FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
DANIEL K. MOJICA, RESPONDENT.	:	LS9206262REB

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 27TH day of AUGUST, 1992.

Peter J Sobils

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9206262-REB
DANIEL K. MOJICA,	:	(DOE case number 91 REB 161)
RESPONDENT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Daniel K. Mojica
7513 South 75th Street
Franklin, WI 53132

Real Estate Board
1400 East Washington Ave.
Madison, WI 53708

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

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Real Estate Board on June 26, 1992. A disciplinary proceeding (hearing) was scheduled for August 25, 1992. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on June 26, 1992 to Daniel K. Mojica, who received it on July 9, 1992.

B. No answer was filed by the respondent within twenty days as required by sec. RL 2.09, Wis. Admin. Code and as stated in the Notice of Hearing.

C On July 24, 1992 a motion for default was filed on behalf of the Real Estate Board by Attorney Charles Howden of the Division of Enforcement of the Department of Regulation and Licensing. A hearing on the motion was scheduled for August 6, 1992. Notice of hearing and the motion were sent by certified mail to Mr. Mojica on July 27, 1992. No certified mail receipt was returned showing that Mr. Mojica received the notice.

D. The motion hearing was held as scheduled on August 6, 1992. Attorney Howden appeared representing the Real Estate Board. Mr. Mojica did not appear, either in person or by counsel. The hearing was recorded, and the exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. Respondent Daniel K. Mojica is a real estate salesperson licensed in the state of Wisconsin, under license number 27998, originally granted on February 11, 1988.

2. On February 7, 1990 Mr. Mojica was convicted of felony theft by fraud, contrary to sec. 943.20(1)(d) and (3)(b), Wis. Stats. In this case, Mr. Mojica falsely reported his van to be stolen and hid the van while he used the insurance proceeds of $8,900 to purchase another van.

3. On September 5, 1991 Mr. Mojica was convicted of felony theft, contrary to secs. 943.20(1)(d) and (3)(c) and 971.36(1), Wis. Stats. In this case, Mr. Mojica talked an elderly couple into cashing in their annuity policies by representing that he would reinvest the proceeds in annuity policies with a higher return, and after cashing in the policies he pocketed the funds amounting to $27,680.10 without reinvesting them for the couple.

CONCLUSIONS OF LAW

I. The Real Estate Board has personal jurisdiction over the Respondent, based on fact #1 above.

II. The Real Estate Board has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 452.14, Wis. Stats, and sec. RL 24.17, Wis. Admin. Code.

III. The Respondent is in default under sec. 2.14, Wis. Admin. Code for failing to file an answer within twenty days of service of the complaint. The averments in the complaint are therefore deemed admitted under sec. RL 2.09(3), Wis. Admin. Code.

IV. The circumstances of Respondent's felony convictions for theft and theft by fraud are substantially related to the practice of a real estate salesperson, and Respondent violated sec. RL 24.17(2), Wis. Admin. Code, thereby demonstrating incompetence to act as a real estate salesperson under sec. 452.14(3)(i), Wis. Stats.

ORDER

THEREFORE, IT IS ORDERED that the license of Daniel K. Mojica to practice as a real estate salesperson in the state of Wisconsin be revoked, effective on the date this order is signed on behalf of the Real Estate Board.

IT IS FURTHER ORDERED that Daniel K. Mojica pay the costs of this proceeding, as authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code.

IT IS FURTHER ORDERED that the disciplinary hearing scheduled for August 25, 1992 is cancelled.

OPINION

By failing to file an answer, Mr. Mojica is in default, and the charges in the complaint are deemed admitted. No factual issue remains to be determined, and the scheduled hearing in this matter is cancelled.[1]

The Board seeks to take action against Mr. Mojica's license based on his felony convictions for theft. Section 111.321, Wis. Stats. generally prohibits employment discrimination on the basis of conviction record, but sec. 111.335 says "notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license ... any individual who: 1. has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity ...."[2]

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[1]No certified mail receipt was returned showing that Mr. Mojica received notice of the motion hearing, and although he is in default for failure to file an answer, he is not being found in default for failure to appear at the motion hearing. Under sec. RL 2.14, Wis. Admin. Code, the Board may still permit Mr. Mojica to answer and defend himself if he can show good cause for his failure to file an answer.

