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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST

FRED T. HOFSTEDE,
RESPONDENT.

FINAL DECISION AND ORDER
(Case No. LS9306251REB)

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

Fred T. Hofstede
6245 W. Appleton Avenue
Milwaukee, WI 53210

State of Wisconsin
Real Estate Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

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

A hearing in this matter was conducted on December 2, 1993, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Roger R. Hall. Mr. Hofstede appeared in person and by Attorney William J. Connell. The Administrative Law Judge issued a Proposed Decision on January 4, 1994.

Based upon the entire record in this matter, the Real Estate Board makes the following Findings of Fact, Conclusions of Law, and Order as its Final Decision in this matter.

FINDINGS OF FACT

1. Fred T. Hofstede (respondent), 624 5 W. Appleton Ave., Milwaukee, WI 53210, is licensed to practice as a real estate broker by license #11007, originally issued on August 27, 1969. Respondent does business as Hofstede Realty and is the controlling shareholder in Stede

Investments, Inc., 6245 West Appleton Avenue, Milwaukee, Wisconsin 53210.

2. On July 8, 1975, the Real Estate Examining Board issued its Findings of Fact, Conclusions of Law and Order in a disciplinary proceeding captioned *Kassel v. Fred T. Hofstede*, concluding that Mr. Hofstede had engaged in the unauthorized practice of law and had demonstrated incompetency in his handling of a real estate transaction. The board ordered that Mr. Hofstede's license be suspended for a minimum of 30 days.

3. On May 26, 1976, the Real Estate Examining Board issued its Findings of Fact, Conclusions of Law and Order in a disciplinary proceeding captioned *In the Matter of the Individual Real Estate Broker's License of Fred T. Hofstede*, concluding that Mr. Hofstede had demonstrated incompetency and untrustworthiness in his handling of a real estate transaction. The board ordered that Mr. Hofstede's license be revoked for 45 days, and that he be required to rewrite the broker's examination prior to reinstatement.

4. On March 25, 1983, the Real Estate Board issued its Final Decision and Order in a disciplinary proceeding captioned *In the Matter of Disciplinary Proceedings Against Fred T. Hofstede*. The board found that Mr. Hofstede had failed to discover an adverse factor and to disclose that factor to the buyer in a real estate transaction. The board ordered that Mr. Hofstede's license be suspended for 30 days.

5. On November 17, 1987, respondent entered into a residential listing contract with Allyn and Rita Sweet (Sweets) for the sale of their residence at 2505 North 36th Street, Milwaukee, Wisconsin for a listed price of $28,900. Expiration date of the contract was March 17, 1988. No sale occurred during the term of the listing.

6. On March 22, 1988, respondent entered into a new residential listing contract with the Sweets for sale of their north 36th Street property on essentially the same terms and conditions as the initial contract. Expiration date of the new contract was July 22, 1988. No sale occurred during the term of the listing.

7. On August 11, 1988, respondent drafted what was captioned *Mutual Agreement*, by which Danny and Janice Smith (Smiths), potential purchasers of the Sweet residence, agreed to rent the Sweet property for not less than 12 nor more than 18 months with the option to purchase the property at the listed price within 18 months. Monthly payments of $675.00 were to include $375.00 in rent, and $300 to be held in escrow and credited toward the purchase price upon closing. If the Smiths were unable to conclude the sale, one-half of the amount escrowed was to be retained by he sellers, with the balance returned to the buyers. By the terms of the agreement, the Sweets agreed to pay two and one-half points to a lender to help secure a mortgage. Finally, respondent agreed to purchase the property on land contract by August 26, 1988, and to re-convey the property to the Smiths within 18 months.

8. On the following day, August 12, 1988, 21 days following the expiration of the second listing contract, respondent drafted, and the Sweets executed, an Amendment to Listing Contract, in part purporting to extend the expiration date of the March 22, 1988 Listing Contract from July 22, 1988 to August 15, 1988. The amendment attempted to make other changes

consistent with the *Mutual Agreement* executed the previous day, and specified that the land contract conveying the property to respondent was to be executed by August 26, 1988.

