Mr. George complete twelve hours of auctioneer education, a \$1,000 forfeiture, and imposition of 50 percent of the costs.

On July 20, 2012, a Final Decision and Order was issued by the Auctioneer Board (*hereinafter*, Board), which adopted the ALJ's conclusion that Mr. George violated Wis. Stat. § 480.24(2)(b) and Wis. Admin. Code § SPS 126.02(8) as well as the ALJ's recommended discipline and costs outlined above. The Board also imposed additional provisions to clarify the mechanism for removal of the suspension and to allow for additional discipline if Mr. George violated the terms or conditions of the order.

On October 11, 2012, Mr. George, through current counsel, filed a Petition for Review in Rock County Circuit Court and on March 15, 2013, filed a Notice of Motion and Motion to Stay Proceedings Pursuant to Wis. Stat. § 227.54, and for Leave to Present New Evidence Pursuant to Wis. Stat. § 227.56, and brief in support thereof. Mr. George claimed that he had located a witness, Michael Liebhart, who would contradict the ALJ's and Board's finding that two of the Division's witnesses had bid on real estate at the request of Mr. George. In support of his motion, counsel for Mr. George submitted an affidavit from Mr. Liebhart dated August 11, 2012. On July 1, 2013, Rock County Circuit Court Judge Barbara McCrory issued an order staying Mr. George's suspension and remanding this matter to the Division of Hearings and Appeals to take the testimony of Mr. Liebhart.

On January 8, 2014, a hearing on remand was held, at which Mr. Liebhart did not appear. On January 14, 2014, at the request of Mr. George's counsel and with the agreement of the Division, the ALJ admitted Mr. Liebhart's December 18, 2013 deposition testimony, and ordered briefing, with the final brief due January 31, 2014.

FINDINGS OF FACT ON REMAND

1. In an affidavit dated August 11, 2012, submitted to the Rock County Circuit Court in support of Mr. George's request for relief, Mr. Liebhart stated under oath that he was the person who initiated the opening bid at the Neuenschwander real estate auction, that there were only two bidders at the auction, himself and another man; that no women bid at the auction; that he knew there were family members at the house during the day but none of the family members bid on the real estate; and that the house in which the auction was held had a dividing wall between the kitchen and the living/dining room areas and that no bids were made from the kitchen area. He stated that he would be willing to testify as to what he observed at the auction. (Ex. 5, attached

to Complainant's Notice of Motion and Motion in Limine Regarding Testimony of Michael Liebhart)

2. After the case was remanded to the ALJ, Mr. Liebhart signed a second affidavit dated December 4, 2013, in which, again under oath, he abandoned most of the statements made in his initial affidavit, stating that Mr. George's attorney had "misinterpreted [his] response to several questions he asked me." Mr. Liebhart's second affidavit did not state that he had initiated the bid, that there were only two men who bid on the real estate, or that no family member of the Neuenschwanders bid on the real estate. Instead, Mr. Liebhart stated that he had been to several auctions held by Mr. George and that Mr. George takes bids by either having the bidder raise a hand or a bid card. This statement was offered to contradict Ms. Farmer's testimony at hearing that she placed the opening bid by nodding her head. Mr. Liebhart also repeated his statement that he would be willing to testify. (Ex. 1, attached to Respondent's Opposition to the Complainant's Motion in Limine Regarding Testimony of Michael Liebhart)

3. At the hearing on remand held on January 8, 2014, counsel for Mr. George indicated that despite Mr. Liebhart's assurance that he would testify at the hearing, Mr. Liebhart did not appear at the hearing and could not be reached by telephone. Counsel for Mr. George had not attempted to subpoena Mr. Liebhart and instead relied on Mr. Liebhart's assurances that he would appear. (Ex. 100, p. 10) In light of this development, counsel for Mr. George requested that Mr. Liebhart's December 18, 2013 deposition testimony be admitted. The Division did not object and the deposition transcript was admitted into evidence as Exhibit 100. No other testimony was received at hearing.

4. In his December 18, 2013 deposition, Mr. Liebhart testified under oath that, contrary to his statements also made under oath in his August 11, 2012 affidavit, he was not the first person to bid on the real estate. He stated that he could not recall who initiated the bidding, though he "want[ed] to say it was the guy standing next to me." Also, contrary to his initial affidavit, he did not recall how many bidders there were, but he believed the auction went quickly. He also stated that a "man and wife" were there, "looking to buy it for themselves" and that a woman placed the winning bid. (Ex. 100, pp. 20-21, 27, 37, 44, 52, 79-80)

5. Mr. Liebhart further testified that in 2008, he had been the winning bidder for real estate property auctioned by Mr. George and that when his investors walked away from the deal, he contacted Mr. George about getting the \$1,000 buyer's fee back from Mr. George. He never heard back from Mr. George until some years later, when Mr. George came to Mr. Liebhart's house and informed him of the disciplinary proceedings against him and asked Mr. Liebhart if he recalled the Neuenschwander auction. During this interaction, Mr. George returned the \$1,000 buyer's fee he owed to Mr. Liebhart and Mr. Liebhart believed that it was at that time that he signed the August 11, 2012 affidavit. (Ex. 100, pp. 17-18, 52-55)

6. Mr. Liebhart testified that he could not recall whether he had attended the Neuenschwander auction until Mr. George and his attorney showed him photographs and took Mr. Liebhart to the Neuenschwander property, which occurred over a year after he signed his August 2012 affidavit and a week or two before his December 18, 2013 deposition. (Ex. 100, pp. 18-19, 60-6, 66-67)

7. Mr. Liebhart admitted during the deposition that at some point in November of 2013, he informed counsel for the Division that he believed the auction at issue had been in Janesville, not Evansville, that he saw no point in showing up for a deposition, that he did not open the bidding, and that he did not know whether the owners of the property or their family members were at the auction. (Ex. 100, pp. 61-64)

8. Mr. Liebhart testified that the auction was in the living room, that he was at the back of the living room standing¹ right in the kitchen doorway and that everyone who bid was in front of him. He stated that his friend "Cindy," for whom he was bidding, was beside him, as was a man who was an investor. (Ex. 100, pp. 46-47)

9. Mr. Liebhart testified that he had been to other auctions conducted by Mr. George and that he observed that Mr. George had people bid by raising their hands, and that he never saw Mr. George take a bid from someone other than by raising a hand. (Ex. 100, pp. 77-78, 98)

10. Mr. Liebhart testified that the kitchen was behind him and that no bids were taken from the kitchen. (Ex. 100, p. 87)

11. Mr. Liebhart has a 2006 misdemeanor conviction for obstructing an officer in Rock County Circuit Court. The criminal complaint associated with that conviction alleges that a Beloit police officer responded to a report of armed robbery and that Mr. Liebhart told the officer that he was robbed at gunpoint by an unknown black male. According to the criminal complaint, Mr. Liebhart also continually denied having been with a white female; however, when confronted with contrary statements from other witnesses, Mr. Liebhart eventually admitted he had lied to the officer and that he actually did have contact with a white female. (Div. Ex. 19)²

DISCUSSION AND CONCLUSIONS OF LAW ON REMAND

Violation of Wis. Stat. § 480.24(2)(b) and Wis. Admin. Code § SPS 126.02(8)

In his August 2012 affidavit filed with the circuit court, Mr. Liebhart stated under oath that he was the person who initiated the opening bid at the Neuenschwander real estate auction; that there were only two bidders at the auction, himself and another man; that no women bid on the property; that he knew there were family members of the property owners at the house during the day but none of the family members bid on the real estate; that the house in which the auction was held had a dividing wall between the kitchen and the living/dining room areas and that no bids were made from the kitchen area.

However, at his deposition shortly before the hearing in this matter, Mr. Liebhart testified that he did not in fact make the opening bid and that he could not recall who did so, although he

¹At one point, Mr. Liebhart stated he was sitting in the back of the room and at another point, he stated he was standing. (Ex. 100, pp. 46-47)

² At the close of the January 8, 2014 hearing on remand, counsel for Mr. George objected to the admissibility of the Division's Exhibit 19, the criminal conviction and complaint involving Mr. Liebhart. The ALJ stated that she would defer ruling on its admissibility and counsel for Mr. George indicated that he wished to address the issue in a brief. Because Mr. George has not provided any authority showing that Exhibit 19 is inadmissible and the ALJ has likewise not uncovered any such authority, the Division's Exhibit 19 is admitted into evidence.

believed it was an investor who was standing next to him, that he did not know how many people bid on the property, that a woman placed the winning bid, and that he did not know whether there were family members of the property owners present. Unlike in his original affidavit, at his deposition, he did not testify that no family members bid on the property. The only material assertion which has remained consistent between the proceedings in circuit court and those on remand before this tribunal is Mr. Liebhart's assertion that no bids were taken from the kitchen. Indeed, had the circuit court been provided with the actual grounds for Mr. George's remand request, one wonders whether the court would have remanded this matter in the first place.

