

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 92-03
)	DIA NO. 97DOCEL-1
PRECISION DRAWING, INC.)	
an Iowa Corporation)	FINDINGS OF FACT,
111 Second Street, S.E., Ste. A)	CONCLUSIONS OF LAW,
Altoona, Iowa 50009)	DECISION AND ORDER
)	
RESPONDENT)	

TO: PRECISION DRAWING, INC.

On March 10, 1997, the Iowa Engineering and Land Surveying Board (Board) filed a Notice of Board's Intent To Issue Order and Respondent's Right To Hearing to Precision Drawing, Inc. (Respondent). The Respondent filed a timely request for hearing, and a Notice of Hearing was issued.

A prehearing conference was held on Friday, June 13, 1997 at 10:00 a.m. and was attended by Pamela Griebel, Assistant Attorney General; Tamy Sanford, President of Precision Drawing, Inc. and John Sanford; Caroline Finch, Executive Secretary for the Board; and Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals. The state filed its Prehearing Conference Report and provided the Respondent with copies of the state's proposed exhibits. The Respondent filed its Answer, Witness List, and copies of its Exhibits.

The hearing was held on Thursday, June 19, 1997 at 11:00 a.m. in the Board conference room, 1918 S.E. Hulsizer, Ankeny, Iowa. The Respondent was represented by its President, Tamy Sanford. The state was represented by Pamela Griebel, Assistant Attorney General. All of the members of the Board were present for the hearing. The testimony was recorded by a certified court reporter.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f)(1997). The Administrative Law Judge was instructed to prepare the Board's Order, in conformance with their deliberations.

THE RECORD

The record includes the Notice of Board's Intent To Issue Order and Respondent's Right To Hearing, Notice of Hearing, Answer, State's Prehearing Conference Report, the testimony of the witnesses, and the following exhibits:

State Exhibit A: 11/96 Yellow Pages Advertising, U.S.
West, Des Moines

State Exhibit B: 11/96 Yellow Pages Advertising, Telecom USA, Des Moines

State Exhibit C: Complaint, 12/91

State Exhibit D: Letter dated 4/3/92 (Dugdale to Respondent)

State Exhibit E: Letter dated 4/6/92 (Respondent to Dugdale)

State Exhibit F: Letter dated 5/5/92 (Dugdale to Respondent)

State Exhibit G: Letter dated 7/1/92 (Weeg to Respondent)

State Exhibit H: Letter dated 9/16/92 (Peters to Respondent)

State Exhibit I: Letter dated 9/16/92 (Peters to Bishop)

State Exhibit J: Letter dated 9/21/92 (Respondent to Peters)

State Exhibit K: Letter dated 9/22/92 (Peters to Respondent)

State Exhibit L: Complaint dated 10/21/92

State Exhibit M: Letter dated 11/14/92 (Weeg to Respondent)

State Exhibit N: Case No. 92-03 Closed

State Exhibit O: 1993 U.S. West Yellow Pages Advertising

State Exhibit P: Letter dated 1/25/94 (Ross to Board)

State Exhibit Q: Letter dated 1/26/94 (Ross to AG)

State Exhibit R: Letter dated 3/2/94 (Weeg to Respondent)

State Exhibit S: Letter dated 3/9/94 (Respondent to Weeg)

State Exhibit T: Letter dated 4/5/94 (U.S. West to Respondent)

State Exhibit U: Letter dated 4/15/94 (Griebel to Respondent)

State Exhibit V: 11/94 Telecom U.S.A. Yellow Pages Ad

State Exhibit W: Letter dated 11/94 (Griebel to Respondent)

State Exhibit X: Letter dated 1/17/95 (Griebel to Respondent)

State Exhibit Y: Letter dated 1/19/95 (Respondent to Griebel)

State Exhibit Z: Letter dated 2/28/95 (U.S. West to Griebel)

State Exhibit AA: Letter dated 4/28/95 (Griebel to Respondent)

State Exhibit BB: Letter dated 7/11/95 (Griebel to Respondent)

State Exhibit CC: 11/95, Telecom U.S.A. Yellow Pages Ad

State Exhibit DD: Letter dated 4/22/96 (Griebel to Respondent)

State Exhibit EE: Letter dated 10/30/96 (Peters to Respondent)

State Exhibit FF: 12/96 Complaint

State Exhibit GG: Letter dated 3/26/97 (Respondent to Board)

State Exhibit HH: Barry A. Bishop, P.E., L.S., Vita

Respondent Exhibit 1: Form used by Respondent

FINDINGS OF FACT

1. The Respondent is an Iowa Corporation with offices in Altoona, Iowa. Tamy Sanford is the President and 100% stockholder of the corporation. Since 1989, the Respondent has been in the business of providing drawings of properties to mortgage lenders. The drawings provided show boundaries and improvements on the property in question but are not land surveys. The Respondent and the mortgage banking industry refer to these drawings as "mortgage surveys." The Iowa Code refers to these drawings as "real estate inspection reports." (Testimony of Tamy Sanford; Barry Bishop, P.E., L.S.; Iowa Code section 542B.35)

2. The Respondent does not employ any licensed land surveyors. At one time it had 19 employees, but currently has only one employee due to reduced market demand. The Respondent's only

customers are mortgage bankers and lenders. (Testimony of Tamy Sanford)

3. The Respondent's employees obtain plats of the properties from county courthouses and use existing identifying markers, such as yellow caps and stakes, and right of ways to measure boundaries of a property. A computer drawing is prepared which identifies the boundaries and the location of any improvements on the property. The drawing is printed on a form which has been used by the Respondent for approximately five years. The form bears the heading "PRECISION DRAWING, INC." Underneath the computer drawing of the property appears the following printed statement:

In my opinion, all improvements located upon the above described property are wholly within the boundary lines of said premises as shown on the sketch. None of the improvements located upon the adjoining property encroach upon said premises. The building line setbacks and/or easements have not been violated.

This document is provided as a service to lenders for mortgage purposes only and shall not be used as a staked survey, **THIS DOCUMENT SHALL NOT BE RECORDED.**

Since receiving the Board's Notice of Intent, the Respondent has modified this language to provide that the boundaries are "approximate." (Testimony of Tamy Sanford; John Sanford; Respondent Exhibit 1)

4. The Respondent has purchased advertising in the U.S. West Yellow Pages since 1991. This advertising has been placed under the heading of "Surveyors-Land." The advertising itself bears the name, address, and phone number of the Respondent, and the phrase, "Specializing in MORTGAGE SURVEYS." The advertising has appeared in the Des Moines area directory, and has sometimes appeared in the Cedar Rapids and Quad Cities directories. In addition, the same ad, under the same heading, has appeared in the Telecom U.S.A. directory. This advertising was not separately purchased by the Respondent. Telecom U.S.A. replicates all U.S. West advertising after confirming the accuracy of the ad's content with the business owner. (Testimony of Tamy Sanford; State Exhibits A, B, O, V, CC)

5. On December 20, 1991, the Board received a written complaint from a licensed Iowa land surveyor, which asserted that the Respondent's advertising would mislead the public into thinking that the Respondent employs registered land surveyors. Correspondence was exchanged between the Board and the Respondent on this issue. The Respondent was informed that the Iowa Code does not recognize "mortgage surveys," but does allow non registered persons to prepare "real estate inspection reports." On April 16, 1992, the Respondent wrote to the Board and stated that they would make every effort to see that a correction was made and "it will

not happen again." Based on this written assurance, the Board closed its pending complaint file. (Testimony of Tamy Sanford; State Exhibits C-I)

6. The Respondent requested that the U.S. West directory provide a new heading, "Mortgage Surveyors," under which they could place future ads. On September 11, 1992, U.S. West notified the Respondent that the new heading would not be available for the 1992-1993 directory, but hopefully would be approved for a later issue. (Testimony of Tamy Sanford; State Exhibits J, K)

7. On October 29, 1992, the Board filed its own complaint against the Respondent based on an advertising in the 1992 Telecom U.S.A. directory which appeared under the heading, "Engineers-Civil." Correspondence was again exchanged between the Respondent and the Board, and the Complaint was closed after the Respondent reported that it was too late to remove the ad. (Testimony of Tamy Sanford; State Exhibits L-N)