9. On September 15, 1988, respondent drafted an *Amendment to the August 11, 1988, Mutual Agreement*, by which the Smith's agreed to purchase the Sweet property for $28,900, and also agreed to permit respondent to purchase the property on land contract for reconveyance to the Smith's within 18 months of the Amendment. Also on that date, respondent drafted, and the Smith's executed, a *Residential Offer to Purchase* by which Stede Investments offered to purchase the Sweet property on land contract for $24,453.67. The offer to purchase specified that the property was on the date of the offer rented by the Smiths subject to the August 11, 1988, *Mutual Agreement*. The offer was executed by respondent for Stede Investments, Inc. An *Amendment to Contract of Sale*, also dated September 15, 1988, specifies "Stede Investments, Inc., agrees to release this land contract if Danny R. Smith and Janice A. Smith secure a loan to purchase said property for $28,000.00. Net proceeds of $24,453.67 will then be due Allyn and Rita Sweet."

10. On September 23, 1988, respondent drafted a Land Contract, by which the Sweets conveyed their property to Stede Investments, Inc. The Land Contract, which was executed by respondent and by the Sweets, made no reference to an outstanding mortgage between the Sweets and Mortgage Associates, Inc., dated August 11, 1970, in the original amount of $22,000. The Land Contract was not authenticated or acknowledged, and was never recorded.

11. The various transactions never closed and, on June 6, 1989, Stede Investments, Inc., filed an Eviction Complaint against the Smiths which ultimately resulted in their eviction from the Sweet property.

12. On December 21, 1987, respondent entered into a *Residential Listing Contract* for the sale of a property located at 5086 North 54th Street, Milwaukee, Wisconsin owned by Clark and Mary Blomquist (Blomquists), at a listed price of $39,900.00. The term of the contract was from December 21, 1987, until April 21, 1988.

13. On February 29, 1988, respondent drafted a *Residential Offer to Purchase*, by which Robert and Debra Szuminski (Szuminskis) offered to purchase the Blomquist property for $39,900.00. The Blomquists accepted the offer on March 2, 1988, and, by the terms of the accepted offer, closing was scheduled for April 22, 1988. The sale contract was contingent on the Szuminskis obtaining a C.H.O.P. first mortgage commitment in the amount of $41,029.00, amortized over 30 years at 9.08% interest per annum.

14. On March 1, 1988, respondent drafted an *Amendment to Contract of Sale* by which the sellers agreed to have the driveway resurfaced to divert rain water away from the house. The amendment was executed by the Blomquists and the Szuminskis.

15. On March 6, 1988, respondent drafted a *Mutual Agreement* by which the Szuminskis, as potential buyers of the property, agreed that the property could be rented to one Gloria Voss for a period between March 6, 1988, and April 22, 1988, or until the Blomquist/Szuminski transaction closed. The agreement was executed by respondent, the

Szuminskis and Ms. Voss. Ms. Voss thereafter moved into the Blomquist property.

16. The Blomquist/Szuminski transaction failed to close on April 22, 1993, based on failure to meet the financing contingency.

17. On May 11, 1988, respondent and Ms. Voss entered into a *Lease Between Owner (Landlord) and the Family (Tenant) Under the City of Milwaukee Rent Assistance Program Section 8 Certificate Program.* Respondent executed the agreement as landlord.

18. On May 25, 1988, respondent entered into a *U.S. Department of Housing and Urban Development Housing Assistance Payment Program for rental payments Contract* providing for rent payments to be made on behalf of Ms. Voss and her family. The contract identifies respondent as the owner, and it was executed by him as owner/agent. Respondent had no ownership interest in the Blomquist property and had no formal agreement with the Blomquists to act as their agent in applying for rent assistance for Ms. Voss.

19. On April 1, 1988, respondent drafted a Residential Offer to Purchase on behalf of William E. and Barbara J. Kamrath for purchase of the Blomquist property. The offer provided for a purchase price of $33,500.00, and was contingent upon the buyers obtaining a C.H.O.P. fixed rate first mortgage commitment in the amount of $34,000.00 amortized over 30 years at 9.08% interest per annum. The offer specified that the property was occupied by a tenant and that the tenant would vacate the premises by April 30, 1988.

20. On April 2, 1988, respondent drafted a Counter-Offer to the Kamrath offer increasing the purchase price from $33,500.00 to 39,700.00, increasing the mortgage amount from $34,000.00 to $38,213.00, and specifying that the sellers would pay the lesser of two and one-half points or $875.00 as a contribution to the buyers' financing. The Counter-Offer was signed by respondent as agent for the owners. Respondent had no formal agreement with the Blomquists to act as their agent in executing the Counter-Offer.

