

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
ROBERT F. HAMMEN, JR.,	:	LS9202103REB
RESPONDENT.	:	

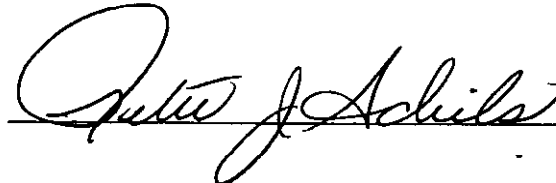
The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

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

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

Dated this 25TH day of JUNE, 1992.

  
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(04)

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

ROBERT F. HAMMEN, JR.,

LS9202103REB

Respondent

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PROPOSED DECISION

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

Robert F. Hammen, Jr.  
11732 North Vega 79W  
Mequon, WI 53092

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

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

A hearing was conducted in the above-captioned matter commencing at 10:00 a.m., on May 5, 1992, in Room 133, at 1400 East Washington Avenue, Madison, Wisconsin. Complainant appeared by Attorney Charles J. Howden. Mr. Hammen did not appear nor did anyone appear purporting to represent him. Based on Mr. Hammen's failure to appear, the Administrative Law Judge (ALJ) granted Mr. Howden's motion for default under Wis. Adm. Code sec. RL 2.14, and Mr. Howden thereafter introduced prima facie evidence of the matters alleged.

On May 6, 1992, the ALJ received Mr. Hammen's letter dated May 4, 1992, requesting that certain information be made a part of the record herein. This information addresses both the procedural aspects of this matter and the merits of the federal

criminal prosecution underlying the Complaint in this matter. By letter dated May 19, 1992, Mr. Howden responded to the representations made by Mr. Hammen, and objected to including in the record of the matter Mr. Hammen's assertions that he is not guilty of the charges brought in the criminal case.

The ALJ has admitted Mr. Hammen's letter into evidence as Exhibit 4, with the exception of paragraph 6 of the letter, which constitutes inadmissible hearsay evidence collaterally attacking the federal conviction. Mr. Howden's May 19, 1992, letter has been admitted as Exhibit 5.

Based on the entire record in this case, the ALJ 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. Robert F. Hammen, Jr. (respondent) 11732 North Vega 79W, Mequon, WI 53092, was at all times material to this matter licensed as a real estate broker in the State of Wisconsin by license #30631, granted on January 5, 1984.

2. On or about June 4, 1991, a criminal indictment was entered in Case 391 CR 147, in the United States District Court for the Eastern District of Wisconsin. The indictment charged respondent with aiding and abetting a scheme to defraud and obtain money by means of false and fraudulent pretenses.

3. On or about December 9, 1991, a "Judgment in a Criminal Case" was entered in Case 391 CR 147, by which respondent was adjudged guilty of aiding and abetting bank fraud, a Class C Felony.

4. The circumstances of respondent's felony conviction for aiding and abetting bank fraud substantially relate to the the practice of a real estate broker.

#### CONCLUSIONS OF LAW

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

2. The circumstances of respondent's felony conviction for aiding and abetting bank fraud substantially relate to the practice of a real estate broker within the meaning of Wis. Stats. sec. 111.335(1)(c) and Wis. Adm. Code sec. RL 24.17.

3. In having been convicted of a felony the circumstances of which substantially relate to the practice of a real estate broker, respondent has violated Wis. Adm. Code sec. RL 24.17(1) and (2) and, pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has therefore demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of Wis. Stats. sec. 452.14(3)(i).

#### ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Robert F. Hammen, Jr., to practice as a real estate broker in Wisconsin be, and hereby is, revoked.

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

#### OPINION

Respondent's Answer in this matter admitted that respondent had been convicted in federal court of aiding and abetting bank fraud.<sup>1</sup> Respondent denies that the federal conviction is substantially related to the practice of real estate and, accordingly, also denies that the conviction violates any provision of the real estate statute or code.<sup>2</sup>

On the issue of whether the conviction is substantially related, the Wisconsin Supreme Court most recently defined the criteria for establishing substantial relationship in *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 (1987). Defendant in that case had been

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<sup>1</sup> At the time of the prehearing conference in this matter on March 21, 1992, respondent had not filed a verified Answer to the Complaint. It was confirmed at the conference that actual service of the Complaint had not been accomplished and, absent objection by complainant's attorney, respondent's oral Answer was received. That Answer is set forth in the Memorandum of Prehearing Conference & Scheduling Order filed by the ALJ on March 31, 1992.

<sup>2</sup> The Complaint in the matter also alleged that respondent had failed to report the conviction to the board within 30 days as required by Wis. Adm. Code sec. RL 24.17. In his oral Answer, respondent raised the affirmative defense that his probation officer had indicated to him that notification to the board of the conviction would be provided as a matter of established procedure. By *Complainant's Trial Memorandum* submitted on April 28, 1992, complainant's attorney notified the ALJ that this allegation would not be pursued, and no evidence or argument on the issue was received.

convicted of homicide by reckless conduct and of neglect of nursing home residents. The court found that in his capacity as nursing home administrator, the defendant had failed to provide for necessary staffing and supplies to avoid patient harm. At the time of conviction, defendant was employed by the County of Milwaukee as a Crisis Intervention Specialist, and he was discharged from employment as a result of the conviction. The Supreme Court overturned the decisions of the Milwaukee Circuit Court and the Court of Appeals by finding that the circumstances of the conviction were substantially related to the circumstances of employment as a crisis intervention specialist.

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 . . . . 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. *139 Wis. 2d at 824.*

A conviction for the crime of aiding and abetting bank fraud under Title 18, sections 2, 1344 and 1346 of the United States Code requires a finding that the defendant intended to defraud a financial institution or to obtain property owned or controlled by a financial institution by means of false or fraudulent pretenses, representations or promises. See *In re Rosenbleet*, 592 A.2d 1036 (D.C. App. 1991). Such intent evinces character traits clearly inconsistent with those required of a real estate broker. Persons engaged in real estate transactions with brokers have the right to expect those brokers to deal with them honestly and ethically. When a broker engages in criminal activity evidencing character traits diametrically opposed to those expected of a broker, it must be concluded that such activity and the criminal conviction arising therefrom are not merely substantially related, but are almost directly related to the circumstances of the practice of a real estate broker. If so, then the conclusion lies that respondent has violated Wis. Adm. Code sec. 24.17(1), which establishes as a violation of the real estate law a violation of a law or conviction of a crime the circumstances of which substantially relate to the practice of a real estate broker; and that under Wis. Adm. Code sec. 24.01(3), respondent has therefore also violated Wis. Stats. sec. 452.14(3)(i).

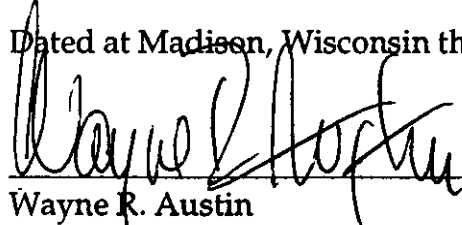
It is well established that the purposes of licensee discipline in Wisconsin are to protect the public, to deter other licensees from engaging in similar conduct, and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969). Because the federal courts' interpretation of the bank fraud law

Robert F. Hammen, Jr.

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requires criminal intent for conviction, and where, as here, the circumstances of the conviction arising from that intentional criminal activity are substantially related to the practice of a broker, serious discipline is required. Respondent is currently appealing the conviction upon which this disciplinary action is based. But unless and until he prevails on appeal or, if he does not prevail on appeal, unless and until he is able to establish his rehabilitation to the satisfaction of the board, the cited disciplinary objectives dictate that respondent be deprived of his license.

Dated at Madison, Wisconsin this 5th day of June, 1992.

A handwritten signature in cursive script, appearing to read "Wayne R. Austin", is written over a horizontal line.

Wayne R. Austin  
Administrative Law Judge

WRA:BDLS2:1845

STATE OF WISCONSIN  
BEFORE THE

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS OF THE
	:	OFFICE OF BOARD LEGAL SERVICES
ROBERT F.HAMMEN, JR.,	:	(Wis. Stats. sec. 440.22)
RESPONDENT	:	

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

<u>DATE &amp; TIME SPENT</u>	<u>ACTIVITY</u>
2/25/92 10 minutes	Draft Prehearing Notice
3/31/92 15 minutes	Draft Prehearing Memo
5/5/92 21 minutes	Conduct Hearing
6/2/92 4 hours, 45 minutes	Prepare Proposed Decision
6/3/92 1 hour, 5 minutes	Prepare Proposed Decision



Total Time Spent.....6 hours 36 minutes

Total administrative law judge expense for Wayne R. Austin:  
6 hours, 36 minutes @ \$33.35, salary and benefits:.....\$220.11

REPORTER EXPENSE  
Magne-Script

DATE &  
TIME SPENT

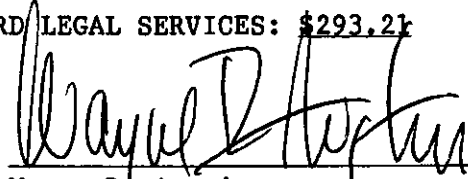
ACTIVITY

5/5/92  
8 minutes

Record hearing

Total billing from Magne-Script reporting  
service (Invoice #5982, dated 5/27/92):.....\$73.10

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: \$293.21



Wayne R. Austin  
Administrative Law Judge

Sworn to and subscribed before me this 5<sup>th</sup> day of June, 1992.

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

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT IN SUPPORT
	:	OF MOTION FOR COSTS
ROBERT F. HAMMEN, JR.,	:	91 REB 181
RESPONDENT.	:	

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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 matters; 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

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
09/10/91	Review file and letter	30 minutes
11/06/91	Review response and file	10 minutes
12/13/91	Phone conference/memo	15 minutes
12/20/91	Review documents, contact Board Advisor, memo and prepare PIC summary	1 hour
12/27/91	Edit summary and complete file for PIC	<u>30 minutes</u>
		2 hrs, 25 min.
	Subtotal (\$18 x 2 hrs, 25 min = \$	43.50)

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
01/15/92	Review file for PIC and draft Stipulation and correspondence	2 hours
01/23/92	Phone conference	.1 hour


01/28/92	Review file	.1 hour
01/29/92	Draft Complaint and Notice of Hearing	.5 hour
02/03/92	Review draft and meet with investigator	.5 hour
02/04/92	File Complaint and arrange time for hearing	.5 hour
02/27/92	Receive and review prehearing Order	.1 hour
03/03/92	Phone conference with Administrative Law Judge regarding postponement of hearing	.1 hour
02/11/92	Receive and review letter from Respondent	.3 hour
03/18/92	Receive and review prehearing notice	.1 hour
03/31/92	Prehearing/phone conference/draft letter and memo	1.25 hours
04/24-28/92	Draft brief and correspondence	4.0 hours
05/04/92	Preparation for hearing	1.0 hour
05/05/92	Hearing	.5 hour
05/19/92	Receive and review correspondence and prepare correspondence	.75 hour
06/12/92	Prepare affidavit regarding cost	.5 hour
06/15/92	Receive and review correspondence re objection and draft correspondence	.75 hour
		13.05 hours

Subtotal (\$30 x 13.05 hrs = \$ 391.50)

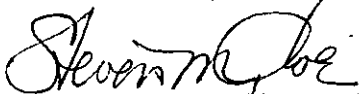
OUT-OF-POCKET COSTS

Clerk, U.S. District Court, Milwaukee, Wisconsin, photocopies and certification	\$ 10.00
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TOTAL ASSESSABLE COSTS	\$ 445.00
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 \_\_\_\_\_  
 Charles J. Howden

Subscribed and sworn to before me  
 this 16<sup>th</sup> day of June, 1992.

  
 \_\_\_\_\_  
 Notary Public  
 My Commission is Permanent.

CJH:kcb  
 ATY2-1987

## NOTICE OF APPEAL INFORMATION

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

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

### 1. Rehearing.

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

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

### 2. Judicial Review.

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

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

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

The date of mailing of this decision is June 26, 1992.