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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JAMES C. THOMAS RESPONDENT	: : : : : :	FINAL DECISION AND ORDER

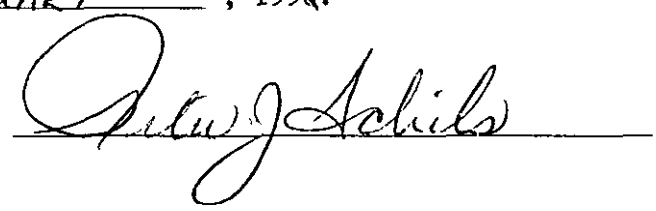
The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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

Dated this 24TH day of JANUARY, 1991.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JAMES C. THOMAS,

Respondent

PROPOSED DECISION

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

James C. Thomas
3803 West Fond du Lac Avenue
Milwaukee, WI 53216

State of Wisconsin Real Estate Board
1400 East Washington Avenue, Room 183
Madison, WI 53708

Department of Regulation & Licensing, Division of Enforcement
1400 East Washington Avenue, Room 183
Madison, WI 53708

A hearing was conducted in the above-captioned matter on October 9, 1990, at 1400 East Washington Avenue. Madison, Wisconsin. Respondent attended in person and by Attorney Le Roy Jones. Complainant appeared by Attorney Richard Castelnuovo. Based upon the entire record in this matter, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision and order the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. James C. Thomas, respondent herein (respondent), 3803 West Fond du Lac Avenue, Milwaukee, WI 53216 was at all times material hereto licensed as a real estate broker in the State of Wisconsin by license #9790, granted on August 5, 1968.

2. On or about June 17, 1983, respondent prepared an Offer to Purchase property owned by him located at 3704 North 4th Street, Milwaukee, Wisconsin,

on behalf of prospective buyers Jimmie and Rachel Lee Jones. The offer provided for a purchase price of $31,500. Earnest money in the amount of $300 was to be tendered with the offer with additional earnest money in the amount of $475 to be paid within 30 days of acceptance of the offer. The buyer was to pay $800 at the time of closing as the balance of the down payment. The offer contained a financing contingency requiring financing through the City of Milwaukee Low Interest Loan Program in the amount of $29,925, at an interest rate not to exceed 10.2% per annum, plus 1/2% P.M.I. on the unpaid balance. Respondent accepted the Offer on or before September 1, 1983.

3. Only $100 in earnest money was tendered with the application. An additional $200 was tendered by the Joneses approximately two weeks later. No additional down payment monies were ever paid by the Joneses.

4. At the time of these events, Universal Mortgage Corporation (Universal), 744 North 4th Street, Milwaukee, Wisconsin, participated in the City of Milwaukee Low Interest Loan Program. The Joneses submitted a loan application to Universal for financing the purchase on or about June 6, 1983.

5. One of the conditions of the Low Interest Loan Program was that all down payment funds must come from the personal resources of the applicant. On July 20, 1983, Rachel and Jimmie Jones executed a Certification certifying to Universal that funds used for the down payment came from "my on [sic] source at home."

6. Universal conducted a credit check on the Jones, which revealed an outstanding judgment and at least one other overdue debt. Universal contacted the Joneses relating to this adverse credit information, and the Joneses contacted respondent. Respondent thereafter satisfied the Joneses' outstanding liens, including a lien held by Ernie Von Schledorn Pontiac-Buick and one held by Columbia Family Stores. Universal was notified of the satisfaction of the liens by a letter signed by the Joneses dated September 27, 1983.

7. Also by letter dated September 27, 1983, respondent falsely verified to Universal that the Joneses had deposited down payment monies in the amount of $1600 with respondent, which had in turn been deposited in respondent's real estate trust account. Respondent's letter indicates that $200 was deposited with him on June 20, 1983, that $700 was deposited on August 31, 1983, and that $700 was deposited on September 23, 1983.

8. On June 20, 1983, respondent deposited $200 into his real estate trust account as down payment on the property in question. On October 28, 1983, respondent deposited $1400 into his real estate trust account as the balance of the down payment on the property.

