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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
ANNE M. O'CONNOR,	:	LS0902182REB
RESPONDENT.	:	

Division of Enforcement Case No. 06 REB 106

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 department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of August, 2009.

Peter A. Sveum
Member
Real Estate Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **ANNE M. O'CONNOR**, Respondent

PROPOSED DECISION AND ORDER
Case No. LS0902182REB

Division of Enforcement Case No. 06 REB 106

The parties to this proceeding for purposes of Wis. Stat § 227.53 are:

Anne M. O'Connor
3764 South Massachusetts Avenue
Milwaukee, WI 53220

Real Estate Board
P. O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing (Department), by

Attorney Angela L. Arrington
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The complaint was filed on February 18, 2009. On March 9, 2009, respondent filed her answer.

Hearing in the matter was held as scheduled on April 29, 2009, at the Department of Regulation and Licensing, Madison, Wisconsin. Appellant appeared *pro se*. The Department appeared by Attorney Angela Arrington.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Anne M. O'Connor, date of birth August 10, 1957, was licensed in the State of Wisconsin as a real estate broker, having license #90-51489. This license was first granted on March 11, 2003, and expired on December 15, 2008. (Complaint ¶ 1; Answer ¶ 1)

2. Ms. O'Connor's last reported address on file with the Department of Regulation and Licensing is: 3764 South Massachusetts Avenue, Milwaukee, Wisconsin 53220. (Complaint ¶ 2; Answer ¶ 2)

3. In November 2003, Ms. O'Connor was charged in Milwaukee County Circuit Court Case No. 03-CF-6174 with one count of armed robbery, use of force, party to a crime. (Ex. 2, p. 1) On June 20, 2005, Ms. O'Connor pled guilty to and was convicted of Endanger Safety/Use/Dangerous Weapon (Party to A Crime), a Class A misdemeanor. (Ex. 1) The Department concedes that the circumstances of the crime do not substantially bear on her fitness to practice real estate. After pleading guilty to this misdemeanor, Ms. O'Connor sought to withdraw her plea. She subsequently withdrew the motion to

withdraw her plea, and on August 12, 2005, sentence was imposed. Her sentence included two years probation. (O'Connor testimony; Exs. 1, 112)

4. Around the time of her conviction in Case No. 03-CF-6174, Ms. O'Connor's attorney, Raymond Dall'Osto, gave her incorrect advice regarding her obligation to report the conviction to the Wisconsin Real Estate Board. Weighing all the evidence, this decision accepts Ms. O'Connor's claim that Attorney Dall'Osto advised her that she was not required to report a misdemeanor conviction for conduct not substantially related to the practice of real estate.

5. Consistent with her understanding of the absence of legal obligation to do so, Ms. O'Connor did not attempt to report her conviction in Case No. 03-CF-6174 to the Real Estate Board until the following March. (O'Connor testimony)

6. In March 2006, Ms. O'Connor was reviewing the Real Estate Board's website. Doing so, she discovered that she had been required to report her conviction from the previous summer. She printed off and filled in Form 2704 and also wrote a cover letter further explaining the conviction. (Ex. 105) On March 20, 2006, she contacted her probation agent to ask that he provide the Board with a statement regarding her adjustment on supervision. (Ex. 6)

7. At a minimum, Ms. O'Connor intended to submit the report of her conviction in March 2006. Weighing the evidence, it seems likely that she mailed the form to the Department. For reasons that cannot be ascertained, her report and cover letter were not formally in-processed by the Department of Regulation and Licensing and may never have been received.

8. Ms. O'Connor's probation agent completed his summary of her adjustment on supervision on or around March 27, 2006. Her probation agent's report was received by the Department on May 3, 2006. (Exs. 2, p. 2, and 6)

9. The receipt of Ms. O'Connor's probation agent's report prompted the Screening Committee to send her a letter dated June 9, 2006. The letter enclosed a copy of her agent's report, which it referred to as a complaint, and asked that she provide "a detailed written response to the allegations contained in the complaint." The same letter was sent to Ms. O'Connor on July 25, 2006, and September 15, 2006, by certified mail. (Ex. 4; *see also* Ex. 103)

10. There is some question as to whether Ms. O'Connor received the copy of the Screening Committee's June 9, 2006, letter when it was re-sent on July 25, 2006. Ms. O'Connor believes she received the letter each of the three times it was mailed to her. Ms. O'Connor testified that after receiving the letter the first time, she called the Department and explained that she had sent in a report of her conviction in March and that the person she spoke with stated he would look for the report. Ms. O'Connor further testified that after receiving the same letter a second and possibly third time, she spoke with the same person at the Department, who told her that her letter had not been located but that she did not need to respond further to the demand for a written response to her agent's report. At the hearing, Ms. O'Connor believed that Investigator Douglas Austin was the person with whom she spoke regarding the June 9, 2006, letter.

