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STATE OF WISCONSIN
BEFORE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
MEREDITH L. SCHOEN,	:	LS0302171REB
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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 26th day of June, 2003.

Richard Kollmansberger
Chairperson
Real Estate Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

MEREDITH L. SCHOEN,

LS0302171REB

Respondent

PROPOSED DECISION

The parties to this proceeding for the purposes of § 227.53 are:

Meredith Schoen
1312 Copeland
Beloit, WI 53511

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

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on February 17, 2003. Respondent failed to answer the Complaint, and failed to appear at prehearing conferences scheduled to be conducted on April 8 and April 24, 2003. Accordingly, the Division filed its Motion for Default Judgment on April 25, 2003.

A Class II hearing was held in the matter on May 14, 2003, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Kelly Cochrane. Ms. Schoen did not appear, nor

did anyone appear to represent her. The Division renewed its Motion for Default, which was granted pursuant to § RL 2.14, Wis. Admin. Code. The Division thereafter presented prima facie evidence of the alleged violations.

Based upon the entire record in this case, 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. Meredith L. Schoen, a/k/a Meredith L. Herd-Schoen, a/k/a Meredith L. Quies, a/k/a Meredith L. Herd, date of birth 08/28/74, was first licensed as a real estate salesperson in the State of Wisconsin, license # 94-50776, on 09/14/99. She is currently licensed in the State of Wisconsin as a real estate broker having license # 90-50666. This license was first granted to her on 05/30/01.

2. Ms. Schoen’s most recent address on file with the Department of Regulation and Licensing is 3202 Midvale #11, Janesville, WI 53545.

3. On or about September 10, 1999, Ms. Schoen submitted an Application for New Salesperson or Broker License form, seeking a real estate salesperson’s license, to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate. Based upon the information provided, the Department granted Ms. Schoen a real estate salesperson’s license on September 14, 1999.

4. At page 2 of the September 10, 1999, Application for New Salesperson or Broker License form, Ms. Schoen responded “Yes” to the following question:

“A. Have you ever been convicted of a misdemeanor or a felony, or driving while intoxicated (DWI), in this or any other state, or are criminal charges or DWI charges currently pending against you?”

5. Because the answer was “Yes” to the question as quoted in paragraph 4 above, Ms. Schoen was required to complete and attach a Form 2252 titled Convictions and Pending Charges to her application. Paragraph 2 of Form 2252 states: “List all felonies, misdemeanors, traffic crimes and other violations of state or federal law of which you have ever been convicted, in this or any other state, whether the conviction resulted from a plea of no contest or a guilty plea or verdict.” In response to this requirement Ms. Schoen listed the following:

<u>Offense Date</u>	<u>Location</u>	<u>Sentence</u>
Operating after revocation	11/97	Rock Co. Guilty. 5yr rev & rest now rein...

6. On or about December 5, 2000, Ms. Schoen was convicted in the State of Wisconsin Circuit Court Branch 4 in Rock County for violating 3 counts of Wis. Statute 943.24(1); Issue of Worthless Checks (less than \$1000). The dates the violations were committed were June 3 and 4, 2000. Sentence was withheld on the conviction and Schoen was placed on 2 years probation.

7. On or about May 29, 2001, Ms. Schoen submitted a second Application for New Salesperson or Broker License form, this time seeking a real estate broker’s license, to the Department of Regulation and Licensing, Bureau of Direct Licensing. Based upon the information provided, the Department granted Ms. Schoen a real estate broker’s license on May 30, 2001

8. At page 2 of the May 29, 2001, Application for New Salesperson or Broker License form, Ms. Schoen responded "Yes" to the following question:

"A. Have you ever been convicted of a misdemeanor or a felony, or driving while intoxicated (DWI), in this or any other state, or are criminal charges currently pending against you?"

9. Because the answer was "Yes" to the question as quoted in paragraph 8 above, Ms. Schoen was required to complete and attach a Form 2252. Paragraph 2 of Form 2252 states: "List all felonies, misdemeanors, traffic crimes and other violations of state or federal law of which you have ever been convicted in this or any other state, whether the conviction resulted from a plea of no contest or a guilty plea or verdict." In response to this requirement Ms. Schoen listed the following:

<u>Offense</u>	<u>Date</u>	<u>Location</u>	<u>Sentence</u>
Worthless checks	98	Rock Co.	Probation

10. At paragraph 8 of the Form 2252 submitted with Ms. Schoen's May 30, 2001, Application for New Salesperson of Broker License, she explains her conviction as follows: "Charges were prior to my sales person's license and have been investigated for that."