9. With the possible exception of the initial $300 down payment deposits, the entire down payment was loaned to the Joneses by the respondent. The Joneses signed promissory notes to respondent in recognition of those loans, including a promissory note dated August 30, 1983, in the amount of $700; and a note dated September 23, 1983, also in the amount of $700. Those dates correspond closely to those verified to Universal as the dates on which the Joneses had deposited down payment monies with respondent.

10. Additional promissory notes to respondent were executed by the Joneses dated June 17, 1983 for $100, which may or may not have been used to make the initial earnest money deposit; and dated September 9, 1983 for $557.92, which covered all or part of respondent's payments to clear the liens described in paragraph 6, above.

11. At no time did respondent notify Universal that he had paid the Joneses' debts and that he had loaned money to the Joneses to make the down payment; and respondent instructed the Joneses to withhold this information from Universal.

12. An appraisal of the property on or about August 4, 1983, indicated that the selling price of the property should be $32,000 if certain designated repairs were made. On or about August 31, 1983, an Amendment to the Contract of Sale was executed changing the closing date to on or before October 30, 1983, changing the purchase price to $32,000, changing the loan amount in the financing contingency to $30,400, and providing that respondent would pay closing costs. By letter dated September 28, 1983, respondent advised Universal that as seller, he would pay the prepayables for the Joneses at closing.

13. Respondent did not reduce to writing the agreement to perform repairs on the property.

14. The Joneses' loan was approved by Universal on October 7, 1983.

15. Had Universal been aware that respondent had loaned money to the Joneses for the down payment, the loan would not have been approved.

16. The transaction closed on October 28, 1983. The Joneses received a notice of default on their mortgage loan on October 10, 1984, and foreclosure occurred sometime in 1987.

17. The fact that respondent had made loans to the Joneses for the down payment and to clear the Joneses' existing liens and debts is a material and adverse factor as to Universal, and Universal was an interested party in this transaction.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 452.14.

2. The fact that respondent made loans to the Joneses for the down payment and to clear the Joneses' existing liens and debts is a material and adverse factor as to Universal, and Universal was an interested party to this transaction, as those terms are used at Wis. Adm. Code secs. RL 24.07(1) and RL 24.07(2)(d).

3. By satisfying the Joneses' outstanding liens and other debts and by accepting the Joneses' note for the amounts paid by him, without notifying Universal of his actions, respondent has concealed a material fact and an adverse factor from an interested party, in violation of Wis. Adm. Code secs. RL 24.07(1) and RL 24.07(2)(d) and, pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of Wis. Stats sec. 452.14(3)(i).

4. By loaning the Joneses money for the down payment without notifying Universal of his actions, respondent has concealed a material fact and adverse factor from an interested party, in violation of Wis. Adm. Code secs. RL 24.07(1) and RL 24.07(2)(d) and, pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of Wis. Stats. sec. 452.14(3)(i).

5. By his failure to reduce to writing the exact agreement of the parties relating to repairs to be performed by respondent as a condition for increasing the sales price of the affected property to $32,000, respondent has violated Wis. Adm. Code sec. RL 24.08.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of James C. Thomas to practice as a real estate broker in Wisconsin be, and hereby is, suspended for a period of six months, commencing 30 days from the date of the order of the Real Estate Board adopting the terms of this Proposed Decision. On or before the effective date of the board's order, respondent shall return his license certificates to the offices of the Real Estate Board. The certificates shall be returned to him at the conclusion of the period of suspension.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. sec. 440.20, the costs of this proceeding shall be assessed against the respondent.

OPINION

Respondent does not deny that he loaned Rachel and Jimmie Jones $2057.92, and the Joneses' promissory notes documenting those loans are a part of the record herein as Exhibit 5. What respondent claims, however, is that the entire amount of those loans was used to pay the Joneses' outstanding debts. While Mrs. Jones testified that the amount owing to Ernie Von Schledorn was something more than $500, respondent testified that the lien was for over $1500, and that payment of that debt, along with payment of the lien in favor of Columbia Family Stores in the amount of $224 and payment of another debt of undisclosed amount to "Columbia Family Hospital" accounted for the entire amount of the loans.[1]

Even if it is assumed that the entire amount loaned to the Joneses was to cover their outstanding debts, the result herein would be little different.

