FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
GEORGE E. SMITH, JR., RESPONDENT.	:	LS9409093REB

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 26 TH day of JANUARY 1995.

Peter J Schils

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LS9409093REB

GEORGE E. SMITH, JR.,

Respondent

PROPOSED DECISION

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

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

George E. Smith
415 South Atwood
Janesville, WI 53545

State of Wisconsin Department of Regulation & Licensing
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53703

A hearing was conducted in the above-captioned matter on December 7, 1994. Applicant appeared in person and without legal counsel. Complainant appeared by Attorney Gerald M. Scanlan. Based on 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. George E. Smith, Jr., 415 South Atwood, Janesville, Wisconsin 53545, is licensed as a real estate broker in Wisconsin by license #25820, granted on June 22, 1981.

2. On or about November 15, 1993, the Wisconsin Supreme Court revoked respondent's license to practice law in Wisconsin In the Matter of Disciplinary Proceedings Against George E. Smith, Jr., Case # 92-0534-D.

3. The Supreme Court's findings of violation included failure to deposit a personal injury client's settlement checks into a trust account, in violation of Supreme Court Rule (SCR) 20:1.15(a); conversion of that client's settlement proceeds to his personal use, in violation of SCR 20:8.4(c); failure to timely deliver those proceeds to the client and to the subrogated party, in violation of SCR 20:1.15(b); misrepresenting the status of the case to the subrogated party, in violation of SCR 20:8.4(c); and failure to cooperate with the Attorneys Board of Professional Responsibility in its investigation, in violation of SCR 22.07(2). The Supreme Court also found that a purported agreement made with another client to provide living quarters for the client was not fair and reasonable to the client and that the terms of the transaction were not adequately transmitted in writing to the client, in violation of SCR 20:1.8(a); and that his conversion of that client's funds and failure to maintain records of the disbursement of those funds violated SCR 20:8.4(c). Finally, the court found that respondent had failed to maintain required trust account records and to produce those records upon request of the Attorneys Board of Professional Responsibility, in violation of SCR 20:1.15(e) and (f).

4. The circumstances of respondent's conduct leading to revocation of his license to practice law in Wisconsin substantially relate to the practice of a real estate broker.

CONCLUSIONS OF LAW

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

2. In having been found by the Wisconsin Supreme Court to have violated sections 20:1.15(a), (b) (e) & (f); 20:1.8(a); 20:8.4(c); and 22.07(2) of the Supreme Court Rules, respondent has violated a law the circumstances of which substantially relate to the practices of a real estate broker, in violation of sec. RL 24.17(1), Code, and, pursuant to sec. RL 24.01(3), Code, respondent has therefore violated sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of George E. Smith, Jr., to practice as a real estate broker in Wisconsin be, and hereby is, revoked, effective 30 days from the date of the Final Decision and Order of the Real Estate Board adopting the terms of this Proposed Decision.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats. the costs of this proceeding are assessed against the respondent.

OPINION

The Code section found to have been violated in this case is sec. RL 24.17(1). Code. That section states in relevant part as follows:

> **RL 24.17 Miscellaneous requirements.** (1) VIOLATIONS OF LAW. Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson. A licensee who has been convicted of a crime, except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which explains the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of real estate broker or salesperson, pursuant to s. 111.335(1)(c), Stats.

While respondent did not directly contend that a violation of Supreme Court Rules is not a violation of law for the purposes of the cited section, he repeatedly argued that violation of those rules is not as serious as a criminal violation. To the extent that there is any question whether Mr. Smith's disbarment came as a result of a "violation of law," however, the legislative history of the Supreme Court Rules clearly establishes that it was. Secs. 256.29 & 256.293, Stats., renumbered to sec. 757.29 & 757.293, Stats., by ch. 187, Laws of 1977, provided various grounds for disbarment, including "to violate the disciplinary rules of the American bar association code of professional responsibility, as adopted by the supreme court." Those sections were repealed by a Supreme Court Order dated December 11, 1979, on the basis that equivalent provisions are contained in the Supreme Court's rules. It would be a little difficult to argue that while a violation of the former statutes would concededly have constituted a violation of law, violation of the Supreme Court Rules, which are deemed by the court to be equivalent to the statutory provisions, is not.

The other requirement for a finding of violation of the cited section is that the violation of law must be substantially related to the practice of a real estate broker. In demonstrating at hearing that such a substantial relationship exists, the prosecutor cited to provisions in the Real Estate Board's rules which parallel the Supreme Court Rules violated. A few examples should suffice to demonstrate the point:

- SCR 20:1.15(a) and sec. RL 18.03, Code (Parallel requirements for attorneys and brokers to deposit client funds into trust accounts.)

- SCR 20:8.4(c) and sec. 452.14(3)(k), Stats. (The former prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; the latter prohibiting conduct which constitutes improper, fraudulent or dishonest dealing.)

- SCR 20:1.8(a) and secs. RL 24.012 & 24.05, Code. (Conflicts of interest prohibited.)

- SCR 20:1.15(e) and sec. RL 18.15, Code (Similar trust fund recordkeeping requirements.)

- SCR 22:07(2) and 452.14(a), Stats. (Both defining as misconduct providing misinformation to the respective boards.)

The similarity between the respective rules of conduct for attorneys and for brokers makes it abundantly clear that conduct which constitutes a violation of the affected Supreme Court Rules is conduct substantially related to the practices of a broker.

