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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
LINDA A. LEAF, J.D., RESPONDENT.	:	LS9503161REB

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 25th day of APRIL 1996.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LINDA A. LEAF, J.D. LS9503161REB

Respondent

PROPOSED DECISION

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

Linda A. Leaf
Attorney at Law
4920F South 19th Street
Milwaukee, WI 53221

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

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

A hearing in this matter was conducted on December 12, 1995. The respondent, Linda A. Leaf, appeared pro se. The complainant appeared by Attorney Charles J. Howden, Division of Enforcement. Written closing arguments were prepared, the last of these being received on March 6, 1996.

Based upon the entire record of 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. Linda A. Leaf, J.D. (Ms. Leaf), 4920F South 19th Street, Milwaukee, WI 53221, born on August 26, 1950, is licensed as a real estate broker in Wisconsin by License #16015, granted on March 14, 1977.

2. On or about October 16, 1991, Ms. Leaf, who is an attorney, was disciplined by the Wisconsin Supreme Court in a case captioned *In the Matter of Disciplinary Proceedings Against Linda A. Leaf, Attorney at Law*, 164 Wis. 2d 458, 476 N.W. 2d 13 (1991). The Supreme Court adopted the findings and conclusions of law recommended by the referee and suspended Ms. Leaf's license to practice law for six months. Because Ms. Leaf had, at the time of the hearing herein, failed to pay the costs assessed by the Court, the license had not been restored.

3. Findings adopted by the Court included the following:

> (a) The actions of Attorney Leaf after entering into an attorney-client relationship with clients . . . and then entering into direct and indirect business relationships with these clients during the course of the representation constitute a conflict of interest in violation of SCR 20.24(1) and 20.28(1).
>
> (b) The actions of Attorney Leaf in permitting, condoning, encouraging and supporting Haynes in his activities with her clients constitute aiding or allowing a non-lawyer to engage in the unauthorized practice of law in violation of SCR 20.18(1).
>
> (c) The false representations of Leaf concerning Haynes' status as a non-employee of the Leaf Law Office constitute misrepresentation to the Board of Attorneys Professional Responsibility during the course of an investigation in violation of SCR 22.07.
>
> (d) On July 14, 1986, respondent signed and filed an affidavit in opposition to the motion to disqualify her. In that affidavit Linda Leaf stated that she did not arrange for [a client] to room with [another client], never discussed with or counseled [one of the clients] on sexual matters and never discussed [that client's] personal history. . . . The information contained in the affidavit of Linda Leaf filed in the court action was a false affidavit constituting a violation of SCR 20.36(1) and 20.04(4).
>
> (e) The respondent's actions [in response to the investigation of the Board of Attorneys Professional Responsibility] constitute failure to cooperate with the investigation of the Board and the Board's Committee in violation of SCR 21.03, SCR 22.07(2), and SCR 22.07(3).

4. The circumstances of the disciplinary findings made by the Wisconsin Supreme Court in *the Matter of the Disciplinary Proceedings Against Linda Leaf, Attorney at Law*, are substantially related to the circumstances of the practices of a real estate broker.

CONCLUSIONS OF LAW

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

2. The circumstances of the disciplinary findings made by the Wisconsin Supreme Court in *the Matter of the Disciplinary Proceedings Against Linda Leaf, Attorney at Law*, are substantially related to the circumstances of the practices of a real estate broker.

3. Violation of the Supreme Court's Code of Professional Responsibility, as found by the Court in *the Matter of the Disciplinary Proceedings Against Linda Leaf, Attorney at Law*, constitutes a violation of law the circumstances of which substantially relate to the practices of a real estate broker within the meaning of sec. RL 24.17, Code.

4. In having violated a law the circumstances of which substantially relate to the practices of a real estate broker in violation of sec. RL 24.17, Code, respondent has, pursuant to sec. RL 24.01(3), Code, 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 Linda A. Leaf to practice as a real estate broker in the State of Wisconsin be, and hereby is, suspended for a period of six months from the date of the 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 Ms. Leaf.

OPINION

Ms. Leaf has suggested that the question whether the circumstances of her discipline by the Supreme Court are or are not substantially related to the circumstances of the practice of real estate is a mixed question of law and fact. In her closing argument, she states in part as follows:

> [The Division of Enforcement] claims . . . that notions of standard of proof do not apply because the substantial relationship test is a question of law not fact. . . . [T]he test is whether there is a substantial relationship, not whether there is any kind of relationship. Therefore, the particular circumstances of an alleged violation can not be ignored, and the burden of proof is on DOE to prove that those particular circumstances have a substantial relationship to the practice of real estate. A determination of the applicable "particular circumstances" is a question of fact since it entails an examination of the facts. (Respondent's *Brief*, pp. 17-18)

Respondent is right that the determination whether the circumstances of misconduct in the context of one activity is substantially related to the circumstances of another activity involves examination of both factual and legal issues. She is not correct, however, in terms of the facts to

be examined. In her brief, after describing and defending the activity out of which the attorney discipline action arose, she states:

> Even though all of the above facts are contained in the Leaf attorney disciplinary record, are uncontroverted by any evidence, and many are mentioned in the Leaf disciplinary decision upon which DOE relies, DOE refused to allow Leaf to present evidence of these facts citing collateral estoppel and irrelevancy. Rather than apply the substantial relationship test to the above undisputed circumstances which form the basis of Leaf's misconduct violations, DOE prefers to use broad, general terminology, such as failure to cooperate, misrepresentation to a court, conflict of interest, etc. Misleading appellations are manipulated by those who use obfuscation to conceal the truth found in the details. (Respondent's *Brief*, pp. 10-11)

The contention by respondent that the Real Estate Board must examine the underlying activity which led to the Supreme Court's findings of fact rather than the court's findings themselves is contrary to the manner in which the Supreme Court has determined that the inquiry as to substantial relationship is to be made. In *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 (1987), the Court described the test for determining whether a substantial relationship exists as follows:

> We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *County of Milwaukee, supra, at 824.*

Accordingly, the test whether the circumstances of respondent's conduct are substantially related to the practice of real estate do not depend, for example, on the manner in which the Board of Attorneys Professional Responsibility conducted its investigation, it is whether the finding that respondent failed to cooperate with the board in its investigation is so related. The test does not, for further example, depend on a determination of the specific conduct by respondent's associate, Andrew Haynes, which gave rise to the allegation that respondent aided the unauthorized practice of law by Mr. Haynes, it is whether the finding that she in fact aided in the unauthorized practice of law is so related. In short, the inquiry here is not to determine the details of the conduct which led to the allegations that respondent violated the supreme court's disciplinary rules, it is whether the findings of the Supreme Court describe tendencies and inclinations which may appear in the related context of the practice of real estate. Stated somewhat differently, if the kind of conduct found by the supreme court to have occurred in respondent's practice of law also occurred in respondent's practice as a real estate broker, would such conduct violate the Real Estate Board's statutes and rules? Stated still another way, are the circumstances of respondent's discipline by

the Supreme Court substantially related to the circumstances of the practice of a real estate broker?[1]

The answer to that question is that the circumstances of the Supreme Court's discipline are not merely substantially related to the circumstances of the practice of real estate, they are intimately related thereto. As pointed out in *Complainant's Brief*, The Supreme Court found that respondent had entered into relationships with clients and that such relationships constituted conflicts of interest; Secs. RL 24.025, RL 24.03(2)(b) and RL 24.05, Code, prohibit conflicts of interest in the practice of real estate. The Court found that respondent has engaged in aiding or allowing the unauthorized practice of law; Sec. RL 24.06(1), Code, prohibits brokers from engaging in activities that constitute the unauthorized practice of law. The Court found that respondent had made misrepresentations to the Board of Attorneys Professional Responsibility and that respondent had failed to cooperate with the investigation of the Board; Sec. 452.14(3)(a), Stats., defines as misconduct any material misstatement in information provided by a broker to the department or the board. The Court found that respondent had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; Sec. 452.14(3)(k), Stats., prohibits conduct by a broker constituting improper, fraudulent or dishonest dealing.

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 real estate broker.[2]

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

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[1] Ms. Leaf's argument that the factual findings addressed in the substantial relationship determination must be made based upon the underlying conduct, rather than upon the findings of fact made by the court, leads her to also argue that any such findings must be based upon clear and convincing evidence, which was the burden of proof required in disciplinary proceedings before licensing boards at the time of at least part of the conduct in question. Because that premise is incorrect -- that is, because the operative findings of fact are those made by the Supreme Court -- the necessary burden is that in place at the time of the Supreme Court's decision, which was, under sec. 440.20(3), Stats., proof by a preponderance of the evidence In this case, of course, the question of burden of proof is irrelevant, for the findings made by the Supreme Court in Ms. leaf's attorney discipline action are not in dispute.

[2] 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. To the extent that there is any question whether the Supreme Court disciplinary action 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.

appropriate discipline in this case, the Supreme Court's comments on the perceived seriousness of Ms. Leaf's conduct are relevant:

> Attorney Leaf's professional misconduct is serious and warrants a sanction of commensurate severity. The close ties she maintained between her law practice and a nonlawyer's conduct of a business unrelated to the law created the potential, if not the actuality, of taking advantage of those who sought her advice and counsel as a legal practitioner. That she used misrepresentation, not only to clients but also to a court and the Board, to disguise that connection exacerbates the gravity of her misconduct. Further, by appearing on behalf of a person opposed to a former client while in a position to use against her information gained in the course of the prior representation, Attorney Leaf has demonstrated a failure to appreciate the need for an attorney to avoid acting in the presence of a conflict of interest. *Disciplinary Proceedings Against Leaf,* 164 Wis. 2d 458 (1991) at 470.