In *Ollerman v O'Rourke Co., Inc.*, 94 Wis. 2d 17, 42 (1980), the Wisconsin Supreme Court defines a material fact as follows:

> A fact is material if a reasonable purchaser would attach importance to its existence or nonexistence in determining the choice of action in the transaction in question; or if the vendor knows or has reason to know that the purchaser regards or is likely to regard the matter as important in determining the choice of action, although a reasonable person would not so regard it.

While Universal was not the purchaser in this transaction, the board's statute and rules require disclosure of material facts both to the parties to the transaction and to other interested parties. It may therefore be concluded that respondent's payment of the Joneses' debts and his acceptance of their promissory notes for the amounts paid would be material facts as to Universal if Universal would have attached importance to their existence in determining its choice of action in granting the mortgage loan to the Joneses. Gary Rieboldt, Vice President and former Loan Originator for Universal Mortgage, credibly testified that knowledge by Universal that the respondent was lending money to the Joneses to satisfy the latter's liens and judgments would in fact have been an adverse factor in determining whether the mortgage loan was granted.

[1] *Respondent in his initial testimony stated that there were debts paid by him on the Joneses behalf in addition to those owed to the car dealer and the department store, but that he was unable to recall what they were. Later, after reviewing Universal's undated letter to the Joneses indicating that a satisfaction would be needed for the judgment for "Columbia Family Hospital," respondent testified that it was in fact that debt which he had been attempting to recall.*

That circumstance was therefore a material fact and an adverse factor from Universal's standpoint, and Universal, unquestionably an interested party in this transaction, was therefore required to be notified of the loans.

It is true that if respondent did not consider his action in loaning money to the Joneses' to satisfy their debts to be a material fact in terms of Universal's interests, that would be at least a mitigating factor. I do not credit respondent's contention that he did not consider those particular loans to the Joneses to be material, however, and instead credit Mrs. Jones' testimony that respondent had instructed her on two or three occasions not to disclose to Universal that he had paid the Joneses' debts. The clear inference from that instruction is that respondent was well aware that Universal would attach importance to the manner in which the Joneses' debts had been satisfied.[1] Accordingly, it is concluded that even if every penny loaned to the Joneses by respondent was expended exclusively to repay their debts, respondent nonetheless concealed or failed to disclose a material fact and adverse factor from an interested party, and he would thus be subject to discipline.

There is clear and convincing evidence, however, that at least $1400 of the money loaned by respondent to the Joneses was for the purpose of making the down payment. First, there is the testimony of Mrs. Jones, who stated that she and her husband had paid $100 as down payment on or about the time of the Offer to Purchase; had paid $200 approximately two weeks thereafter; and had not from that day forward made any further down payment.[2] Mrs. Jones was a reluctant and forgetful witness, and her testimony evinced a greater recognition of the ramifications of the manner in which this transaction was conducted than she professed having.[3] Nonetheless, there

1 *It may also be noted in this regard that respondent admitted in his letter to the department dated May 15, 1989, that he had drafted the September 27, 1983, letter to Universal which states that at that time, "We are all up to date with all of our bills and don't owe anyone except $500 altogether." At that time, the Joneses had executed promissory notes to respondent in the amount of $2057.92.*

2 *It is probable that the $100 promissory note given to respondent by the Joneses on June 17, 1983, covered a loan by respondent to make the earnest money payment tendered with the Joneses' offer to purchase on that same date. Absent corroborating evidence, however, the coincidence of dates does establish clearly and convincingly that the initial earnest money deposit came from respondent.*

3 *An example of Mrs. Jones' occasionally obfuscatory testimony was her response to Attorney Jones' repeated question whether the "Certification of Source of Funds Used for Down Payment" executed by she and her husband at the time they applied for their mortgage loan was truthful. Her typical response was "I put the truth down what I was told."*

is no reason not to believe Mrs. Jones' testimony that she had made no down payment in addition to the initial payments totaling $300, for it was not in her best interests to so testify. This is true because Mrs. Jones' contention that she and her husband had received no funds from respondent and therefore owed him no money would be more credible if she had also contended that she and her husband had in fact provided the entire $1600 down payment.