CONCLUSIONS OF LAW

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

2. By drafting the *Mutual Agreement* and *Amendment to Mutual Agreement* providing for rental of the Sweet property to the Smiths pending closing of the sales transaction and for purchase by respondent of the Sweet property on land contract for re-conveyance to the Smiths, respondent has failed to use approved forms, as required by sec. RL 16.04(1), Code, and has engaged in the unlicensed practice of law within the meaning and in violation of sec. RL 24.06, Code. Pursuant to sections RL 16.07 and RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. By drafting what purported to be an amendment to the March 22, 1988, Listing Contract 21 days following the expiration of the contract, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in

violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

4. By drafting the *Mutual Agreement* providing for rental of the Blomquist property to Gloria Voss pending closing of the sales transaction between the Blomquists and the Szuminskis, respondent has failed to use approved forms, as required by sec. RL 16.04(1), Code, and has engaged in the unlicensed practice of law within the meaning and in violation of sec. RL 24.06, Code. Pursuant to sections RL 16.07 and RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

5. By failing to enter into an agency agreement with the Blomquists by which respondent was authorized to execute applications and contracts with the City of Milwaukee Rent Assistance program and the U.S. Department of Housing and Urban Development, respectively, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

6. By failing to enter into an agency agreement with the Blomquists by which respondent was authorized to execute the counter-offer in the Kamrath transaction, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Fred P. Hofstede to practice as a real estate broker in the State of Wisconsin is SUSPENDED for a period of THREE (3) MONTHS, commencing ten days following the date of this Final Decision and Order.

IT IS FURTHER ORDERED, that upon expiration of the suspension ordered herein, the license of Fred P. Hofstede to practice as a broker in the State of Wisconsin shall be LIMITED for a period of at least ONE (1) YEAR. During the period of limitation, Mr. Hofstede may practice real estate only in the capacity of a salesperson under the supervision of another real estate broker. After one year, Mr. Hofstede may petition the board for return to full licensure. Any such petition shall be accompanied by a formal written report from his supervising broker(s) evaluating Mr. Hofstede's practice as a salesperson and certifying that, in the opinion of the supervising broker, Mr. Hofstede has not engaged in any practice inconsistent with the real estate statute or code. Denial by the board of any such petition shall not be considered a denial of licensure so as to entitle Mr. Hofstede to a hearing on the denial under sec. 227.42, Stats.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats., Fred P. Hofstede shall be assessed the costs of this proceeding in the amount of $1000 or the actual costs, whichever is less.

EXPLANATION OF VARIANCE

The Real Estate Board has adopted the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge (ALJ) in their entirety. The board has also accepted the disciplinary recommendation that Mr. Hofstede practice real estate under a limited license for at least one year. However, prior to the granting of such a limited license, the board believes that Mr. Hofstede should be suspended from practice for three months.

The addition of a suspension to the discipline ordered in this case is premised upon the "repeater" aspect of Mr. Hofstede's conduct, in that he has been previously disciplined by the board on three prior occasions, as well as to discourage other licensees from engaging in similar misconduct. See, *State v. MacIntyre*,.41 Wis. 2d 481 (1969); *State v. Aldrich*, 71 Wis. 2d 206 (1976). As noted by the ALJ:

> "...two earlier disciplinary actions, however, bear a striking resemblance to this one. In all three cases (in this proceeding) we see Mr. Hofstede becoming involved in complicated and convoluted real estate transactions in which he is or becomes involved as a party, and in which he attempts to keep deals afloat by stacking one transaction on top of another, with the ultimate .-- and perhaps inevitable -- result that they collapse of their own weight. Contributing to that result is Mr. Hofstede's apparent propensity to create documents which he is unauthorized and probably incompetent to prepare, and to fail to prepare documents which he is both authorized and required to prepare. But absent evil intent, revocation of Mr. Hofstede's license to practice his life-long career for a minimum of five years, as recommended by complainant, seems excessive."