11. If Ms. O'Connor called the Department after receiving the June 9, 2006, letter, it is not likely that she spoke with Mr. Austin. Mr. Austin was not assigned to the matter until February 2007. (Austin testimony; Ex. 10). Nevertheless, based on the administrative law judge's assessment of Ms. O'Connor's credibility as a witness and consideration of the circumstances of the case, this decision finds it to be more likely than not that Ms. O'Connor did not ignore the June 9, 2006, letter, or its subsequent re-mailings. This decision finds it to be more likely than not that Ms. O'Connor called the Department after receiving the letter and explained that the "complaint" had been sent by her probation agent at her request, and that she had sent in a completed form 2704 in March. This decision does not make specific findings regarding the Department's representative's response but concludes that Ms. O'Connor believed she had adequately responded to the June 9, 2006, letter.

12. After the June 9, 2006, letter was re-sent on September 15, 2006, no further action was taken by the Department on the matter until February 2007, when it was assigned to Investigator Austin. Mr. Austin communicated with Ms. O'Connor and her attorney in the spring of 2007. (Austin testimony; O'Connor testimony; Ex. 10) Ms. O'Connor was initially unable to locate a copy of the letter and reporting form that she had prepared in March 2006. Under cover of letter dated April 4, 2007, she submitted a new form 2704, as well as a copy of her e-mail to her attorney in April 2006. (Ex. 5). She also asked Probation Agent Ken Bober to provide a memorandum resending his original report and explaining that the

report had been sent at her request. Ms. O'Connor subsequently located and provided to Mr. Austin a copy of the form 2704 that she had filled out the previous spring, which was received by the Department on April 30, 2007. (Ex. 7) Attorney Dall'Osto also wrote to Mr. Austin in late April 2007 on Ms. O'Connor's behalf. (Ex. 8)

13. In late fall 2008, the Department proposed that Ms. O'Connor stipulate to discipline consisting of a reprimand and a forfeiture of \$250. Ms. O'Connor declined this proposal, in part because she believed the stipulated decision incorrectly suggested that she had failed to respond to the Screening Committee's requests for information during the summer of 2006. (O'Connor testimony; Exs. 101 and 104) As noted above, on February 18, 2009, a disciplinary action was commenced by the filing of a complaint.

14. As of the beginning of the hearing, the Division of Enforcement's recoverable costs in this matter totaled \$1,372.

CONCLUSIONS OF LAW

1. Wisconsin Administrative Code § RL 24.17(1) provides:

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 describes 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 a real estate broker or salesperson, pursuant to s. 111.335(1)(c), Stats.

2. Ms. O'Connor's failure to report her conviction in Case No. 03-CF-6174 within 30 days after her sentencing in August 2005 violated Wis. Admin. Code § RL 24.17(1).

3. The fact that Ms. O'Connor failed to timely report her conviction in Case No. 03-CF-6174 because her attorney gave her incorrect advice regarding her duty to report is a factor in mitigation of the violation, but does not mean a violation did not occur. The reporting requirement set out in RL 24.17(1) is clear and unambiguous. An individual holding a state professional license has an obligation to be familiar with the rules governing the practice of his or her profession. A state licensed professional is not excused from this obligation because an attorney provides faulty advice, where there is no legal uncertainty regarding the licensee's obligations.

4. Nevertheless, Ms. O'Connor was not attempting to conceal her conviction and took prompt action to report the conviction once she realized that she had been required to report it. On the facts of the case, the violation does not warrant the imposition of formal discipline.