11. On or about November 2, 2001, Ms. Schoen was convicted in the State of Wisconsin Circuit Court in Rock County for violating Wis. Statute 943.24(1)-Issue of Worthless Check (less than \$2500). She was sentenced to 5 months in the local jail for this violation, concurrent with 00CM2484, with Huber privileges.

12. Ms. Schoen failed to timely report the above two convictions to the Department within 30 days of the judgment of conviction, as required by Wis. Admin. Code section RL 24.17(1).

CONCLUSIONS OF LAW

1. The real Estate Board has jurisdiction in this matter pursuant to § 452.14, Stats.

2. In having been convicted on December 5, 2000, of 3 counts of violating sec. 943.24(1) Wis. Stats. Issue of Worthless Checks, and in failing to report to the Department of Regulation and Licensing the December 5, 2000, criminal conviction within 30 days of the conviction, Ms. Schoen has violated § RL 24.17(1), Wis. Admin. Code, and § 452.14(3)(i), Stats.

3. In having been convicted on November 2, 2001, of violating sec. 943.24(1) Wis. Stats. Issue of Worthless Check, and in failing to report to the Department of Regulation and Licensing the November 2, 2001, criminal conviction within 30 days of the conviction, Ms. Schoen has violated § RL 24.17(1), Wis. Admin. Code, and § 452.14(3)(i), Stats.

4. In making a material misrepresentation in her May 30, 2001, Application for New Salesperson or Broker License when referring to an alleged 1998 previous conviction, to wit: "Charges were prior to my sales person's license and have been investigated for that.", Ms. Schoen has violated § 452.14(3)(a), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Meredith L. Schoen to practice as a real estate broker be, and hereby is, revoked.

IT IS FURTHER ORDERED that any right to renew the license of Meredith L. Schoen to practice as a real estate salesperson be, and hereby is, revoked.

IT IS FURTHER ORDERED that pursuant to sec. 440.26, Stats., the costs of this proceeding shall be assessed against the respondent.

OPINION

The findings set forth herein are fully supported by the testimonial and documentary evidence provided at hearing and, because respondent failed to answer or to appear for hearing, they are unchallenged. Also because respondent did not appear, there is no mitigating evidence to rationalize respondent's conduct.

Ms. Schoen was convicted on two separate occasions of violating § 943.24(1) of the statutes. That section provides as follows:

(1) Whoever issues any check or other order for the payment of not more than \$2,500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

It would appear that there were five incidents of issuing worthless checks to merchants. The circumstances under which the incidents occurred is unknown, and those circumstances could be important to this matter. Intent to issue a worthless check may be proven in three ways. Section 943.24(3), Stats., states in that regard,

(3) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, intended it should not be paid:

(a) Proof that, at the time of issuance, the person did not have an account with the drawee; or

(b) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order; or

(c) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

The possibility that the checks were dishonored simply because Ms. Schoen's account was overdrawn may not have any significance in terms of the criminal violation found, but it could have significance in this proceeding. Because Ms. Schoen did not answer or appear, however, it cannot be known what the actual circumstances were, and it is necessary to assume that there was actual criminal intent. Accordingly, there is no question but that the circumstances of the convictions substantially relate to the circumstances of the practice of a real

estate broker. Brokers are regularly entrusted with client's money and must be trusted to be honest in safeguarding client resources to which the broker has access.

The other violations found here is Ms. Schoen's failure to notify the department of her criminal convictions, in violation of § RL 24.17(1), Wis. Admin. Code, and her making a material misrepresentation to the department, in violation of § 452.14(3)(a), Stats. Again, Ms. Schoen offered no explanation or evidence in mitigation of these violations, and again, it must therefore be inferred that her actions were intentional and calculated to obstruct and mislead the department. If she is not honest with her licensing authority, it cannot be assumed that she would be any more honest or candid with her clients.

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).

The last reason that it is unfortunate that Ms. Schoen did not appear is that there is no way to gauge whether discipline short of revocation would have a rehabilitative effect, or whether rehabilitation is even a realistic possibility. Moreover, without any evidence in mitigation of these violations, any discipline other than revocation would not sufficiently put other licensees on notice that violations of the kind found here will not be tolerated.

Finally, as to costs, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated this 6th day of June, 2003.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge