

**BEFORE THE  
DIVISION OF SECURITIES  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS**

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**IN THE MATTER OF**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
OPINION AND ORDER**

Shirley A. Andersen,

**Respondent**

**File No. S-99150 (LX)**

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Randall E. Schumann, Designated Hearing Officer, presiding. Pursuant to paragraph 3 of the October 27, 1999 Notice of Hearing, these Findings of Fact, Conclusions of Law, Opinion and Order issued by the Designated Hearing Officer in this matter constitute the final Decision of the Division.

Appearances

(and persons considered parties for purposes of judicial review and rehearing)

For the Division of Securities:

David A. Cohen, Supervising Attorney,  
Enforcement Bureau  
DFI Division of Securities  
345 West Washington Avenue  
Madison, WI 53701

Also present: William C. Lloyd  
Staff Attorney  
Enforcement Bureau  
DFI Division of Securities  
345 West Washington Avenue  
Madison, WI 53701

For the Respondent:

Hal Harlowe & Associates, S.C.,  
By Attorney Hal Harlowe  
519 North Pinckney Street  
Madison, WI 53703

Ms. Shirley A. Andersen  
5716 Frusher Lane  
Madison, WI 53711

### Preliminary Matters

Pursuant to an October 27, 1999 Notice of Hearing, accompanied by a Staff Petition For Hearing also dated October 27, 1999, and following an extended period of rulings on various motions involving exchanges of briefs by Counsel for the parties, a hearing was held on February 20, 2001, before the Designated Hearing Officer. The issues for hearing are as set forth in the Issues For Hearing section below, constituting the issues remaining after various rulings made by the Designated Hearing Officer on motions made by Counsel for the parties, as well as after certain issues were withdrawn by the Division Staff at the commencement of the hearing.

An initial Prehearing Conference was held on November 30, 1999, and a Prehearing Memorandum and Scheduling Order was issued on December 3, 1999. A second Prehearing Conference was held on January 6, 2000, and a Second Prehearing Memorandum and Scheduling Order was issued on January 10, 2000.

Following an exchange of briefs relating to Respondent's Motion To Dismiss two (among several) allegations contained in the Division Staff's Petition for Hearing, the Designated Hearing Officer issued a ruling on November 9, 2000 granting Respondent's Motion To Dismiss the Division Staff's allegation (in paragraph 5 of the Petition) that Andersen violated section 551.21, Wis. Stats., by offering and selling unregistered securities in Wisconsin. Respondent's Motion To Dismiss the Division Staff's allegation (in paragraph 7 of the Petition relating to Andersen's actions in effecting securities transactions not recorded on the books and records of her employing broker-dealer constituting "dishonest or unethical business practices") was denied. In the same November 9, 2000 Ruling, the Designated Hearing Officer granted the Division Staff's October 6, 2000 Motion To Amend the Petition for Hearing (which Motion was not objected to by Counsel for Respondent) to add a paragraph referencing the Decision of an Administrative Law Judge for the Office of the Commissioner of Insurance ("OCI") in an insurance license revocation proceeding involving Shirley Andersen, with the Securities Division Staff contending that such OCI Decision provides a separate, additional basis for revocation of Ms. Andersen's securities agent license .

The Division Staff on December 15, 2000, filed a Motion asking the Designated Hearing Officer to reconsider his November 9, 2000 ruling that granted Respondent's Motion to Dismiss the Division Staff's allegation (in paragraph 5 of the Petition) that Andersen violated section 551.21, Wis. Stats., by offering and selling unregistered securities in Wisconsin. Following an exchange of Memoranda of Authority by the parties and oral arguments by Counsel for the parties on January 12, 2001, the Designated Hearing Officer issued a verbal ruling at the conclusion of oral arguments denying the Division Staff's Motion for Reconsideration, which verbal ruling was memorialized on January 18, 2001.

Separately on January 5, 2001, the Division Staff filed a Motion for Summary Judgment with regard to this proceeding. Following an exchange of Memoranda of Authority by the parties and oral argument by Counsel for the parties on February 9, 2001, the Designated Hearing Officer issued a verbal ruling at the conclusion of oral arguments denying the Division Staff's Motion for Summary Judgment, which verbal ruling was memorialized on February 19, 2001.

At the commencement of the hearing, Counsel for the Division Staff made a Motion to withdraw the allegations in the Staff Petition For Hearing relating to Andersen's not reporting certain disciplinary events to the Central Registration Depository, which Motion was granted.

The February 20, 2001 hearing was transcribed by a court reporter. The record consists of: (i) the Division's October 27, 1999 Notice of Hearing, with accompanying Staff Petition For Hearing dated October 27, 1999; (ii) Respondent's Answer dated December 1, 1999 (iii) a December 3, 1999, Prehearing Memorandum and Scheduling Order; (iv) a January 10, 2000, Second Prehearing Memorandum and Scheduling Order; (v) motions, briefs and rulings relating to Respondent's Motions to Dismiss and Division Staff's Motion to Amend; (vi) motions, briefs and rulings relating to the Division Staff's Motion for Summary Judgment; (vii) the transcript of the February 20, 2001 hearing in this proceeding; (viii) the Division Staff's Hearing Exhibits 1 through 12 (which included the two days of OCI hearing transcripts); and (ix) Respondent's Hearing Exhibits A, B-1 to B-96, and C to F.

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Applicable Law

Wisconsin Statutes:

551.34. Denial, suspension and revocation of licenses.

(1)(c) [The licensee] Subject to ss. 111.321, 111.322 and 111.335, has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony.

(1)(g) [The licensee] Has engaged in dishonest or unethical practices in the securities or investment advisory business or has taken unfair advantage of a customer.

(2) The enumeration of the causes stated in sub. (1) shall not be exclusive, and the Division may deny an application or suspend or revoke any license or censure a licensee for any cause whether similar to or different from these causes when necessary or appropriate in the public interest or for the protection of investors.

Wisconsin Administrative Code:

DFI-Sec 4.06 Prohibited Business Practices.

(2) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under s. 551.34(1)(g), Stats., without limiting those terms to the practices specified in this subsection:

(c) Effecting any securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transaction.

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Issues For Hearing

- (1) Whether Respondent Andersen's actions in effecting transactions for the benefit of her Uncle Grover Rainey in the securities of Marlo Investment Trust and of Omega Trust & Trading Ltd. ("Marlo/Omega") that were not recorded on the regular books and records of her employing broker-dealer constitute a "dishonest or unethical business practice" or "taking unfair advantage of a customer" that would provide a basis under section 551.34(1)(g), Wis. Stats., for revocation or other sanction of Respondent Andersen's Wisconsin securities agent license
- (2) Whether Respondent Andersen's March 1, 1999 plea of guilty to misdemeanor theft under section 943.20(1)(b), Wis. Stats., relating to the transactions in the Marlo/Omega securities made for the benefit of her Uncle Grover Rainey provide a basis, pursuant to section 551.34(1)(c) or (2), Wis. Stats., for revocation or other sanction of Respondent Andersen's Wisconsin securities agent license.
- (3) Whether the Decision with Findings and Conclusions issued (as a Proposed Decision dated October 24, 2000, and as a Final Decision dated November 13, 2000) by the Office of the Commissioner of Insurance ("OCI") provide a sufficient basis under section 551.34(2) of the Wisconsin Securities Law for revocation or other sanction of Respondent Andersen's Wisconsin securities agent license.

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Based on the record, the Designated Hearing Officer makes the following:

Findings of Fact

1. Shirley A. Andersen ("Andersen") is an adult individual with a residence address at 5716 Frusher Lane, Madison, Wisconsin, 53711.
2. Andersen initially became licensed as an insurance agent in Wisconsin during 1984, and on February 28, 1994 Anderson became licensed as a securities agent in Wisconsin following passage of the Series 6 and Series 63 securities examinations.
3. Andersen had a long and close family relationship with her Uncle, Grover Rainey ("Rainey"), who resided in Colville, Washington. (PM Tr. 7-9)
4. On October 15, 1993, at Rainey's request, Andersen went to Rainey's attorney's office where Rainey executed a Power of Attorney authorizing Andersen to act on Rainey's behalf. (PM Tr. 13-14, Exhibit B-93)

5. Andersen received no compensation for acting as Rainey's Power of Attorney. (PM Tr. 98)
6. During October of 1993, Andersen sold Rainey three annuities totaling \$94,000. (PM Tr. 10, Exhibit 6a p.4)
7. Omega Trust and Trading, Ltd. ("Marlo/Omega") is a foreign business entity with a last known address at 25604 West Ivanhoe Road, Wauconda, IL, 60084 and 1015 N. Fisk, Suite 7, Brownwood, TX 76801. (Exhibit A)
8. During the end of 1993, Andersen first learned about the Marlo/Omega investment program at gatherings of family and friends. (PM Tr. 13)
9. The Marlo/Omega investment program purported to be a so-called "prime bank" or "bank rollover" offshore bank loan investment program that would generate extraordinary profits from trading "prime bank notes" in foreign banks. Under the program, investors were to receive multiple (up to 50) times their initial investment after 275 days, and where the investments were evidenced by documents titled "private party loan agreements." (Exhibit A)
10. Andersen did not receive information or documentation regarding the subject matter of how the Marlo/Omega business operated, and did not understand the mechanism under which Marlo/Omega could generate such high promised returns to investors. (PM Tr. 82-83)
11. Beginning in 1994 and continuing into 1996, Andersen purchased for her own account the private loan agreement investment instruments ("investment instruments") of Marlo/Omega, and during that same period, her husband and other family relatives purchased Marlo/Omega investment instruments directly for themselves aggregating in excess of \$30,000. (PM Tr. 12, 27, 51)
12. In December, 1994 Anderson in writing asked Rainey whether he was interested in investing in Marlo/Omega investment instruments. Rainey indicated in writing that he was. (Exhibit 11)
13. Beginning in 1994 and continuing into 1996, Andersen exercised her Power of Attorney on Rainey's behalf to purchase Marlo/Omega investment instruments in 18 transactions aggregating approximately \$96,000. (Exhibit B-96)
14. Each purchase of Marlo/Omega investment instruments by Andersen was funded by withdrawals from Rainey's annuities (incurring certain early withdrawal penalties), which withdrawn funds were placed in Andersen's own personal checking account from which she obtained money orders that were then sent to Marlo/Omega to effectuate the purchases pursuant to the procedures specified by Marlo/Omega. (PM Tr.24-25, Exhibit 96)
15. Andersen received no commission or other benefit in connection with Andersen's purchases on Rainey's behalf of the Marlo/Omega investment instruments. (PM Tr. 19)
16. Andersen was provided with acknowledgments from Marlo/Omega regarding the purchases of investment instruments reflecting the amounts purchased on behalf of Rainey. (PM Tr. 25-26)

17. According to the private party loan agreement documents relating to the Marlo/Omega investment instruments for Rainey and Andersen, the promised profit/investment return for Grover Rainey's investment was a 2-times (200 percent) return, and Anderson's was a 50 times return. (PM Tr. 62-63)
18. Andersen did not believe that the Marlo/Omega investment program and related investment instruments involved the sale of securities. (PM Tr. 6)
19. Andersen's purchase on Rainey's behalf of Marlo/Omega investment instruments were not recorded on the regular books and records of Andersen's employer-broker-dealer, Fortis Benefits Insurance Company. (PM Tr. 6)
20. Although Andersen did not receive for distribution to Rainey any return of principal or interest after the 275-day investment periods for any of the investment instrument purchase transactions made for the benefit of Rainey, she continued to invest Rainey's money in subsequent purchases of Marlo/Omega investment instruments. (PM Tr. 75-76)
21. Unknown to Andersen, Marlo/Omega was a fraudulent operation. (PM Tr. 17)
22. Marlo/Omega defrauded thousands of individuals throughout the United States, including Grover Rainey as well as Respondent Andersen, of in excess of \$12 million. The principals of Marlo/Omega were the subject of an extensive federal investigation over an extended period of time, were indicted criminally, were convicted, and are serving sentences in connection with Criminal Case No. 00-20046 for the Central District of Illinois. (Exhibit A)
23. In December 1996, Andersen received a letter from Rainey's attorney that revoked Anderson's Power of Attorney for Rainey, which letter notified Andersen of the name of the person with a new Power of Attorney (Monty LeClaire), and demanded an accounting of the uses of Rainey's money. (Exhibit 5, p.293)
24. Andersen did not notify Marlo/Omega that her Power of Attorney for effectuating transactions on behalf of Rainey had been revoked, and did not notify LeClaire of the Marlo/Omega investments made on behalf of Rainey. (Exhibit 5, p. 311-312)
25. By letter dated June 4, 1997, Marlo/Omega sent to Rainey c/o Andersen, a letter offering to let Rainey have his invested funds back, but Andersen failed to let Rainey or LeClaire know about the letter. (PM Tr. 94-96)
26. On the Marlo/Omega June 4, 1997 letter, Andersen checked off a box which said "I Grover Rainey am satisfied with Omega and definitely do not want to a refund," whereupon Andersen signed the letter as a "witness" and returned it to Marlo/Omega. (PM Tr. 90-96)
27. Based on a complaint filed on behalf of Rainey with the Office of the Commissioner of Insurance ("OCI"), the OCI in 1997 began investigating Andersen's activities conducted on behalf of Rainey.
28. On March 4, 1998, Andersen was charged in Dane County Circuit Court with felony theft from Grover Rainey of an amount equaling the money withdrawn from Rainey's annuity accounts. (Exhibit 1)
29. During the course of that investigation and prosecution, the Dane County prosecutors asserted to Andersen that it was their belief Andersen fabricated the existence of

Marlo/Omega, and because the then-ongoing federal and state investigations of Marlo/Omega were secret, neither Andersen, nor Anderson's then-current attorney, were able to present evidence proving that Marlo/Omega actually existed, and the Dane County prosecutors were not able independently to verify the existence of the Marlo/Omega federal and state investigations. (PM Tr. 41-42)

30. On March 1, 1999, Andersen pled guilty to a charge of misdemeanor theft by bailee (involving an amount less than \$1000) in violation of section 943.20(1)(b), Wis. Stats. Exhibits 2 & 3)
31. Andersen's plea was a as a result of the cumulative effect of the several factors of: (i) not being able to provide documentation to establish the "missing" \$10,000 of Marlo/Omega investments for Rainey's account, (ii) not being able to establish to the Dane County prosecutors the existence of the national Marlo/Omega fraud, (iii) not wanting to subject her Uncle (who had since had a stroke) to be compelled to travel to Madison Wisconsin to testify in a criminal proceeding, and (iv) advice of Andersen's previous attorney representing her during the criminal proceedings that a plea of guilty to misdemeanor theft by bailee would not adversely impact her professional licenses. (PM Tr. 39-42)
32. Thereafter, Andersen became a witness in the development of the Central District of Illinois criminal case involving the Marlo/Omega principals, and Andersen provided information to a grand jury through investigators working with the United States Attorney's Office for the Central District of Illinois. (PM Tr. 43-44)
33. In connection with OCI's investigation, OCI conducted an administrative hearing on March 6 and 7, 2000 following which the Hearing Officer issued a Proposed Decision dated October 24, 2000 containing Findings of Fact and Conclusions of Law that revoked Anderson's insurance agent license, which Decision was made a Final Decision by OCI on November 13, 2000. (Exhibits 6a & 6b)
34. The bases for the OCI Decision relevant to this proceeding were considerations that included:
  - a. Andersen's guilty plea to the misdemeanor criminal charge of theft by bailee;
  - b. Andersen's inability to account for approximately \$10,000 of Grover Rainey's funds led to a conclusion that such funds were used for Anderson's benefit rather than Rainey's;
  - c. Andersen's lack of a reasonable basis to conclude that the Marlo/Omega purchases were suitable investments for Rainey, together with Anderson's signing of documents as Power of Attorney on behalf of Rainey after she was aware that the Power of Attorney had been revoked;

(Exhibit 6a & 6b, Opinion p.8, Conclusions of Law 32, 33, 34)

35. One of the issues at the OCI hearing was the whereabouts of approximately \$10,000 that had been withdrawn from Rainey's annuities but for which there was no corresponding purchase acknowledgements, confirmations or other paperwork evidencing investments on behalf of Rainey with Marlo/Omega in such amount. (Exhibit 6a)
36. At the Hearing in this Division of Securities proceeding, Andersen produced documentation relating to the "missing" \$10,000 in the form of purchase acknowledgments containing Rainey's account number for two separate purchases of Marlo/Omega investments approximating \$11,300 on dates that corresponded with two

separate withdrawals from Rainey's annuities. (Exhibit B p. 9-10, 87-88)

37. Andersen did not find those purchase acknowledgment documents earlier, incident to the Dane County investigation or the OCI investigation, because the documents were misfiled in a box with Anderson's own personal Marlo/Omega investment documents. (PM Tr. 21-23, 71-72)
38. Andersen very seldom had any securities dealings with her customers, but rather dealt almost exclusively in insurance-related products such as universal life and fixed and variable annuities. Anderson's securities agent license was used primarily for sale of variable annuities (PM Tr. 6 & 77)

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#### Conclusions of Law

1. The Marlo/Omega private loan agreement instruments involved in its investment program constitute securities under section 551.02(13)(a), Wis. Stats., and rule DFI-Sec 1.02(6)(a), Wis. Adm. Code.
2. Andersen effected securities transactions relating to the Marlo/Omega investment instruments purchased on behalf of Grover Rainey not recorded on the regular books and records of her broker-dealer employer constituting a "dishonest or unethical business practice" or "taking unfair advantage of a customer," under rule DFI-Sec 4.06(2)(c), Wis. Adm. Code, providing a basis under section 551.34(1)(g), Wis. Stats., for sanctioning Respondent Andersen's Wisconsin securities agent license.
3. On the basis of the documents and other evidence in the record of this proceeding that were not available at the time of Andersen's guilty plea and conviction on March 1, 1999 relating to 1 count of misdemeanor theft by bailee under section 943.20(1)(b), Wis. Stats., such March 1, 1999 plea and conviction is not deemed a basis under section 551.34(1)(c) or (2), Wis. Stats., for sanctioning Respondent Andersen's Wisconsin securities agent license.
4. The Final Decision by the Office of the Commissioner of Insurance containing findings relating to Anderson's lack of a reasonable basis to conclude that the Marlo/Omega purchases were suitable investments for Rainey, and Anderson's signing of documents as Power of Attorney on behalf of Rainey after she was aware the Power of Attorney had been revoked, together with the hearing testimony and documentary evidence on those subjects in the record for this hearing proceeding, constitute sufficient cause under section 551.34(2) of the Wisconsin Securities Law for issuance of a lengthy suspension-sanction of Respondent Andersen's Wisconsin securities agent license.

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#### Opinion

This Division of Securities hearing proceeding was triggered by an investigation conducted by the Wisconsin Office of the Commissioner of Insurance ("OCI"). The OCI investigation resulted in a November 13, 2000 Final Decision (following a two-day hearing in March 2000) that revoked the insurance agent license of Shirley Andersen based on certain violations of the Wisconsin insurance statutes specified in the OCI Final Decision. That OCI proceeding related

essentially to Anderson's activities in dealing with her Uncle Grover Rainey pursuant to a Power of Attorney under which Andersen made a series of investments on behalf of Rainey over a two-year period in what turned out to be an investment fraud of national scope involving thousands of investors throughout the United States and aggregating in excess of \$12 million of investor losses, according to federal prosecutors.

This Division of Securities hearing proceeding was initiated by an Oct. 27, 1999 Notice of Hearing accompanied by a Staff Petition For Hearing setting forth certain specific alleged Securities Law related violations. As set forth in the Preliminary Matters Section above, one area of alleged Securities Law violations (alleging that Andersen offered and sold unregistered securities) was dismissed in a November 9, 2000 ruling granting Respondent's Motion to Dismiss. Separately, at the commencement of the hearing in this matter, Counsel for the Division Staff made a motion (which was granted) to withdraw the allegations relating to Anderson's not reporting certain disciplinary events to the Central Registration Depository.

The remaining two Securities Law-related allegations in the Division Staff's original October 27, 1999 Petition For Hearing contended that: (i) Andersen's March 1, 1999 plea of guilty to misdemeanor theft relating to the transactions in the Marlo/Omega securities that Andersen made for the benefit of her Uncle Grover Rainey provided a basis, pursuant to section 551.34(1)(c) or (2), Wis. Stats., for sanctioning Andersen's Wisconsin securities agent license; and that (ii) Andersen's effectuating of securities transactions on behalf of Grover Rainey that were not recorded on the regular books and records of her broker-dealer employer, constituted a "dishonest or unethical business practice" under securities ruled DFI-Sec 4.06(2), Wis. Adm. Code, and a basis pursuant to section 551.34(1)(g), Wis. Stats for sanctioning Andersen's Wisconsin securities agent license.

Additionally, during the course of this proceeding, the Division Staff's October 6, 2000 Motion To Amend the Petition for Hearing was granted (which motion was not objected to by Counsel for Respondent) to add a paragraph referencing the Decision in the OCI Hearing proceeding which revoked Andersen's insurance agent license, and alleging that such constituted a separate, additional basis under the Wisconsin Securities Law for sanctioning Andersen's securities agent license.

The OCI Final Decision was based on considerations relevant to this proceeding (summarized in my Findings of Fact No. 34 above), which included:

- a. Andersen's guilty plea to the misdemeanor criminal charge of theft by bailee.
- b. Andersen's inability to account for approximately \$10,000 of Grover Rainey's funds in connection with the purchases.
- c. Andersen's lack of a reasonable basis to conclude that the Marlo/Omega purchases were suitable investments for Rainey, together with Anderson's signing of documents as Power of Attorney on behalf of Rainey after she was aware that the Power of Attorney had been revoked.

(Exhibit 6a & 6b, Opinion p.8, Conclusions of Law 32, 33, 34)

Because Anderson's guilty plea was a critical aspect of both the OCI hearing proceeding as well as this Division of Securities hearing proceeding, and because Andersen's inability to account for approximately \$10,000 of Rainey's funds was integral to that guilty plea, this Opinion, following discussion of a couple of background matters, will focus on those aspects first.

Preliminarily, as noted in Findings of Fact No. 2, Andersen initially became licensed as an insurance agent in Wisconsin during 1984, and on February 28, 1994 Anderson became licensed as a securities agent in Wisconsin following passage of the Series 6 and Series 63 securities examinations.

The background of Respondent Andersen's family relationship with her Uncle Grover Rainey and the circumstances giving rise to Anderson's being given the Power of Attorney were extensively described in Anderson's hearing testimony (PM Tr. 7-9 and 14-16). Andersen had a long and close family relationship with her Uncle, Grover Rainey ("Rainey"), a resident of Colville, Washington, who lived alone. Andersen testified that during a family visit she and her mother (Rainey's sister) made to see Rainey in the fall of 1993 (when he was 78 or 79 years old), they discovered that because of his distrust of banks, he had over \$100,000 in cash in a safe at his home. [Later testimony by Andersen (PM Tr. 74) stated that Rainey had other "investable" assets (separate from the 3 annuities referred to in Finding of Fact 13) approximating \$300,000.] Following discussions during that visit involving Andersen, her mother and Rainey regarding the need to have someone take Power of Attorney for Rainey regarding financial matters, although Andersen stated that she preferred her mother to act as Power of Attorney, Andersen's mother and Rainey "outvoted" her. Andersen also later testified that her mother and Rainey felt that Andersen, being the younger person, "would be around longer to keep an eye on things" (PM Tr. 61) Thereupon, on October 15, 1993, at Rainey's request, Andersen went to Rainey's attorney's office where Rainey executed a Power of Attorney authorizing Andersen to act on Rainey's behalf. (PM Tr. 13-14, Exhibit B-93) Shortly after the Power of Attorney was executed, Andersen sold Rainey three annuities totaling \$94,000. (PM Tr. 10, Exhibit 6a p.4) Andersen testified that she received no compensation for acting as Rainey's Power of Attorney. (PM Tr. 98)

The second background matter relates to Marlo/Omega and investments made therein by Andersen, her husband and other family relatives, as well as the Marlo/Omega investments made by Andersen on Rainey's behalf using the Power of Attorney.

As set forth in the Findings of Fact above, the Marlo/Omega investment program purported to be a so-called "prime bank" or "bank rollover" offshore bank loan investment program that would generate extraordinary profits from trading "prime bank notes" in foreign banks. Under the program, investors were to receive multiple times their initial investment after 275 days, and the investments were evidenced by documents titled "private party loan agreements." (Exhibit A) During the end of 1993, Andersen testified that she first learned about the Marlo/Omega investment program at gatherings of family and friends. (PM Tr. 13) Beginning in 1994 and continuing into 1996, Andersen testified that she purchased for her own account the private party loan agreement investment instruments ("investment instruments") of Marlo/Omega, and during that same period, her husband and other family relatives (including Andersen's mother, sisters, brother and son) purchased Marlo/Omega investment instruments directly for themselves, with

the total invested amounts exceeding \$30,000. (PM Tr. 12, 27, 51)

In December, 1994, Anderson in writing asked Rainey whether he was interested in investing in Marlo/Omega investment instruments. Rainey indicated in writing that he was. (Division Staff Exhibit 11, Respondent Exhibit B-94) Beginning in 1994 and continuing into 1996, Andersen exercised her Power of Attorney on Rainey's behalf to purchase Marlo/Omega investment instruments in 18 transactions aggregating approximately \$96,000. (Respondent Exhibit B-96) According to the private loan agreement documents relating to the Marlo/Omega investment instruments for Rainey and Andersen, the promised profit/investment return for Grover Rainey's investment was a 2-times (200 percent) return, and Anderson's was a 50 times return. (PM Tr. 62-63) Each purchase of Marlo/Omega investment instruments by Andersen for the benefit of Rainey was funded by withdrawals from Rainey's annuities (incurring certain withdrawal penalties), which withdrawn funds were placed in Andersen's own personal checking account from which she obtained money orders that were then sent to Marlo/Omega to effectuate the purchases pursuant to the procedures specified by Marlo/Omega. (PM Tr. 24-25, Exhibit 96)) Andersen was provided with acknowledgments from Marlo/Omega regarding the purchases of investment instruments reflecting the amounts purchased on behalf of Rainey. (PM Tr. 25-26)

In contrast to the sales commissions Andersen received in connection with her sale of annuities to Rainey, Andersen testified that she received no commission or other benefit in connection with her purchases on Rainey's behalf of the Marlo/Omega investment instruments. (PM Tr. 19) In that regard, the Division Staff made no allegations that Andersen received any commission or otherwise received compensation in connection with her purchases on Rainey's behalf of the Marlo/Omega investment instruments.

Unknown to Andersen and the other family members and relatives purchasing Marlo/Omega investment instruments at the time, Marlo/Omega was a fraudulent operation. (PM Tr. 17) As later determined by federal prosecutors following an extensive, non-public investigation over an extended period of time by several law enforcement authorities and set forth in a criminal indictment returned on August 18, 2000, in Criminal Case No. 00-20046 for the Central District of Illinois (Exhibit A), Marlo/Omega defrauded thousands of individuals throughout the United States of in excess of \$12 million, and it is my determination that included among those defrauded individuals is Grover Rainey as well as Respondent Andersen and a number of her other relatives. Ultimately, the indicted principals of Marlo/Omega pled guilty, except for two persons who were convicted following trial, and all are serving sentences in connection with that criminal case.

However, those public criminal enforcement developments involving the principals of Marlo/Omega did not occur until well after the investigation conducted by the Dane County District Attorney's Office discussed below that resulted in the criminal charges against Andersen filed in March 1998, and her later guilty plea in March 1999 detailed below.

In December 1996, Andersen received a letter from Rainey's attorney that revoked Anderson's Power of Attorney for Rainey, which letter notified Andersen of the name of the person with a new Power of Attorney, and demanded an accounting of the uses of Rainey's money. (Exhibit 5, p. 293) Based on a complaint filed on behalf of Rainey with the Office of the Commissioner of Insurance, the OCI in 1997 began investigating Andersen's activities conducted on behalf of Rainey. Additionally, Anderson's actions under the Rainey Power of Attorney were the subject of an investigation by the Dane County District Attorney's Office.

As a result of the investigation by the Dane County District Attorney's Office, Andersen was charged on March 4, 1998 in Dane County Circuit Court with felony theft from Grover Rainey of an amount equaling the money withdrawn from Rainey's annuity accounts. (Exhibit 1) Andersen testified at the hearing this proceeding that during the course of the Dane County investigation

and prosecution, the Dane County prosecutors asserted to Andersen that it was their belief Andersen fabricated the existence of Marlo/Omega, and that because the then-ongoing federal and state investigations of Marlo/Omega were secret, neither Andersen, nor Anderson's then-current attorney, were able to present evidence proving that Marlo/Omega actually existed, nor were the Dane County prosecutors able to independently verify the existence of the Marlo/Omega federal and state investigations. (PM Tr. 41-42) On March 1, 1999, Andersen pled guilty to a charge of misdemeanor theft by bailee (involving an amount less than \$1000) in violation of section 943.20(1)(b), Wis. Stats. (Exhibits 2 & 3) Thereafter, Andersen became a witness in the development of the Central District of Illinois criminal case involving the Marlo/Omega principals, and Andersen provided information to a grand jury through investigators working with the United States Attorney's Office for the Central District of Illinois. (PM Tr. 43-44)

Andersen's testimony during the hearing in this proceeding regarding her guilty plea was that even though Andersen knew she had not misappropriated any of her Uncle Grover Rainey's funds, her plea was a as a result of the cumulative effect of the several factors of: (i) not being able to provide documentation to establish the "missing" \$10,000 of Marlo/Omega investments for Rainey's account, (ii) not being able to establish to the Dane County prosecutors the existence of the national Marlo/Omega fraud, (iii) not wanting to subject her Uncle (who had since had a stroke) to be compelled to travel to Madison Wisconsin to testify in a criminal proceeding, and (iv) advice of Andersen's previous attorney representing her during the criminal proceedings that a plea of guilty to misdemeanor theft by bailee would not adversely impact her professional licenses. (PM Tr. 39-42) In view of the background and circumstances of the entire situation, I find Anderson's testimony credible with respect to what she and her counsel (PM Tr.126) in this proceeding have characterized as a "strategic plea" in that criminal matter.

I would speculate that had Andersen been able to produce for the Dane County District Attorney's Office the criminal indictment that subsequently (in August of 2000, approximately 1-1/2 years after Andersen's guilty plea) was issued by federal prosecutors against the principals of Marlo/Omega (Exhibit A), and had Andersen produced the purchase acknowledgment documentation that was subsequently discovered and was produced for the record in this proceeding evidencing the "missing" \$10,000 of Marlo/Omega investments for Rainey's account (Exhibit B p. 9-10, 87-88), there would not have been a March 1, 1999 guilty plea to provide the major basis for the OCI hearing proceeding and this hearing proceeding.

However, timing --as it related to when the criminal enforcement developments involving the principals of Marlo/Omega were made public--was everything. Likewise, timing was everything as it related to being able to produce documentation regarding one of the key issues at the OCI Hearing concerning the whereabouts of the "missing" \$10,000 that had been withdrawn from Rainey's annuities to make Marlo/Omega investments, but for which there was no corresponding purchase acknowledgements, confirmations or other paperwork evidencing investments on behalf of Rainey with Marlo/Omega in such amount. (Exhibit 6a)

At the Hearing in this Division of Securities proceeding, Andersen produced documentation relating to the "missing" \$10,000 in the form of purchase acknowledgments containing Rainey's account number for two separate purchases of Marlo/Omega investments approximating \$11,300 on dates that corresponded with two separate withdrawals from Rainey's annuities. (Exhibit B p. 9-10, 87-88) Andersen testified that she did not find those purchase acknowledgment documents earlier, incident to the Dane County investigation or the OCI investigation, because the documents were misfiled in a box with Anderson's own personal Marlo/Omega investment documents. (PM Tr. 21-23, 71-72) Although Counsel for the Division, during cross-examination of Andersen, questioned the "odd" timing of Andersen's "suddenly" discovering the "missing" acknowledgment documents incident to this proceeding (PM Tr. 71), I find that Anderson's testimony regarding the circumstances of the discovery of the documents to be credible.

Furthermore, it is my view that if Andersen were inclined to "create" the acknowledgment documents, because she had considerably more "at stake" at the time of the prior Dane County District Attorney's Office criminal proceeding and the OCI license revocation proceeding, any such "creativity" would not have waited until this proceeding to be "discovered".

Because it is my view that had Andersen been able to produce and demonstrate to the Dane County prosecutors while they were investigating and prosecuting her case both the Exhibit A documents and related evidence regarding the criminal indictments of the principals of the Marlo/Omega national investment fraud, and the purchase acknowledgment documentation evidencing the "missing" \$10,000 of Marlo/Omega investments for Rainey's account, there would not have been the need for Andersen's "strategic" guilty plea and resulting criminal conviction, and because such documents, exhibits and related hearing testimony have been made a part of the record in this proceeding, it is my determination that Andersen's March 1, 1999 guilty plea to misdemeanor theft by bailee is not a basis for sanctioning her securities agent license--again, based on the record in this proceeding.