For the reasons set forth below, I conclude that Mr. Liebhart's deposition testimony does not change the outcome of the Board's July 20, 2012 Final Decision and Order in this matter. Therefore, I uphold the Board's conclusion that Mr. George engaged in conduct evidencing a lack of knowledge or ability to apply professional principles or skills within the meaning of Wis. Stat. § 480.24(2)(b) by "knowingly escalating or attempting to escalate bidding through false bids, shills or through collusion with another," in violation of Wis. Admin. Code § SPS 126.02(8). I also uphold the discipline and costs imposed by the Board.

Mr. Liebhart's general credibility is severely undermined by several factors. Most importantly, his version of events has changed significantly from the time he signed the August 2012 affidavit to the time he testified at his deposition shortly before the hearing on remand. Under oath and with the possible penalty of perjury, Mr. Liebhart, in signing his name, affirmed that the false statements made in his August 2012 affidavit were true. In signing the August 2012 affidavit, Mr. Liebhart affirmed that certain very specific facts with respect to the Neuenschwander auction were true, only to state later that he was not even sure if, at the time he signed the affidavit, he was at the auction at all.

Further undermining Mr. Liebhart's credibility is his failure to appear at the hearing in this matter, after twice stating in affidavits that he would testify and after telling counsel for Mr. George that he would do so. Also of note is the fact that at roughly the same time Mr. Liebhart was asked to assist in these proceedings, Mr. George provided him with the \$1,000 buyer's fee that Mr. Liebhart had requested several years prior, only to be ignored by Mr. George. Mr. Liebhart's lack of credibility is also evidenced by the fact that he has lied to police officers in the past, telling them that he was robbed by a "black man" at gunpoint and that he had not been with a certain female, both of which were false, and which formed the basis of a conviction for obstructing an officer. Thus, to the extent there is any relevant inconsistency between Mr. Liebhart's deposition testimony and the hearing testimony provided by the Division's witnesses, Ms. Farmer and Mr. Neuenschwaner, both of whose testimony was deemed credible by the ALJ and Board, I find the Division's witnesses more credible.³

Also unconvincing are Mr. George's specific arguments on remand, most of which pertain to whether Mr. Neuenschwander credibly testified at the original hearing that he placed several bids from the kitchen. All of these arguments with respect to bidding from the kitchen can be rejected for the simple reason that the final decision in this matter did not depend in any

³ I note that I would find Mr. Liebhart less credible than the Division's witnesses based solely on the great inconsistency between his version of events as these proceedings have unfolded and on his willingness to make untruthful statements in an affidavit.

way on whether Mr. Neuenschwander was in the kitchen when he placed the bids. In its findings of fact, the Final Decision and Order states:

On the day of the auction, Respondent approached Janice Farmer . . . and Glen Neuenschwander, Jr., . . . and asked them to place bids on the real estate. Mr. Neuenschwander testified, "[Mr. George] asked if we could help bid the house up. . . [t]o get a better price for it." Ms. Farmer and Mr. Neuenschwander bid on the real estate even though they had no intention of purchasing the property. Ms. Farmer opened the bidding, and Mr. Neuenschwander bid several times, up to an amount previously agreed upon by him and [Mr. George].

(Final Decision and Order, p. 3) What the Board specifically relied on and found credible in both its findings of fact and conclusions of law was Mr. Neuenschwander's testimony that Mr. George asked him to help bid up the price of the house, and that Mr. Neuenschwander consequently placed bids with no intention of purchasing the property. Mr. Neuenschwander's location when he placed the phony bids is not mentioned in, and is immaterial to, the decision. All that matters is whether Mr. George colluded with Mr. Neuenschwander to "knowingly escalat[e] or attempt[] to escalate bidding," in violation Wis. Admin. Code § SPS 126.02(8). The Board found that Mr. George did so. Although the arguments pertaining to Mr. Neuenschwander's location while bidding need not be addressed further, they are also rejected for the reasons below.