The board agrees with the above analysis, as well as the conclusion that despite Mr. Hofstede's multiple disciplinary sanctions in the past, he is not beyond rehabilitation. It appears that Mr. Hofstede is in need of a period of suspension from practice in order to impress upon him the necessity for avoiding inappropriate practice in the future. A re-entry to practice in the subordinate capacity of a salesperson will also serve to provide Mr. Hofstede with the supervision and guidance needed in order to assure that he is not in a position to engage in misconduct similar to that found in this case for a substantial period of time. A practice setting as a salesperson will also provide him with the benefit of the experience of others in handling difficult and complicated real estate transactions.

In conclusion, a short suspension period, coupled with a limited license upon completion, should serve to adequately protect the public from similar misconduct by Mr. Hofstede in the future.

Dated: February 24, 1994

STATE OF WISCONSIN
REAL ESTATE BOARD

Peter J. Schils
Chairman

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

FEBRUARY 25, 1994

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
FRED T. HOFSTEDE,	:	89 REB 141, 88 REB 292
RESPONDENT.	:	88 REB 482, 89 REB 296

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Roger R. Hall, being duly sworn, deposes and states as follows:

1. That I am 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 I was assigned as a prosecutor in the above-captioned matter; and

3. That set out 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 agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
10/7/92	File review; draft preliminary complaint	4.2
10/14/92	Telephone conference with expert witness; prepare legal services contract; review file	0.8
10/29/92	Conference with Board Advisor	0.2
11/12/92	Conference with Expert Witness/Minter	3.1
12/3/92	Conference with Expert Witness; draft complaint	4.0
2/9/93	Draft Final Decision and Order and Stipulation	2.6
2/26/93	Draft correspondence	0.2
6/9/93	Review file; draft Complaint; draft Notice of Hearing	1.3
8/19/93	Attend prehearing telephone conference; telephone conference with attorney Connell	0.5
9/21/93	Draft Affidavit of Default; Notice of Motion	0.5
9/28/93	Preparation for default hearing	1.5
9/30/93	Preparation for hearing	6.5

10/4/93	Preparation for hearing	1.0
10/5/93	Preparation for hearing; conference with expert witness	6.5
12/1/93	Preparation for hearing	4.3
12/2/93	Attend hearing	2.1

TOTAL HOURS

39.3 Hours

Total attorney expense for 39.3 hours at
$30.00 per hour (based upon average salary and benefits
for Division of Enforcement attorneys) equals: $1,179.00

TOTAL ASSESSABLE COSTS $1,000.00

Roger R. Hall

Roger R. Hall, Attorney

Subscribed and sworn to before me this
16th day of February, 1994.

Notary Public

My Commission is permanent

RH:pw
ATTY-ELG983

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST FRED T. HOFSTEDE, RESPONDENT.	: : : : :	NOTICE OF FILING PROPOSED DECISION LS9306251REB

TO: William J. Connell, Attorney
William J. Connell Law Office
2500 North Mayfair Road
Suite M211
Wauwatosa, WI 53226
Certified P 992 818 984

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

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Real Estate Board by the Administrative Law Judge, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Real Estate Board, Room 281, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before January 19, 1994. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Real Estate Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Real Estate Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 5th day of January, 1994.

Wayne R. Austin
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

FRED T. HOFSTEDE, LS9306251REB

Respondent

PROPOSED DECISION

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

Fred T. Hofstede
6434 West North Avenue
Wauwatosa, WI 53213

State of Wisconsin
Real Estate Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing in this matter was conducted on December 2, 1993, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Roger R. Hall. Mr. Hofstede appeared in person and by Attorney William J. Connell.

Based upon the entire record in this matter, the administrative law judge recommends that the Real Estate Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Fred T. Hofstede (respondent), 6434 West North Avenue, Wauwatosa, Wisconsin 53213, is licensed to practice as a real estate broker by license #11007, originally issued on August 27, 1969. Respondent does business as Hofstede Realty and is the controlling shareholder in Stede Investments, Inc., 6245 West Appleton Avenue, Milwaukee, Wisconsin 53210.

2. On July 8, 1975, the Real Estate Examining Board issued its Findings of Fact, Conclusions of Law and Order in a disciplinary proceeding captioned *Kassel v. Fred T. Hofstede*, concluding that Mr. Hofstede had engaged in the unauthorized practice of law and had demonstrated incompetency in his handling of a real estate transaction. The board ordered that Mr. Hofstede's license be suspended for a minimum of 30 days.