With regard to the Division Staff's allegation that the transactions effectuated by Andersen on behalf of Rainey were not reflected on the books and records of Andersen's employing broker-dealer, such was admitted by Andersen during her testimony (PM Tr. 6). Her testimony noted that had such transactions been reflected on her employers books and records, the fraudulent nature of those Marlo/Omega investment instruments probably would have been recognized by persons at her employer/broker-dealer firm. Obviously, such recognition would have saved Andersen, her Uncle Grover Rainey, and her other family members and relatives who made Marlo/Omega investments, immeasurable grief. However, with regard to a basis for sanctioning Andersen's license, although the particular rule that was violated is contained under the "Prohibited Business Practices" section DFI-Sec 4.06 of the securities licensing rules, because that particular rule essentially deals with a books-and-records type matter (as contrasted with the more serious "sales practice"-type rules separately listed under DFI-Sec 4.06), I do not consider the violation of such rule relating to the Rainey transactions to be a basis for license revocation or other significant sanction. Rather, the sanction for violation of the rule on this point is reflected in the duration of the suspension sanction as determined in the following, final portion of this Decision.

The remaining aspects of the OCI decision that provided a basis for OCI's sanction of Andersen's insurance agent license were (as set forth in my Findings of Fact No. 34c. above) Andersen's lack of a reasonable basis to conclude that the Marlo/Omega purchases were suitable investments for Rainey, together with Andersen's signing of documents as Power of Attorney on behalf of Rainey after she was aware that the Power of Attorney had been revoked. These aspects also were a major focus of the testimony and evidence in the record for this proceeding.

With regard to the suitability of using Rainey's annuity funds to make the initial purchases of Marlo/Omega investment instruments for the benefit of Rainey using the Power of Attorney, Andersen acknowledged in her hearing testimony that she did not receive information or documentation regarding the subject matter of how the Marlo/Omega business operated, and did not understand the mechanism under which Marlo/Omega could generate such high promised returns to investors. (PM Tr, 82-83) The OCI Hearing Officer's Opinion noted that Andersen acknowledged in the OCI proceeding having exercised "poor judgment" in making the Marlo/Omega purchases on Rainey's behalf. (Exhibit 6a p. 6) Separately, Andersen testified in this proceeding that she felt "foolish" and "embarrassed" about it. (PM Tr. 17 & 20) Andersen also testified that she did not believe that the Marlo/Omega investment program and related investment instruments involved the sale of securities. (PM Tr, 6)

Separately, with regard to the suitability of additional purchases of Marlo/Omega investment instruments for the benefit of Rainey using the Power of Attorney over approximately a 2-year

period, although Andersen did not receive for distribution to Rainey any return of principal or interest after the 275-day investment periods for any of the investment instrument purchase transactions made for the benefit of Rainey, she continued to invest Rainey's money in subsequent purchases of Marlo/Omega investment instruments. (PM Tr. 75)

On the subject of suitability, the OCI Hearing Officer's Opinion noted that "An insurance agent is called on to make appropriate recommendations as to the purchase of insurance products based on an assessment of the client's circumstances and needs." (Exhibit 6a, p. 7) Similarly, for Wisconsin Uniform Securities Law purposes, the suitability of investment recommendations made for customers is a critical responsibility for a licensed securities agent, and it is the subject of a specific suitability/know-your-customer rule set forth in DFI-Sec 4.06(2)(i). I find that the above-referenced summary of the circumstances relating to Anderson's initial and continuing purchases of Marlo/Omega investment instruments on behalf of Rainey (and as referenced in Findings of Fact 10 and 20) demonstrate a failure by Andersen to meet her suitability responsibilities as a securities agent--even though her dealings on behalf of Rainey were not in a "traditional" securities-agent-dealing-with-a-securities-customer situation--and thus provide a basis for imposing a license suspension sanction as ordered below.

A separate aspect of the series of Marlo/Omega investment instrument purchases during the period 1994 to 1996 by Andersen on Rainey's behalf requires discussion at this point. That aspect relates to Andersen's authority to continue to draw from the annuities over approximately a two-year period to make those Marlo/Omega investments. There was testimony at several points during this hearing on the subject, including with reference to a discussion on page 7 of the OCI Hearing Officer's Decision that Andersen acknowledged in response to a question at the OCI hearing that Rainey's December 1994 authorization to invest in Marlo/Omega instruments did not provide authorization for the subsequent transactions over a two-year period. At the hearing in this proceeding, Andersen testified that she was confused when answering that particular question asked by the OCI Hearing Officer, and that, in fact, Andersen believed that Rainey's December 1994 written authorization also provided authorization for the continuing withdrawals from annuities to make additional Marlo/Omega investments. (PM Tr. 87-89, 101-102) While I find credible Andersen's hearing testimony that she believed she had the authority to make ongoing purchases, such does not excuse the lack of suitability I find to exist (as discussed above) for all of such purchases (initial as well as continuing) of Marlo/Omega investment instruments by Andersen on behalf of Rainey.

The final aspect of Anderson's activities regarding the Marlo/Omega investments on behalf of Rainey as it relates to an appropriate sanction in this matter, was Anderson's signing of certain documents as Power of Attorney on behalf of Rainey after Andersen was aware that the Power of Attorney had been revoked.

