

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0668
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-454

**IN COURT OF APPEALS
DISTRICT IV**

**RAINBOW AUCTION AND REALTY COMPANY, INC. AND
JON SCHUSTER,**

PETITIONERS-APPELLANTS,

v.

**REAL ESTATE BOARD AND DEPARTMENT OF REGULATION
AND LICENSING (DIVISION OF ENFORCEMENT),**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Jon Schuster and his corporation, Rainbow Auction and Realty Company, Inc., appeal an order which affirmed a disciplinary decision by the Wisconsin Real Estate Board. Schuster and Rainbow claim the

discipline was excessively harsh and unsupported by the evidence and applicable law. We conclude that the board acted within its allowable discretion and therefore affirm.

BACKGROUND

¶2 This is the third appeal before us arising from the same underlying facts. See *Greenlee v. Rainbow Auction/Realty Co.*, 202 Wis. 2d 653, 553 N.W.2d 257 (Ct. App. 1996) (*Greenlee I*), and *Greenlee v. Rainbow Auction/Realty Co.*, 218 Wis. 2d 745, 582 N.W.2d 93 (Ct. App. 1998) (*Greenlee II*). In a nutshell, when he learned that a bank had foreclosed on a property on which a truck stop was located, a businessman named Greenlee undertook to find a buyer for the property, hoping to obtain a commission. Meanwhile, the bank arranged to list the property for sale exclusively with Rainbow. Greenlee found a buyer, and contacted Rainbow's agent John Schuster. Schuster drafted an agreement which purported to separate the foreclosed assets into personal and real property, and to award Greenlee a commission for finding a buyer for the personal property (e.g., restaurant equipment), so long as the closing price for the combined real and personal property exceeded a set figure. This attempted fee-splitting arrangement was found to violate WIS. STAT. § 452.19 (1999-2000),¹ which prohibits a licensed real estate broker from paying a finder's fee to anyone who is not a licensed or registered broker. Schuster and Rainbow were subsequently found to be liable to the bank for its costs incurred in defending against a suit by Greenlee.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶3 Based on these events, and on the additional finding that Schuster knew that Greenlee was not a licensed broker but failed to adequately communicate the significance of that fact to the bank, the Real Estate Board concluded that Schuster's conduct violated several sections of the administrative code. The board also concluded that Schuster had demonstrated incompetency to act as a broker in a manner that safeguards the interests of the public. The board suspended Schuster's real estate license for a period of six months, set certain educational conditions for reinstatement of his license, and ordered Schuster to pay a \$5,000 forfeiture plus half of the \$8,593.49 assessable costs of the proceeding. The board further reprimanded Rainbow, prohibited Rainbow from listing, selling or accepting referral fees for any commercial property during Schuster's suspension, and ordered Rainbow to pay a forfeiture of \$5,000 and the other half of the assessable costs of the proceeding.

ANALYSIS

¶4 Our review of an administrative decision is limited to determining whether the agency exceeded the discretion authorized it by law, or otherwise acted arbitrarily, contrary to the constitution or statutes, or in violation of the agency's own rules or practice. WIS. STAT. § 227.57(8). We cannot substitute our judgment for that of the agency as to the weight of the evidence on any disputed finding of fact, so long as the fact is supported by substantial evidence in the record. Section 227.57(6); *Advance Die Casting Co. v. LIRC*, 154 Wis. 2d 239, 249, 453 N.W.2d 487 (Ct. App. 1989); *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54-55, 330 N.W.2d 169 (1983). Additionally, we accord great weight deference to an agency's legal conclusions whenever: (1) the agency is charged by the legislature with the duty of administering the statute in question; (2) the agency's interpretation of the statute is one of long-standing; (3) the agency

employed its expertise or specialized knowledge in interpreting the statute; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. *See Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 660, 539 N.W.2d 98 (1995). We conclude these conditions are met in this case, and therefore, we will affirm the board's decision so long as it was reasonable, even if it is not the result we might have reached. *See UFE Inc. v. LIRC*, 201 Wis. 2d 274, 287, 548 N.W.2d 57 (1996).

¶5 Schuster concedes, given the prior holdings of this court in *Greenlee I & II*, that his actions violated several administrative rules. He contends in this appeal, however, that the discipline the board imposed was arbitrary because it was unnecessary to achieve the stated objectives of professional discipline, that it was also punitive in nature, more severe than that imposed in less egregious cases, and/or so harsh as to shock the conscience.

¶6 Schuster correctly notes that the objectives of professional discipline include promoting the rehabilitation of the licensee, protecting the public, and deterring others from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). He argues that the punishment imposed by the board was not necessary to meet any of these objectives because he had already paid \$30,000 to compensate the bank for its defense costs, and he had not committed any further infractions in the years since the Greenlee incident had occurred. Therefore, he reasons, the discipline could only have been punitive in nature.

¶7 The board's decision, however, explicitly stated that the educational requirements were necessary to rehabilitate Schuster, and that the suspension, reprimand, and forfeiture were necessary to protect the public and deter other

licensees from similar conduct. We have no reason to doubt the board's statement of its motivation, and we see nothing in the record that would indicate that the board intended to impose discipline merely as punishment. Furthermore, we are satisfied that the record supports the board's conclusion that Schuster was in need of rehabilitation, given that Schuster denied at the disciplinary hearing that he had violated any statutes or administrative rules.

¶8 With regard to the protection of the public and deterrence, the statutes authorize forfeitures of up to \$1,000 for each violation, in addition to reprimands and license suspensions or revocations. WIS. STAT. § 452.14(3) and (4m)(a). It was not unreasonable for the board to conclude that imposition of the maximum forfeitures in this case, in conjunction with a reprimand and six-month license suspension, would deter other brokers from similar attempts to circumvent the fee-splitting rules, thus protecting the public. Schuster's contention that the length of his suspension and the amount of the forfeitures were unduly harsh in relation to other cases amounts to little more than a request for this court to substitute its judgment for that of the board, which we cannot do. *See* WIS. STAT. § 227.57(6).

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