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CONCLUSIONS OF LAW

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

2. By drafting the *Mutual Agreement* and *Amendment to Mutual Agreement* providing for rental of the Sweet property to the Smiths pending closing of the sales transaction and for purchase by respondent of the Sweet property on land contract for re-conveyance to the Smiths, respondent has failed to use approved forms, as required by sec. RL 16.04(1), Code, and has engaged in the unlicensed practice of law within the meaning and in violation of sec. RL 24.06, Code. Pursuant to sections RL 16.07 and RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. By drafting what purported to be an amendment to the March 22, 1988, Listing Contract 21 days following the expiration of the contract, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

4. By drafting the *Mutual Agreement* providing for rental of the Blomquist property to Gloria Voss pending closing of the sales transaction between the

Blomquists and the Szuminskis, respondent has failed to use approved forms, as required by sec. RL 16.04(1), Code, and has engaged in the unlicensed practice of law within the meaning and in violation of sec. RL 24.06, Code. Pursuant to sections RL 16.07 and RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

5. By failing to enter into an agency agreement with the Blomquists by which respondent was authorized to execute applications and contracts with the City of Milwaukee Rent Assistance program and the U.S. Department of Housing and Urban Development, respectively, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

6. By failing to enter into an agency agreement with the Blomquists by which respondent was authorized to execute the counter-offer in the Kamrath transaction, respondent has failed to put into writing commitments regarding transactions, expressing the exact agreement of the parties, in violation of sec. RL 24.08. Pursuant to sec. RL 24.01(3), Code, respondent has therefore demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that, effective 30 days from the date hereof, the license of Fred P. Hofstede to practice as a broker in the State of Wisconsin shall be limited for a period of at least one year. During the period of limitation, Mr. Hofstede may practice real estate only in the capacity of a salesperson under the supervision of another real estate broker. After one year, Mr. Hofstede may petition the board for return to full licensure. Any such petition shall be accompanied by a formal written report from his supervising broker(s) evaluating Mr. Hofstede's practice as a salesperson and certifying that, in the opinion of the supervising broker, Mr. Hofstede has not engaged in any practice inconsistent with the real estate statute or code. Denial by the board of any such petition shall not be considered a denial of licensure so as to entitle Mr. Hofstede to a hearing on the denial under sec. 227.42, Stats.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats., Fred P. Hofstede shall be assessed the costs of this proceeding in the amount of $1000 or the actual costs, whichever is less.

OPINION

Because respondent failed to file an Answer to the Complaint in this matter, complainant's Motion for Default filed on September 24, 1993, was granted by order dated October 6, 1993. By the terms of the Order, presentation of a prima facie case at the hearing would result in issuance of a Proposed Decision based upon the Complaint and other evidence presented by complainant. Accordingly, the Findings of Fact recommended herein are consistent with those presented in the Complaint. Conversely, the Conclusions of Law are not entirely consistent with those contained in the Complaint, but are, rather, only those legal conclusions which are clearly supported by the Findings of Fact. This is appropriate because while default judgment is determinative as to issuable facts, it is not determinative as to conclusions of law. See 47 Am Jur 2d, *Judgments*, §1202; *Williams v. Williams*, 63 Wis. 58, 72 (1885).

Examining the Sweet/Smith transaction, found at Count I, the allegations and the evidence are that Mr. Hofstede drafted legal documents captioned *Mutual Agreement* and *Amendment to Mutual Agreement*, and that these contractual agreements were not on forms approved by the board for use by real estate brokers, in violation of sec. RL 16.04(1), Code. The conclusion also lies that in drafting such non-approved contractual agreements, Mr. Hofstede engaged in the unauthorized practice of law, in violation of sec. RL 24.06, Code. See *State ex rel. Reynolds v. Dinger*, 14 Wis. 2d 193 (1960), where it was found that the use by brokers even of authorized forms constitutes the practice of law, but that use of such forms could be tolerated.

A second violation is demonstrated by the prima facie evidence presented in support of the first Count. Mr. Hofstede drafted what purported to be an amendment to the March 22, 1988, Listing contract approximately 21 days following its expiration. There was therefore no contract in effect to amend, and a violation of the requirement that all agreements be put in writing has therefore also been found.