In December 1996, Andersen received a letter from Rainey's attorney that revoked Anderson's Power of Attorney for Rainey, which letter notified Andersen of the name of the person with a new Power of Attorney, and demanded an accounting of the uses of Rainey's money. (Exhibit 5, p 293) Andersen did not notify Marlo/Omega that her Power of Attorney for effectuating transactions on behalf of Rainey had been revoked, and did not notify the person with the new Power of Attorney of the Marlo/Omega investments made on behalf of Rainey. (Exhibit 5 p. 311-312) Subsequently, by letter dated June 4, 1997, Marlo/Omega sent to Rainey c/o Andersen, a letter offering to let Rainey have his invested funds back, but Andersen failed to let Rainey or the new person with power of attorney know about the letter. (PM Tr. 94-96) On the Marlo/Omega June 4, 1997 letter, Andersen checked off a box which said "I Grover Rainey am satisfied with Omega and definitely do not want a refund," whereupon Andersen signed the letter as a "witness" and returned it to Marlo/Omega. (PM Tr. 90-96)

Andersen testified that she did not regard her actions in unilaterally rejecting and returning the rescission offer as something that was subject to the Power of Attorney. Rather, she viewed it as "an act of a family member," with a belief that "the money was around the corner." (PM Tr. 91-92, 94-96) As did the OCI Hearing Officer, I find that Anderson's actions in that regard to be totally unjustified, and thus provide a separate basis for imposing a license suspension sanction as ordered below.

Finally, in determining the appropriate sanction in this matter, an additional consideration relates to the non-traditional securities customer context of Anderson's activities involving the Rainey transactions which involved a Power of Attorney situation with one individual, a relative, together with the fact that no other person (whether or not a securities or insurance customer) was involved.

Andersen's hearing testimony stated that she very seldom had any securities dealings with her customers, but rather dealt almost exclusively in insurance-related products such as universal life and fixed and variable annuities. Anderson's securities agent license was used primarily for sale of variable annuities (PM Tr. 6 & 77) [I take judicial notice that variable annuities are securities for federal securities law purposes (although not under the Wisconsin Securities Law), thus the reason for having a securities license.] Andersen testified that she was never the subject of any securities customer complaints or disciplinary actions. (PM Tr. 58) In that regard, I also take judicial notice of Andersen's CRD securities agent database information--which although it reflects the OCI insurance license revocation proceeding--does not disclose any securities-related customer complaints, arbitration proceedings or regulatory disciplinary actions during the time Andersen was licensed as a securities agent. Nor is there any information in the record in this proceeding that there have ever been any securities-related complaints of any nature directed to the Division by any of Andersen's securities customers.

On the basis of the foregoing, while it is my determination that the November 13, 2000 OCI Final Decision sanctioning Andersen's insurance agent license based on findings relating to Anderson's lack of a reasonable basis to conclude that the Marlo/Omega purchases were suitable investments for Rainey, and Anderson's signing of documents as Power of Attorney on behalf of Rainey after she was aware the Power of Attorney had been revoked, together with the hearing testimony and documentary evidence on those subjects in the record for this hearing proceeding, constitute sufficient cause under section 551.34(2) of the Wisconsin Securities Law for sanctioning Respondent Andersen's Wisconsin securities agent license, because I find that those violations are the only substantive bases for sanctioning Andersen's license on the record in this proceeding, and because such violations did not involve Anderson's acting in a "traditional" licensed agent context with any securities customers (but rather involved a family member causing participation by another family member in the same investment arrangement Andersen's entire family was caught up in), it is my determination that a suspension sanction of the duration specified below--rather than a revocation--is warranted in this proceeding.

Additionally, because I view the lack-of-suitability aspect, together with Andersen's failure to recognize that the Marlo/Omega investment instruments were securities, to be a cause for concern from a Securities Law standpoint regarding Anderson's lack of knowledge of important securities law and rule concepts and requirements should Andersen decide in the future to again seek to become licensed as a securities agent in Wisconsin, is my further determination that for the protection of Wisconsin investors, and under the authority accorded in sec. 551.32(4), Wis. Stats., I am imposing a for-cause examination requirement under which, in connection with any future securities license application that may be filed by Shirley A. Andersen under the Wisconsin Uniform Securities Law, the Division shall require that Andersen take and pass an appropriate examination under rule DFI-Sec 4.01(3) as may be determined by the Division's licensing staff.

\* \* \* \* \*

NOW THEREFORE, based on the Findings of Fact and Conclusions of Law in this proceeding,  
IT IS ORDERED THAT:

- (1) The Wisconsin securities agent license of Shirley A. Andersen is suspended for a period of one hundred and twenty (120) days, commencing from the last effective date of her license.
- (2) Under the authority accorded in sec. 551.32(4), Wis. Stats., to impose a for-cause examination requirement in connection with any future securities license application that may be filed by Shirley A. Andersen under the Wisconsin Uniform Securities Law, the Division shall impose for the protection of Wisconsin investors pursuant to sec. 551.32(7), Wis. Stats., in connection with the license application process, a requirement that Andersen take and pass an appropriate examination under rule DFI-Sec 4.01(3) as may be determined by the Division's licensing staff.

DATED at Madison, Wisconsin this 23<sup>rd</sup> day of August, 2002.

  
Randall E. Schumann  
Designated Hearing Officer

#### NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and 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 this Decision: (with copies of the statutes cited)

1. Rehearing. Any person aggrieved by this Decision may petition for a rehearing within 20 days after the service of the Decision, as provided in sec. 227.49, Wis. Stats. A petition for rehearing is not a prerequisite for appeal directly to Circuit Court through a petition for judicial review.

A petition for rehearing must be filed with the Department of Financial Institutions-Division of Securities at the address below.

2. Judicial review. Any person aggrieved by this Decision has a right to petition for judicial review of the Decision as provided in sec. 227.53, Wis. Stats. The petition must be filed in Circuit Court within thirty days after service of this Decision if there has been no petition for rehearing, or within thirty days after service of the Order finally disposing of the Petition for Rehearing, or within thirty days after the final disposition by operation of law of any Petition for Rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Wisconsin Department of Financial Institutions-Division of Securities  
345 West Washington Avenue, 4th Floor, Post Office Box 1768  
Madison, Wisconsin 53701

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