8. The Respondent's advertising again appeared under the heading "Surveyors-Land" in the 1993 U.S. West Yellow Pages Directory. In January 1994, the Board received two letters from a registered land surveyor which stated that he was no longer employed by the Respondent, and the Respondent does not have another registered land surveyor on its staff. Correspondence was again exchanged between the Board and the Respondent. The Respondent was again notified that a firm that does not employ a registered land surveyor cannot hold itself out to the public as a land surveying firm. (Testimony of Tamy Sanford; State Exhibits O-R)

9. The Respondent replied that it was never its intention to mislead or misrepresent itself as a licensed civil engineer or licensed land surveyor. The Respondent further stated that U.S. West develops its own headings and has not acted upon the Respondent's request for a new heading. Finally, the Respondent stated that its advertising was in complete compliance with the Iowa Code since it specifically states that their service is "mortgage surveys." (Testimony of Tamy Sanford; State Exhibits S, T)

10. On April 15, 1994, the Board advised the Respondent that if it was unable to persuade U.S. West to create a new heading that it should consider advertising under the existing heading "Real Estate Inspection Service." The Respondent's advertising appeared in the 1994 Telecom U.S.A. directory under the heading "Surveyors-Land." Once again, correspondence was exchanged between the Respondent and the Board. (Testimony of Tamy Sanford; State Exhibits U-Y)

11. On February 20, 1995, the Board wrote to U.S. West to inquire about the Respondent's advertising. U.S. West replied that they accept advertising for all businesses under appropriate headings within the guidelines of acceptable credit, listing standards and

copy standards. They further stated that businesses that advertise are responsible for claims made or implied in the yellow pages listing or advertising copy and have sole responsibility for knowing and complying with all local, state, and federal regulations. The Board's letter was forwarded to the Yellow Pages Headings Research Department who suggested the following alternative headings for the Respondent: Inspection Services, Building Inspection, and Real Estate (with appropriate ad copy). The Board gave this information to the Respondent. The Respondent's advertising continued to appear under the heading "Surveyors-Land" (Testimony of Tamy Sanford; State Exhibits Z, AA, BB, CC, FF)

12. On April 22, 1996, the Board notified the Respondent in writing that a new law, effective July 1, 1996, authorized the Board to impose civil penalties against any person who expressly or impliedly conveys the impression that he or she is a professional engineer or land surveyor when the person is not licensed in Iowa. The Respondent's advertising again appeared under the heading "Surveyors-Land" in the 1996-1997 U.S. West Directory. Further correspondence was exchanged. On March 10, 1997, the Board filed its Notice of Intent To Issue Order. (Testimony of Tamy Sanford; State Exhibits DD-GG)

13. Tamy Sanford drafted the language used in the Respondent's advertising and authorized its placement under the heading "Surveyors-Land" each year. Ms. Sanford considered the alternative categories suggested by U.S. West, but she felt that none of the categories fit their business and their customers would not be looking under these categories for services. Neither the Respondent nor its employees advise customers that they are registered land surveyors or that their drawings constitute land surveys. The name, Precision Drawing, was chosen to convey "accuracy." (Testimony of Tamy Sanford; John Sanford)

14. The Respondent receives approximately one call per day, and more in the summer, requesting land surveying services which they are unable to provide. These callers are referred to registered land surveyors. (Testimony of John Sanford; Lisa Croyle)

15. A "real estate inspection report" is prepared by a non-professional person to represent the location of a particular feature on a piece of property. For many years, real estate inspection reports have been referred to in the banking industry as "mortgage surveys." A real estate inspection report is different from a property survey which is prepared by a registered land surveyor, pursuant to the statutes and regulations which govern such documents. However, there are some visual similarities between a real estate inspection report and a property survey. Barry Bishop, a licensed professional engineer and registered land surveyor, testified that he has had questions from landowners who had obtained a copy of the real estate inspection report from their

bank and thought it was a property survey that could be relied upon in making property improvements, such as building a fence. (Testimony of Barry Bishop, P.E., L.S.; Tamy Sanford; State Exhibit HH)

16. Tamy Sanford testified that she intends to purchase advertising for her corporation in the November 1997 U.S. West directory Yellow Pages under the heading of "Surveyors-Land." (Testimony of Tamy Sanford)

CONCLUSIONS OF LAW

1. Iowa Code section 542B.27 was enacted by the 1996 Iowa legislature, effective July 1, 1996. Iowa Code section 542B.27(1997) provides, in relevant part:

542B.27 Civil penalty.