[2]The Wisconsin Supreme Court has held that an agency need not inquire into the specific facts of a conviction where the "circumstances" of the crime itself are substantially related to the type of employment. See Law Enforce. Stds. Bd. v. Lyndon Station, 101 Wis.2d 472, 305 N.W.2d 89 (1981), Gibson v. Transp. Comm., 106 Wis.2d 22, 315 N.W.2d 346 (1982), County of Milwaukee v. LIRC, 139 Wis.2d 805, 407 N.W.2d 908 (1987). In this case, the facts recited in the criminal complaints, as well as the circumstances of the crimes, are substantially related to the practice of a real estate salesperson.

The Board established its case through exhibits 2, 3 and 4, which clearly show that there is a substantial relationship between the facts and circumstances of the offenses of which Mr. Mojica was convicted, and the circumstances of practice as a real estate salesperson. Both of Mr. Mojica's convictions involved taking money by committing a fraud, even though one was charged as theft by fraud and the other as theft. The practice of real estate involves the handling and the processing of significant amounts of money, and the fiduciary duties of a real estate salesperson require persons of unquestionable honesty. Mr. Mojica's actions make professional discipline appropriate.

The purposes of professional discipline as recited by the Wisconsin Supreme Court[3] are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct.

If discipline were to be imposed to help rehabilitate Mr. Mojica, it would have to be such as to make Mr. Mojica aware of the magnitude of his offense, and for that purpose revocation is appropriate, although it is unlikely that any discipline which can be imposed by the Board will have any rehabilitative effect beyond the effect of the sentences he has already received for his criminal convictions. More important in this case is to protect the public and to deter others in the profession from similar conduct, and given offenses of the magnitude involved in this case, the only discipline which will adequately serve both of those purposes is revocation.

An order that Mr. Mojica pay the costs of this proceeding is also appropriate. His conscious criminal actions occasioned this action, and other members of the profession should not have to share in bearing the burden of regulating such "professionals".

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[3]See State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Corry, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976).

Dated August 7, 1992.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-1963

NOTICE OF APPEAL INFORMATION

(Notice f Rights for Reh aring r Judicial Review, the times all w d f r each, and th 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 decisi n. (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 f r judicial review of this decision as provided in section 227.53 of th 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 f r 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 r 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 f 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 September 1, 1992.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST DANIEL K. MOJICA, RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS OF OFFICE OF BOARD LEGAL SERVICES Case No. LS-9206262-REB

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

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

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

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

   a. Administrative Law Judge Expense - John N. Schweitzer
   (No record was kept of this time) $ 0.00

   b. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI 53705
   Record and transcribe 8/6/92 hearing $ 23.10

Total assessable costs for Office of Board Legal Services = $23.10

John N. Schweitzer, Administrative Law Judge

Sworn to and signed before me this 15th day of September, 1992.

Janeen E. Dlewski, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF SERVICE
DANIEL K. MOJICA, RESPONDENT.	:	91 REB 161

Dennie Peteren, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, Division of Enforcement, and that on September 4, 1992 she filed with the Real Estate Board and served the following upon respondent:

1. Affidavit in Support of Motion for Costs

by mailing a true and accurate copy of the above-described document, which is attached hereto, by regular US mail in an envelope properly stamped and addressed to the above-named respondent at:

7513 South 75th Street
Franklin, WI 53132

which address appears in the files and records of the Department of Regulation and Licensing as the respondent's last known address.

Dennie Petersen

Dennie Petersen
Dept. of Regulation and Licensing
Division of Enforcement

Subscribed and sworn to before
me this 4th day of September, 1992.

Notary Public
Dane County, Wisconsin
My Commission is permanent.

dlp

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST DANIEL K. MOJICA, RESPONDENT.	: : : : :	AFFIDAVIT IN SUPPORT OF MOTION FOR COSTS 91 REB 161

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Charles J. Howden, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties he worked as the prosecutor in the above-captioned matter; and

3. That set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of business in the above-captioned matter:

INVESTIGATOR EXPENSE

Date	Activity	Time Spent
09/11/91	Review file and letter	0.5 hour
09/19/91	Phone call/memo	0.5 hour
09/16/91	letter	0.2 hour
10/30/91	letter	0.2 hour
10/30/91	Phone call	0.1 hour
11/05/91	Review response, case summary send to board advisor	1.5 hour
11/13/91	phone call/memo	0.3 hour
11/15/91	letter	0.2 hour
11/26/91	Dictate PIC summary	0.5 hour