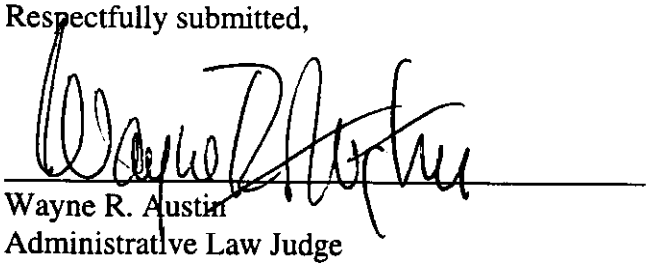
It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee, and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich,* 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968). In determining appropriate discipline in this case, it is significant that the Wisconsin Supreme Court ordered the ultimate sanction in their disciplinary action, stating:

> Attorney Smith's professional misconduct warrants the most severe sanction. He converted client funds to his own use and misrepresented facts in an effort to deprive a subrogated insurer of funds to which it was entitled. In view of the fact that his license was previously revoked for similar professional misconduct, Attorney Smith has again demonstrated that he does not deserve the trust of clients, the courts or the public. *Disciplinary Proceedings Against Smith*, 179 Wis. 2d 508 (1993).

Nor is there any appreciable mitigation here. Mr. Smith spoke at length regarding his good citizenship, and cited to the fact that there have been no real estate citizen complaints filed against him, but those facts are largely irrelevant to the nature of these proceedings. He also alluded a number of times to his contention that the Supreme Court's findings were not accurate and that his conduct in these instances did not result in any harm to any person. However, he failed to produce any mitigating evidence in that regard other than his testimony, which was entirely conclusory in nature. In short, what one is left with is the finding of the Wisconsin Supreme Court, after considering all the evidence in that disciplinary matter, that Mr. Smith "does not deserve the trust of clients. the courts or the public." It is concluded that the substantial relationship between the circumstances underlying the Supereme Court's action and the practice of a real estate broker compels a similar finding in this case, and that the disciplinary objectives cited above therefore require nothing less than the revocation of Mr. Smith's brokers license.

Dated this 28th day of December, 1994.

Respectfully submitted,



Wayne R. Austin
Administrative Law Judge

WRA:9412072

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:

THE 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 1, 1995

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.)

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LS9409093REB

GEORGE E. SMITH,

Respondent

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

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. Unless otherwise noted, all times commence at the start of the first five minute period following actual start of the activity, and terminate at the start of the first five minute period prior to the actual end of the activity.

ADMINISTRATIVE LAW JUDGE EXPENSE
Wayne R. Austin

DATE & TIME SPENT	ACTIVITY
10/19/94 10 minutes	Conduct prehearing conference

10/19/94 10 minutes	Draft memorandum of prehearing conference
12/7/94 51 minutes	Conduct hearing
12/27-28/94 3 hours (one-half the estimated actual time expended)	Prepare Proposed Decision

Total administrative law judge expense for Wayne R. Austin:
4 hours, 11 minutes @ $44.55, salary and benefits:.....$186.36

REPORTER EXPENSE -- PAMELA HAACK

DATE & TIME SPENT	ACTIVITY
12/7/94 51 minutes	Record hearing

Total reporter expense for Pamela A. Haack
51 minutes @ $19.41, salary and benefits.....$16.50

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $202.86

Wayne R. Austin
Administrative Law Judge

Sworn to and subscribed before me this 20th day of February, 1995.

James E. Polewski
Notary Public, State of Wisconsin
My commission is permanent

WRA:9502144.doc

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
GEORGE E. SMITH, JR., RESPONDENT.	:	92 REB 259

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Gerald M. Scanlan, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am 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.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
8/19/94	Review file	2 hours
8/22/94	Draft complaint	2 hours
8/25/94	Finalize complaint	1 hour
8/30/94	File complaint	15 minutes
10/19/94	Prehearing conference	15 minutes
12/5/94	Prepare for hearing	1 hour
12/6/94	Prepare for hearing	1 hour
12/7/94	Prepare for and conduct hearing	3 hours

TOTAL HOURS 10 Hours 30 Min.

Total attorney expense for 10 hours and 30 minutes at $41.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: $430.50

INVESTIGATOR EXPENSE FOR CANDACE O. BLOEDOW

Date	Activity	Time Spent
8/13/92	Phone call with Clerk's office	.08 hours
8/17/93	File reviewed	.50 hours
9/25/93	Conference with auditor	.50 hours
10/21/93	File reviewed, letter	1.0 hours
12/8/93	Phone call with respondent	.08 hours
12/8/93	Phone call with Clerk's office	.09 hours
7/12/93	Phone call with Clerk's office	.08 hours
7/30/93	Letter to Advisor	.50 hours
11/15/93	Phone call with Clerk's office	.08 hours
11/17/93	Conference and letter to Advisor	.50 hours
11/18/93	Phone call with Clerk's office	.09 hours
11/18/93	Case summary typed, case PIC'd	.75 hours

TOTAL HOURS 4 Hours 15 Min.

Total investigator expense for 4 hours and 15 minutes at $20.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: $85.00

TOTAL ASSESSABLE COSTS $515.50

Gerald M. Scanlan

Gerald M. Scanlan, Attorney
Division of Enforcement

Subscribed and sworn to before me this
16th day of February, 1995.

Notary Public

My Commission

GMS:lmf
DOE-BLG1232