Mr. George asserts that Mr. Liebhart's deposition testimony, along with the deposition photographs, show that the layout of the home prevented him from taking any bids from the kitchen, thereby making non-credible Mr. Neuenschwander's testimony that he placed his bids from the kitchen. (Respondent's Brief, pp. 3-5) Mr. George states, "A review of the kitchen photos [] show that the walls separating the kitchen from the dining and living rooms would prevent Mr. George from his location under the window in Exhibit 7, from taking any bids from the kitchen area where Mr. Neuenschwander, Jr. testified that he [] was." (Respondent's Brief, p. 4) This argument is not supported by the deposition testimony or the photographs. The photographs show that from the perspective of looking into the kitchen from the room which adjoins it (which the parties appear to agree is the living room), there is a counter at the height of the other countertops, with countertop material on top and bricks underneath, facing the adjoining room. (Ex. 100, attachment Exs. 3 and 4) Between this counter and a refrigerator is the opening to the kitchen. I agree with the Division's characterization that the photographs suggest an open floor plan between the living room and kitchen.⁴ The photographs do not show that Mr. George would be unable to view someone placing a bid by either raising a hand or nodding his head from the kitchen.

Mr. George also suggests that Mr. Liebhart was standing in the open "doorway" area leading into the kitchen, between the counter and refrigerator, thereby further inhibiting Mr. George's view to the kitchen. I note that it is difficult to discern from the deposition testimony precisely where Mr. Liebhart claims to have been standing and which doorway Mr. Liebhart

⁴ It is very difficult to make sense of much of the testimony relating to the photos as the parties did not describe what Mr. Liebhart was pointing to when he referred to the photographs. Instead, the transcript repeatedly states "indicating," without stating what was being indicated. (See e.g., Ex. 100, pp. 46, 83-87)

claimed to have stood in, as there are two potential doorways by the refrigerator next to which he claimed to have been standing. However, even if he was standing in the "doorway" that is merely an opening between the refrigerator and previously described counter, this would still not mean that Mr. George was unable to see someone placing a bid from the kitchen. At no time did Mr. Liebhart testify that Mr. George's view to the kitchen was blocked by a wall, nor do the photographs demonstrate that.⁵

Mr. George also relies on Mr. Liebhart's testimony that there were no bids placed from the kitchen. Aside from Mr. Liebhart's general lack of credibility in these proceedings, this testimony is also not credible because, based on Mr. Liebhart's testimony that he was standing in the doorway with the kitchen behind him (Ex. 100, p. 87), he would not necessarily be able to tell if someone behind him nodded his head or raised a hand to bid.

As further grounds for challenging Mr. Neuenschwander's testimony at the original hearing that he placed bids from the kitchen, Mr. George states that Mr. Liebhart testified that he only saw a woman in the kitchen. Again, this mischaracterizes the deposition testimony. Mr. Liebhart testified only that there was one person, a female, in the kitchen when he first came into the home. (Ex. 100, pp. 83-84, 96) Even with respect to whether there was anyone else in the kitchen at that point, Mr. Liebhart was somewhat equivocal. (Ex. 100, p. 96) At no time did he testify there was no one or only a female in the kitchen during the bidding.

Mr. George also states that Ms. Farmer's testimony that she did not see Mr. Neuenschwander in the house negates Mr. Neuenschwander's testimony that he placed bids on the property. As a preliminary matter, this argument is not dependent in any way on the "newly discovered evidence" related to Mr. Liebhart, which is the subject of this remand. This argument could have been raised in the original hearing in this matter and therefore need not be considered on remand.⁶ However, even if this assertion were within the scope of remand, it is unsupported. Ms. Farmer testified that she did not see Mr. Neuenschwander at the house, with the focus being on the time period during which she was bidding. She stated that from where she stood, with her back to the kitchen, she could not see who was in the kitchen. She did not testify that Mr. Neuenschwander was not in the house. In fact, when asked by Mr. George if she assumed that Mr. Neuenschwander and Carla Neuenschwander were not in the house, she responded, "I couldn't see anyone in the kitchen, but I assume they were in there." (Hrg. Trans., p. 33) She also testified that she knew Mr. George had asked Mr. Neuenschwander to bid on the real estate. (Hrg. Trans., p. 17) Therefore, Mr. George's argument is without merit.

⁵ Notably, at the original hearing in this matter, during his cross examination of Ms. Farmer, Mr. George stated that he was actually in the kitchen during the auction. (Hrg. Trans., p. 24)

⁶ Likewise outside the scope of remand are any arguments Mr. George attempts to make with respect to purported contradictions between letters written to the Department from Ms. Farmer and Carla Neuenschwander and the hearing testimony of Ms. Farmer and Mr. Neuenschwander. The purpose of the remand was to consider newly discovered evidence, namely, testimony by Mr. Liebhart, not to retry the case and come up with new arguments which could have been advanced at hearing and are not in any way dependent on Mr. Liebhart's testimony. I also note that Mr. George's argument with respect to these alleged contradictions are unsupported and undeveloped and that the alleged discrepancy created by Carla Neuenschwander's letter is improperly first raised in Mr. George's reply brief. Therefore these arguments will not be considered.