Finally, the suggested Conclusions of Law include a finding that in having drafted the Mutual Agreement and the amendment thereto, Mr. Hofstede has engaged in "providing services the licensee was not competent to perform." To the extent that he was drafting documents which he was unauthorized by his licensure to prepare, and to the extent that in so doing he engaged in the unauthorized practice of law, it follows that Mr. Hofstede was not -- at least in a licensing sense -- competent to provide that service. The document may constitute evidence that he was incompetent to prepare such a contract in a real sense as well, but it's probably not necessary to pursue that question here.

The Complaint at Count II alleges that Mr. Hofstede's activities in the Blomquist/Szuminski transaction, which involved renting the property to a third party during the pendency of the sale, constituted the unlicensed practice of law, failure to reduce the exact agreement of the parties to writing, misrepresentation of his agency status to the City of Milwaukee and HUD, and providing services which he was not competent to perform. As with Count I, Mr. Hofstede drafted a contractual agreement other than on an approved form, and thereby may be said to have engaged in the practice of law and to have provided a service that he was not competent to perform. Additionally, there is no agency or power-of-attorney agreement in evidence, and it may therefore be concluded that Mr. Hofstede failed to express in writing the exact terms and conditions of the parties in regard to the HUD application. There is not evidence, however, that the Blomquists had not in fact authorized Mr. Hofstede to go forward as their agent in applying to the City of Milwaukee to receive rent subsidy payments. I therefore find no basis for concluding that he was in fact misrepresenting his status as agent for the Blomquists in making such application.

Count III is also concerned with the Blomquist property. After the Szuminski transaction failed to close, Mr. Hofstede drafted a second Offer to Purchase on behalf of the Kamraths. The offer was countered by the sellers by a Counter-offer executed by Mr. Hofstede, as agent for the Blomquists. There is no evidence, however, that any agency or power-of-attorney agreement existed which would have authorized Mr. Hofstede to sign the counter on behalf of the sellers. Accordingly, the recommended conclusion of law is that Mr. Hofstede failed to express in writing the exact agreement of the parties in violation of sec. RL 24.08, Code.

It is thus apparent that with the exception of the misrepresentation charge, all of the suggested Conclusions of Law set forth in the Complaint have found their way into this Proposed Decision. Significantly, however, the recommended violations are not based upon the rather complicated factual circumstances of the transactions involved, but rather on what appear to be innocent, albeit foolish, mistakes made by Mr. Hofstede in attempting to carry them out.

Complainant would seem to attribute some questionable motive to Mr. Hofstede's involving himself and his corporation in the Sweet/Smith transaction as the interim purchaser by land contract of the property while the Smiths accumulated a down payment through their rental of the property. In his closing argument, by which Attorney Connell attempted an explanation of the circumstances of the admitted facts, it was pointed out that the purpose of this aspect of the transaction was to provide some assurance to the sellers that -- one way or the other -- sale of their property had

in fact been accomplished. There is nothing in this record to establish or suggest that Mr. Hofstede's motives in this aspect of the matter were in any way self-serving except to the extent that they were designed to ensure that the transaction ultimately closed. It would appear that the Land Contract drafted by Mr. Hofstede may have been defective in that it made no mention of what may be presumed was an outstanding mortgage, was not authenticated or acknowledged, and was never filed. But because it was neither authenticated nor filed, it must be presumed to be no more than a draft document, and its mere existence does not provide a basis for a finding that some violation of the real estate laws was intended or occurred. The fact that neither the land contract sale to respondent nor the underlying sales transaction between the Sweets and the Smiths closed arouses one's curiosity as to the circumstances leading to that result, but nothing in this record establishes any basis for concluding that failure of the transaction to close was the result of any intentional misconduct by the respondent.

Similarly, there is no evidence that Mr. Hofstede had any evil intent in applying for rent subsidy on behalf of the interim renter of the Blomquist property during the period in which the Blomquist/Szuminski transaction was pending. Nothing suggests that respondent stood to profit by arranging for rent subsidy for the tenant, and it may be inferred that the only persons intended to profit by his activities were the seller and the renter. Again, the transaction fell through, but this was apparently because the Szuminskis were unable to meet the financing contingency rather than because of some act or failure to act by Mr. Hofstede.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee, and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich,* 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre,* 41 Wis. 2d 481 (1968). In attempting to fashion discipline in this case within the context of these objectives, a number of considerations are relevant. The first of these, which bears on the question of rehabilitation, involves the fact that Mr. Hofstede has been disciplined on three occasions in the past. The Wisconsin Supreme Court, in *McIntyre, supra,* has stated that prior discipline is a factor which is required to be taken into consideration in determining appropriate discipline in licensure actions.