The conclusion that respondent provided $1400 of the Joneses' down payment is corroborated by other evidence in the record. By letter dated September 27, 1983, respondent verified to Universal that the Joneses had deposited down payment monies with him including $700 on August 31, 1983, and $700 on September 23, 1983. On August 30, 1983, and September 23, 1983, Mr. & Mrs. Jones executed promissory notes in respondent's favor; each of them in the amount of $700. One would have to be more than credulous to conclude that mere coincidence is responsible for the fact that the Joneses' $700 promissory notes were dated within one day of the dates which respondent verified as those upon which he received down payment monies from the Joneses. I instead reach the only logical conclusion: that respondent covertly provided at least $1400 of the Joneses' down payment in order to avoid the denial of the Joneses' mortgage loan application.

There is clear and convincing evidence that respondent provided the funds to both satisfy the Joneses' outstanding liens and judgments and to make all but a small part of the down payment; that his actions constituted a material fact and an adverse factor which was required to be disclosed to Universal as an interested party; and that in failing to notify Universal of those material facts and adverse factors, respondent has violated Wis. Adm. Code secs. RL 24.07(1) and (2)(d), and Wis. Stats. sec. 452.14(3)(i). Respondent did not deny at hearing that he failed to reduce to writing the agreement relating to repairs that he agreed to perform on the property in return for an increase in the sales price from $31,500 to $32,000, and it is thus also clear that he has violated Wis. Adm. Code sec. RL 24.08.

It is established that the purposes for imposition of discipline include rehabilitating the licensee, deterring other licensees from engaging in the same or similar conduct and protecting the health, safety and welfare of the public. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481.

There is no question but that respondent has engaged in serious misconduct, and the cited disciplinary objectives militate for serious discipline. Moreover, there is very little mitigation present here. It could be argued that the effect of respondent's actions was to permit a couple who could not otherwise have acquired financing necessary to purchase their own home to do so. Except for one thing, respondent might even be

viewed as a kind of latter day Robin Hood -- notwithstanding his wrongfully concealing his actions from the mortgage company; and even though, as the owner of the property, the expenses he incurred were not for the most part out-of-pocket. The evidence is, however, that respondent pursued payment of the Joneses' promissory notes through a collection agency at the very time the the Joneses were in the process of losing their home to foreclosure. Any question as to a possibly altruistic motive for respondent's actions is thereby set to rest. Nor may it be said that no one was harmed by respondent's actions. It would be speculative to decide that respondent's actions led to the Joneses purchasing a home they couldn't afford, because the record does not document the bases for their ultimate default. To conclude that the mortgage company suffered a net loss as a result of the transaction would also be speculative based on this record. It may be assumed, however, that no one came out ahead on this transaction except possibly the respondent and, in my opinion, the disciplinary objectives require that respondent should for some period of time be deprived of the privilege of practicing his profession. A six month suspension seems appropriate in that regard.

Dated at Madison, Wisconsin this 20th day of December, 1990.

Respectfully submitted,

Wayne R. Austin
Administrative Law Judge

WRA:BDLS:

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
JAMES C. THOMAS, RESPONDENT.	:	AFFIDAVIT OF COSTS (Wis. Stats. sec. 440.22)

TO: Leroy Jones
Attorney At Law
4222 W. Capitol Drive # 308
Milwaukee, WI 53216

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

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Richard Castelnuovo, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Wisconsin, and employed by the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement ("Division").

2. In the course of my employment, I was assigned to prosecute the above-referenced matter and in this regard did render the services described below.

3. Anne Vandervort, an employee of the Division, was assigned to investigate the above-referenced matter and in this regard did perform the work described below.

4. Pursuant to Wis. Stats. Sec. 440.22, the Real Estate Board assessed the costs of the proceeding against the Respondent following the suspension of his license by the Board.

5. The costs set forth below are costs of this proceeding supported by available documentation:

PROSECUTING ATTORNEY COSTS

1989

Oct. 31	Review of File/Conference with Investigator	.50 hour
Nov. 29	Conference with Investigator	.25 hour