5. Ms. O'Connor's alleged failure to cooperate in the investigation of her failure to report her conviction was not set out in the complaint as a basis for discipline. Counsel for the Division confirmed that such a failure to cooperate is not itself a violation of the rules of professional conduct. Moreover, while the facts are not wholly clear, this decision concludes that Ms. O'Connor attempted to report her conviction in the spring of 2006, but that for reasons that are not known, was unsuccessful in doing so, and that she did not ignore the Screening Committee's information requests. Accordingly, her conduct was not in aggravation of the original violation.

DISCUSSION

This decision essentially accepts Ms. O'Connor's explanation of the events leading up to the Department's receipt of her probation officer's report of her probation status in May 2006. (Ex. 2, p. 2) Ms. O'Connor appeared truthful and forthright as a witness. She also lacked any real motive to conceal her conviction from the Real Estate Board, since, as counsel for the Department concedes, the conviction did not substantially relate to her ability to engage in the practice of real estate. The advice given by her attorney in the spring of 2006 is consistent with his having given faulty advice the previous summer. Attorney Dall'Osto's April 11, 2006, letter rendered advice regarding Ms. O'Connor's obligation to report her conviction under newly adopted RL 4.09, without mentioning the pre-existing obligation to report under RL 24.17(1). (*See* Ex. 111) Ms. O'Connor's probation officer's memorandum sent in the spring of 2007 confirms that his March 27, 2006, report was sent at her request. (Ex. 102) Her e-mail to her attorney in April 2006 corroborates her claim that she thought she had already reported the violation by that time. (Ex. 5, 4/12/06 e-mail)

This decision therefore accepts Ms. O'Connor's central defense that she attempted to report her conviction as soon as she became aware of the obligation to do so in March 2006.

Why Ms. O'Connor's March 2006 report was never located at the Department remains something of a mystery. It is possible that the report was lost in the mail. It is possible it reached the Department but was not correctly filed. It is possible that Ms. O'Connor intended to mail it and believed she had done so, but in fact had mislaid it or forgotten to send it. There may be other possibilities. This decision does not purport to determine the true explanation for the missing report. The important point is that Ms. O'Connor was attempting to report her conviction and that her failure to do so was not due to any effort at concealment.

What happened following the Department's receipt of Probation Agent Bober's March 27, 2006, report is also not wholly clear. Nevertheless, this decision largely accepts Ms. O'Connor's claim that she was not attempting to avoid the follow-up inquiries triggered by the receipt of her agent's report regarding her probation status. The principal qualification to this conclusion is that it is likely that the individual Ms. O'Connor spoke with after receiving the Screening Committee's June 9, 2006, letter was not Investigator Austin, as she believes. The most likely explanation for her belief that she spoke with Mr. Austin is that with the passage of time, she has confused the identities of the individuals she spoke with regarding the matter.

The reasons for accepting her claim that she called after receiving the June 9, 2006, letter as well as after receiving at least one of the copies of the letter re-sent by certified mail, are similar to the considerations underlying the acceptance of her basic contention that she sought to report the convictions the previous March. As before, she appeared to be a credible witness, both generally and with respect to this aspect of her testimony. She also did not have any real incentive to ignore the Department's inquiries, particularly given that the "complaint" referred to in the Screening Committee's letter was the report her probation agent had sent at her request.

The case therefore boils down to an instance of a licensee failing to report a criminal conviction that did not relate to her ability to practice real estate, in which the failure to report was not due to any intent to conceal the conviction but due to incorrect advice provided by her attorney, and in which the licensee promptly sought to correct the omission upon learning of her obligation to report. In the absence of actual uncertainty regarding a licensee's professional obligations, it is important that licensees be personally responsible for complying with the rules governing their professional conduct, and this decision so holds. However, Ms. O'Connor's lack of intent to conceal, her prompt attempt to report once the obligation became known, and the fact that an attorney advised her that reporting was not required make it unnecessary that formal discipline be imposed. Ms. O'Connor has been required to respond to a formal complaint and to prepare for and attend her hearing. Her violation will be set out in a published decision. Under the circumstance of the case, these consequences constitute a sufficient sanction for her violation.

ORDER

For the reasons set forth above, IT IS ORDERED that the Complaint against Anne M. O'Connor in Case No. LS0902182REB be and hereby is **DISMISSED**.

IT IS FURTHER ORDERED that file 06 REB 106 be and hereby is closed as to Respondent Anne M. O'Connor.

Dated at Madison, Wisconsin on June 1, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Peter C. Anderson
Administrative Law Judge