Mr. George also attempts to undermine Ms. Farmer's testimony at hearing that she opened the bid by nodding her head. Again, the Board's Final Decision did not depend in any way on the method by which Ms. Farmer placed her bid, only that she placed the initial bid on the property at Mr. George's urging, with no intention to purchase it, in order to raise the price of the property. Thus, whether Ms. Farmer placed that bid by nodding her head is immaterial and has no effect on the outcome of the decision. Although Mr. George's argument with respect to this issue may be rejected on this ground alone, it is rejected on additional grounds as well.

Mr. George relies on Mr. Liebhart's testimony that he has been to several of Mr. George's auctions and that he has people raise their hands to place bids. I first note that I find Ms. Farmer's hearing testimony more credible than Mr. Liebhart's deposition testimony. Second, even if it is true that Mr. Liebhart has never observed Mr. George take a bid by the bidder nodding his or her head, that does not mean Mr. George never does so or that it did not occur during this auction. Therefore, this argument is also insufficient to undermine Ms. Farmer's hearing testimony.

Mr. George also argues that Ms. Farmer's testimony that she placed the opening bid is negated by Mr. Liebhart's alleged deposition testimony that an investor opened the bidding, not Ms. Farmer. (Respondent's Brief, p. 5) As previously stated, this deposition testimony contrasts with Mr. George's circuit court argument and Mr. Liebhart's sworn statement in his August 2012 affidavit that Mr. Liebhart himself opened the bidding. Moreover, Mr. George is simply incorrect that the deposition testimony establishes that an investor opened the bidding. Mr. Liebhart did not testify that an investor opened the bidding. Rather, he testified that he could not recall but that he believed the investor opened the bid. When asked if he recalled who initiated the bidding, he responded, "No, I don't. To be honest with you, no, I don't. I want to say it was the guy standing next to me, but I can't swear to that. . . . Don't make a liar out of me." (Ex. 100, p. 44) When Mr. George's counsel asked at a later time, "But you testified that you think another investor standing next to you did [open the bid]," Mr. Liebhart stated, "Yes. . . . As far as my recollection - and don't make a liar out of me, but I recollect the guy standing along side of me opened the bid." (Ex. 100, pp. 79-80) Thus, even if Mr. Liebhart were generally credible, which I do not find him to be, his noncommittal deposition testimony on this point does not undermine Ms. Farmer's unqualified hearing testimony that she opened the bidding.

Discipline

The Division asks for discipline exceeding that imposed by the Board in its Final Decision and Order. Specifically, the Division requests an order revoking Mr. George's auctioneer registration. I conclude that the Division's request for increased discipline is outside the scope of the remand in this matter, not supported by any authority and based largely on Mr. George's exercise of his statutory appeal rights and Mr. Liebhart's unreliability, the latter of which may have been outside Mr. George's control. I therefore reject the Division's request and instead, reinstate the discipline imposed by the Board in its July 20, 2012 Final Decision and Order, which requires Mr. George to serve the remainder of his one-year suspension, which was

evidently stayed on May 16, 2013,⁷ to complete 12 hours of education, and to pay a fine of \$1,000.

Costs

The Division requests that Mr. George be ordered to pay the costs imposed in the Board's Final Decision and Order as well as the costs of the proceeding on remand. The provisions governing imposition of costs are Wis. Stat. § 440.22 and Wis. Admin. Code § SPS 2.18. These provisions appear to be directed more toward the underlying disciplinary proceeding and do not address imposition of costs following remand by a circuit court. The factors which the Board considers in assessing costs appear to suggest that the costs should be related to the underlying disciplinary action and not to proceedings on remand.⁸ With no authority provided by the Division specifically demonstrating that further assessment of costs on remand is authorized, I decline to impose additional costs for these proceedings.

ORDER ON REMAND

1. The Board's July 20, 2012 Final Decision and Order in this matter is hereby reinstated.

2. Mr. George shall fulfill all of the remaining conditions of his discipline and pay all of the remaining costs ordered by the Board's July 20, 2012 Final Decision and Order.

Dated at Madison, Wisconsin on March 4, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge

⁷ At the Rock County Circuit Court hearing held on April 29, 2013, the circuit court judge ordered that the Board's suspension be stayed. In its brief, the Division asserts that the suspension was stayed on May 16, 2013 and Mr. George does not dispute that assertion.

⁸ Those factors are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buerzli-Fritz*, LS0802183CHI (Aug. 14, 2008).