Dec. 8	File Review Conference with Board Advisor Drafting complaint Conference with Attorney Jones	4.0 hours
Dec.17	Drafting Complaint Research re: precedent	4.0 hours
Dec. 18	Drafting Settlement Letter	.50 hour
1990		
Feb. 2	Conference with Board advisor	.25 hour
Feb. 9	Review of letter from Attorney Jones	.25 hour
May 22	Review and revision of draft complaint	1.25 hours
May 30	Preparation of Notice of Hearing Filing of Complaint	.50 hour
July 9	Conference with ALJ	.25 hour
July 23	Draft and file default motion	.50 hour
Aug. 2	Preparation of Discovery and Witness List Filing same	4.5 hours
Aug. 17	Conference with witness	.25 hour
Sept. 10	Preparation of Final Witness list and request for discovery compliance	.25 hour
Sept. 14	Subpoena preparation Conference with witness	1.0 hour
Sept. 14	Subpoena preparation	.25 hour
Sept. 25	Request for discovery compliance	.25 hour
Sept. 27	Conference with witness	1.0 hour
Oct. 1	Conference with witness	1.0 hour
Oct. 7	Preparation of witness examinations Document organization	2.5 hours
Oct. 8	Conference with witness	1.0 hour

Oct. 9	Preparation for hearing Appearance at hearing	5.0 hours
Dec. 21	Review of Proposed Decision Preparation of Affidavit re: costs	1.50 hours
Jan. 8	Review of Proposed Decision Research re: precedent	2.0 hours
Jan. 11	Preparation of Affidavit	.50 hour

Total Hours . . . . . 33.25 hours

Total Prosecuting Attorney Expense 33.25 hours at $24.80 per hour based on current salary and benefits for the period $824.60

INVESTIGATIVE COSTS FOR ANNE VANDERVORT

1988

May 5	Call to Complainant Letter to Respondent Preparation of memo	1.25 hours
May 10	Letter to Respondent	.75 hour
Dec. 8	Review of file Call to Respondent Preparation of Memo Letter to Complainant	1.50 hours

1989

Sept. 6	Case Review and Summary	1.50 hours
Oct. 31	Conference with Attorney	.25 hour
Nov. 9	Letter to Respondent	.50 hour
Nov. 29	Conference with Attorney	.25 hour

1990

October 8	Preparation for hearing	1.50 hours
October 9	Attendance at hearing	1.0 hour

Total Hours . . . . . 8.50 hours

Total Investigator Expense at $17.53 per hour based on current salary and benefits $149.00

WITNESS TRAVEL AND FEE COSTS

Oct 9, 1990 Witness Fee and Travel for Rachel Jones, Jimmie Jones and Gary Rieboldt $89.60

TOTAL ASSESSABLE COSTS $1063.20

Richard Castelnuovo, Attorney
Division of Enforcement
Department of Regulation and Licensing
(608) 266-9840

Subscribed and sworn to before me
this 15TH day of January, 1991.

Notary Public
My Commission PERMANENT

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JAMES C. THOMAS, RESPONDENT	: : : : :	AFFIDAVIT OF COSTS OF THE OFFICE OF BOARD LEGAL SERVICES (Wis. Stats. sec. 440.22)

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Wayne R. Austin, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter.

ADMINISTRATIVE LAW JUDGE EXPENSE
Wayne R. Austin

DATE & TIME SPENT	ACTIVITY
7/9/90 15 minutes	Draft Scheduling Order
7/25/90 25 minutes	Draft Motion Order
8/7/90 (-)	Draft Notice of Adjourned Hearing
10/9/90 3 hours, 40 minutes	Conduct Hearing
11/30/90 40 minutes	Prepare Proposed Decision
12/5/90 2 hours, 45 minutes	Prepare Proposed Decision

12/7/90 4 hours, 25 minutes	Prepare Proposed Decision
12/10/90 1 hour 25 minutes	Prepare Proposed Decision
12/11/90 4 hours	Prepare Proposed Decision
12/13/90 3 hours, 20 minutes	Prepare Proposed Decision

Total Time Spent.....9 hours 6 minutes

Total administrative law judge expense for Wayne R. Austin:
20 hours, 55 minutes @ $31.37, salary and benefits:.....$656.16

REPORTER EXPENSE
Magne-Script

DATE & TIME SPENT	ACTIVITY
10/9/90 3 hours, 40 minutes	Record hearing

Total billing from Magne-Script reporting service (Invoice #4439, dated 11/01/90):.....$90.00

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $746.16

Wayne R. Austin
Administrative Law Judge

Sworn to and subscribed before me this 20th day of December, 1990.

Notary Public, State of Wisconsin
My commission is permanent

WRA:BDLS:1020

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is January 28, 1991.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.