1. In addition to any other penalties provided for in this section, the board may by order impose a civil penalty upon a person who is not licensed under this chapter as a professional engineer or a land surveyor and who does any of the following:

a. Engages in or offers to engage in the practice of professional engineering or land surveying.

b. Uses or employs the words "professional engineer" or "land surveyor", or implies authorization to provide or offer professional engineering or land surveying services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is a professional engineer or land surveyor or is engaged in the practice of professional engineering or land surveying.

2. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense.

3. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

2. Iowa Code section 542B.35 was enacted by the 1990 Iowa legislature (then codified at Iowa Code section 114.35) Iowa Code section 542B.35 (1997) provides, in relevant part:

542B.35 Exception-real property inspection report.

1. "Real property inspection report" means a report stating whether, after visual examination, a parcel of real property which is being collateralized is materially impaired.

2. A real property inspection report is not a property survey or an engineering document and is exempt from the provisions of this chapter and the rules adopted under this chapter which apply to property surveys. A real property inspection report shall not be filed or recorded with the county recorder. The real property inspection report shall include all of the following:

a. A clear and prominent statement of disclosure to the buyer that the real property inspection report is not a property survey or an engineering document and should not be relied upon as such, and that property boundaries shown may be approximate only.

b. A clear and prominent statement that the report is for the use of the mortgage lender or its assigns and determination of the actual placement of boundary lines should be addressed by a property survey in accordance with the provisions of this chapter.

c. A person who completes the real property inspection report shall not represent themselves as a licensed land surveyor or a professional engineer for purposes of this report.

3. The Board has promulgated rules to implement Iowa Code section 542B.27. These rules are found at 193C IAC 1.10.

193C IAC 1.10(5) provides:

1.10(5) In addition to the factors set forth in Iowa Code section 542B.27(1)"a," the board may consider the following when determining the amount of civil penalty to impose, if any:

a. The time elapsed since the unlawful practice occurred.

b. Evidence of reform or remedial actions.

c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.

- d. Whether the violation involved an element of deception.
- e. Whether the unlawful practice violated a prior order of the board, a court order, cease and desist agreement, consent order, or similar document.
- f. The clarity of the issue involved.
- g. Whether the violation was willful and intentional.
- h. Whether the licensee acted in bad faith.
- i. The extent to which the nonlicensee cooperated with the board.

4. The preponderance of the evidence established that the Respondent violated Iowa Code section 542B.27(1997) when it purchased advertising in the 1996-1997 U.S. West directory under the heading of "Surveyors-Land." The appearance of the Respondent's advertising under this heading conveys the clear impression to the public that the Respondent is engaged in the practice of land surveying.

This impression is reinforced by the Respondent's corporate name, "Precision Drawing," which denotes accuracy, and by the Respondent's use of the term mortgage "survey" to describe its product, when the Iowa Code describes the product as a real estate inspection report. In fact, the real estate inspection reports provided by the Respondent do not and cannot provide the public with accurate boundaries of the subject properties. The Iowa Code stipulates that the boundaries provided by real estate inspection reports are approximate only and must be disclosed as such. Iowa Code section 542B.35(2) "a".


The testimony of the president and employees of the Respondent also establish that the advertising in question implies authorization to provide land surveying services. The Respondent's office receives many calls from the public requesting land surveying services. The advertising has clearly led these members of the public to believe that the Respondent is authorized to provide land surveying services.

The Board has been in continuous communication with the Respondent concerning its advertising over the past six years. The Respondent has committed to changing its advertising, only to place the exact same ad, under the same heading, the following year. Indeed, the president of the corporation testified that she intends to place the same advertisement in the next directory that is published. The Board is left with no alternative but to impose a civil penalty.

ORDER

IT IS THEREFORE ORDERED, that Precision Drawing, Inc. shall pay a civil penalty of \$1,000.00, within thirty (30) days of the issuance of this decision of the Board.

Dated this *31* day of *July*, 1997.


Terry Martin, P.E.
Chairperson
Iowa Engineering and Land Surveying Examining Board

cc: Pamela Griebel
Assistant Attorney General
Department of Justice
Hoover Building
(LOCAL)

Tamy Sanford, President
Precision Drawing, Inc.
111 Second Street, S.E., Ste. A
Altoona, Iowa 50009

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this final order. 193C IAC 4.25.