The undersigned would not presume to question the appropriateness of the Wisconsin Supreme Court's determination of appropriate discipline to be imposed in the attorney discipline action. And inasmuch as this proceeding derives from that action, it seems more than appropriate that the Real Estate Board impose similar discipline. It also seems appropriate to impose costs, as did the Supreme Court.

Dated this 5th day of April, 1996.

Respectfully submitted,

Wayne R. Austin
Administrative Law Judge

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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:

April 26, 1996

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.)

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LS9503161REB

LINDA A. LEAF, J.D.,

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 for the preparation of documents reflect the actual document preparation and editing time as reflected in the statistical summary program included with Microsoft Word for Windows Version 6.0. All times for conferences and hearings are the actual time from the commencement to the termination of the activity.

ADMINISTRATIVE LAW JUDGE EXPENSE
Wayne R. Austin

DATE & TIME SPENT	ACTIVITY
6/9/95 & 6/29/95 25 minutes	Draft Prehearing Notice & Memorandum of Prehearing Conference

9/7/95 2 hours, 26 minutes	Draft Motion Order
12/12/95 3 hours, 7 minutes	Conduct Hearing
4/5/96 7 hours, 49 minutes	Prepare Proposed Decision

Total Time Spent.....13 hours, 47 minutes

Total administrative law judge expense for Wayne R. Austin:
13 hours, 47 minutes @ $43.55, salary and benefits:.....$600.26

REPORTER EXPENSE
Magne-Script

DATE & TIME SPENT	ACTIVITY
12/12/95 3 hours, 7 minutes	Record hearing

Total billing from Magne-Script reporting
service (Invoice #9449, dated 1/2/96):.....$444.60

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $1044.86

Wayne R. Austin
Administrative Law Judge

Sworn to and subscribed before me this 6th day of June, 1996.

Notary Public, State of Wisconsin
My commission is permanent

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST LINDA A LEAF, RESPONDENT	: : : : : :	AFFIDAVIT IN SUPPORT OF MOTION FOR COSTS LS 9503161 REB

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 a 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:

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
2/9/95	Drafting of Stipulation, correspondence and review	2.5 hours
2/14/95	Final drafts	0.8 hours
3/13/95	Drafting of complaint and Notice of Hearing.	1.5 hours
4/5/95	Receipt and review the Answer	0.25 hours
4/10/95	Receipt and review of Interrogatories to Department of Regulation and Licensing receipt from Linda A. Leaf and review of files	2.0 hours

4/24/95	Drafting of complainant's answers and objections to respondent's first set of interrogatories	6.0 hours
5/10/95	Receipt and review of motion to compel discovery and motion to continue hearing	1.25 hours
5/12/95	Receipt and review of second motion for continuance from Linda A. Leaf	0.2 hours
5/15/95	Receipt and review of notice of adjourned hearing from administrative law judge	0.25 hours
5/16/95	Correspondence to administrative law judge	0.8 hours
5/23/95	Motion to substitute administrative law judge receipt from Linda A. Leaf and review of file	1.25 hours
6/6/95	Receipt and review of order granting motion for substitution of administrative law judge	0.2 hours
6/9/95	Receipt and review of notice to pre-hearing conference	0.1 hour
6/29/95	Pre-trial conference	0.3 hours
6/30/95	Receipt and review of memorandum of pre-hearing conference	0.1 hour
7/5/95	Receipt and review of notice of rescheduled hearing	0.1 hour
7/13/95	Correspondence	0.1 hour
7/18/95	Receipt and review of notice of rescheduled hearing	0.1 hour
7/31/95	Receipt and review of respondent's brief and support of motion to compel discovery and review of file and citations relied on by Linda Leaf and the brief	4.5 hours
8/14/95 to 8/17/95	Drafting of motion in limine, brief in support of motion and response to Ms. Leaf's motion to compel discovery	8 hours
9/11/95	Receipt and review of motion decision	0.5 hours

9/12/95	Correspondence and drafting of answer to interrogatory #9	0.5 hours
9/31/95	Receipt and review of numerous documents from Linda A. Leaf	1.5 hours
12/6/95 to 12/7/95	Preparation for hearing of case on December 12, 1995	2.0 hours
12/12/95	Hearing in Leaf matter	3.0 hours
1/4/96	Receipt and review of hearing transcript	1.0 hour
1/30/96	Drafting of complainant's brief	3.0 hours
1/31/96	Final draft of brief and filing	1.5 hours
3/6/96	Receipt and review of respondent's brief	1:25 hours
4/8/96	Receipt and review of proposed decision	0.5 hours
5/2/96	Preparation of Affidavit regarding costs	0.5 hours
TOTAL TIME		45.55 hours
TOTAL ATTORNEY TIME x $41.00 per hour equals:		$1,867.55
TOTAL ASSESSABLE COSTS equals:		**$1,867.55**

Charles J. Howden

Subscribed and sworn to before me
this 3rd day of May, 1996.

James E Polewski
Notary Public
My Commission is Permanent

CJH:dab
ATY-HLG2213