In the disciplinary order issued by the board in 1975, it was found that Mr. Hofstede had engaged in the unauthorized practice of law by improperly drafting contracts in a

real estate transaction to which he was a party. The board suspended the license for 30 days. In 1976, the board "revoked" Mr. Hofstede's license for a minimum of 45 days after finding that he had demonstrated untrustworthiness in his participation in a transaction to which he was a party. In 1983, Mr. Hofstede was found to have failed to discover an adverse factor involving a city ordinance requiring that the buyer of residential real estate obtain a certificate of code compliance. His license was suspended for 30 days.

Inasmuch as it was uncontested in the 1985 matter that the existence of the city ordinance was not known, and that it was Mr. Hofstede's employee-salesperson who failed to discover it, respondent's culpability was based primarily on his status as broker-employer. The two earlier disciplinary actions, however, bear a striking resemblance to this one. In all three cases, we see Mr. Hofstede becoming involved in complicated and convoluted real estate transactions in which he is or becomes involved as a party, and in which he attempts to keep deals afloat by stacking one transaction on top of another, with the ultimate -- and perhaps inevitable -- result that they collapse of their own weight. Contributing to that result is Mr. Hofstede's apparent propensity to create documents which he is unauthorized and probably incompetent to prepare, and to fail to prepare documents which he is both authorized and required to prepare. It is not necessary to attribute bad motives to Mr. Hofstede to decide that he must somehow be deterred from continuing in that conduct. But absent evil intent, revocation of Mr. Hofstede's license to practice his life-long career for a minimum of five years, as recommended by complainant, seems excessive.

On the other hand, the fact that this is the fourth disciplinary action against Mr. Hofstede, raises the spectre of incorrigibility in terms of Mr. Hofstede's ability to be rehabilitated. He's passed the broker examination twice, and it must be assumed that at the time in question he knew, for example, that he was not authorized to create non-approved legal documents, and that it was not possible to extend a contract that was no longer in existence. If that assumption is correct, then to require that he participate in a program of remedial education or that he sit for the broker examination a third time would contribute little or nothing to his reformation.

In the last analysis, perhaps the one form of discipline which will provide assurance that Mr. Hofstede will not in the future engage in the kind of "shortcuts" which have characterized his practice in the past is to impose conditions on his license which require that his entire practice is supervised by another broker until such time that he is able to convince the board that he is able and willing to conform his practice to the standards imposed by the real estate statute and code. To limit his license to require

that he practice only as a salesperson for an indefinite period until he is able to make that demonstration should be sufficient to protect the public from what respondent concedes has been some rather slipshod practice. Official notice may be taken of the computer records of this department, which indicate that Mr. Hofstede is the only licensee employed by Hofstede Realty. Compliance with the suggested order may therefore be considerably more than a minor undertaking. Still, it provides an opportunity for Mr. Hofstede to continue in his chosen profession if he is determined to do so.

Finally, the board has discretion under sec. 440.22, Stats., to assess the costs of this proceeding against Mr. Hofstede if it chooses to do so. Because the board may not reinstate or renew a license until assessed costs are paid, imposition of full costs has in some instances had the unintended effect of creating a considerable or even insurmountable barrier to reinstatement or renewal of the license of one who has been disciplined. The evidence is that Mr. Hofstede may fall into that category. As stated above, respondent failed to file an Answer to the Complaint in this matter and complainant's consequent default motion went unopposed; even though the effect of the order granting the motion was loss of respondent's right to defend against the factual allegations of the Complaint. At hearing, it was explained that the reason respondent had failed to mount a full defense to the Complaint was simply because he could not afford to do so. His decision not to defend obviously saved him some money -- at least in the short run. It also, however, saved the state the expenses involved in a full-blown hearing. Based on these considerations, it is deemed appropriate to impose costs sufficient to defray a portion of the costs of investigating and prosecuting this matter, while at the same time keeping those costs at a level which should not act as a bar to Mr. Hofstede's continued licensure. If so, then the department will receive at least some portion of its expenses rather than none at all.

Dated at Madison, Wisconsin this fourth day of January, 1994.

Respectfully submitted,

Wayne R. Austin
Administrative Law Judge

WRA:BDLS2:3977