

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

IN THE MATTER OF

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

Mr. WILLIAM L. BOETTCHER,

Respondent

File No. S-01120 (LX)

Randall E. Schumann, Designated Hearing Officer, presiding. Pursuant to paragraph 3 of the September 20, 2001 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

Kenneth L. Hojnacki, Director
Licensing & Compliance Bureau
DFI Division of Securities
345 West Washington Avenue
Madison, WI 53701

For the Respondent:

Mr. William L. Boettcher (appeared pro se)
512 Hill Street
Box 615
Walworth, WI 53184

Preliminary Matters

Pursuant to the September 20, 2001 Notice of Hearing, a hearing was held on November 21, 2001, before the Designated Hearing Officer, with the issue for hearing being whether a May 3, 2001 Decision with Findings and Conclusions issued 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 Boettcher's Wisconsin securities agent

license.

A Prehearing Conference was held on October 18, 2001, and a Prehearing Memorandum and Scheduling Order was issued on October 31, 2001.

The hearing was transcribed by a court reporter. The record consists of: (i) the Division's September 20, 2001 Notice of Hearing, with accompanying Staff Petition For Order dated September 5, 2001; (ii) the October 31, 2001, Prehearing Memorandum and Scheduling Order; (iii) the transcript of the November 21, 2001 hearing in this proceeding; (iv) the Division Staff's Hearing Exhibits 1 through 6, of which Exhibits 4 to 6 (OCI 3/29/01 letter, Boettcher 4/15/01 reply letter, and OCI 4/23/01 response letter) were provided on December 5, 2001, and additionally on December 14, 2001, a substituted copy was filed of the Exhibit 2 OCI Deposition of Wm. Boettcher, accompanied by OCI's Exhibits 1 through 41 from its hearing proceeding.

* * * * *

Applicable Law

Wisconsin Statutes:

551.34. Denial, suspension and revocation of licenses.

(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.

* * * * *

Issue

Whether a May 3, 2001 Final Decision with Findings and Conclusions issued 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 Boettcher's Wisconsin securities agent license.

* * * * *

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

Findings of Fact

1. William L. Boettcher ("Boettcher") is an individual with a last known residence address at 512 Hill Street, Box 615, Walworth, WI 53184.
2. At all times material to this proceeding, Boettcher was licensed as a securities agent [Central Registration Depository ("CRD") # 24768], having been licensed for four

securities broker-dealer firms from 1989 through June 5, 2001.

3. Since at least 1979 and at all material time periods, Boettcher was a licensed Wisconsin insurance agent (license # 00351981), and during 1995 through February 1998, Boettcher was employed as an insurance agent in charge of the day-to-day operations of Capital Insurance Agency, Waupun, Wisconsin, which was owned by Mr. Donald Murray.
4. On May 3, 2001 the Wisconsin Office of the Commissioner of Insurance issued a Final Decision revoking the insurance agent license of Boettcher based on findings from the record of an October 10, 2000 hearing, that, while employed at Capital Insurance Agency from 1995 to 1998, Boettcher engaged in conduct constituting six separate violations of the Insurance statutes in sec. 628.34(1), Wis. Stats., as particularized in paragraphs (3) through (10) of the Final Decision Findings, constituting sufficient grounds for OCI to revoke Boettcher's insurance agent license pursuant to sec. 628.10(2)(b), Wis. Stats.
5. The May 3, 2001 OCI Final Decision also contained Findings in paragraphs (11) through (13) that Boettcher had been the subject of sanctions issued by Order of the OCI in three prior instances-- a March 1979 Order imposing a \$300 forfeiture based on finding that Boettcher had misrepresented that insurance coverage existed on two insurance applications, a December 1985 Order imposing a two-week license suspension together with a \$500 forfeiture for failing to maintain adequate business records, and an October 1986 Order suspending Boettcher's license until an overdue payment of \$250 (still owed on the \$500 forfeiture under the December 1985 Order) was fully paid.
6. Boettcher's CRD securities agent database information discloses that his securities agent license was terminated on June 7, 2001 as a result of his broker-dealer employer's granting him permission to resign as a result of the May 3, 2001 OCI Decision revoking Boettcher's insurance agent license.
7. Boettcher's CRD securities agent database information does not disclose any securities-related customer complaints, arbitration proceedings or regulatory disciplinary actions involving Boettcher during the time Boettcher held a securities agent license from January 1989 to June 2001, and the record in this proceeding does not contain any information that there have ever been any securities-related complaints directed to the Division by any of Boettcher's securities customers.

* * * * *

Conclusions of Law

1. The May 3, 2001 OCI Final Decision revoking the insurance agent license of Boettcher based on findings of six separate violations of the Insurance statutes in sec. 628.34(1), Wis. Stats., as particularized in paragraphs (3) through (10) of the Decision findings therein, constitute sufficient cause under section 551.34(2) of the Wisconsin Securities Law for sanctioning Respondent Boettcher's Wisconsin securities agent license.

* * * * *

Opinion

Under section 551.34(2) of the Wisconsin Uniform Securities Law, the Division may deny an application or suspend or revoke any securities license or censure a securities licensee for any cause--whether similar to or different from causes specified in section 551.34(1)--when necessary or appropriate in the public interest or for the protection of investors. The focus of this hearing

proceeding dealt with whether it is necessary or appropriate in the public interest or for the protection of investors that Respondent Boettcher be the subject of sanctions imposed against his securities agent license on the basis of the May 3, 2001 Final Decision of the Office of the Commissioner of Insurance which revoked Boettcher's insurance agent license based on certain violations of the Wisconsin Insurance statutes specified in the OCI Final Decision.

As noted in the above Findings of Fact, Respondent Boettcher, at all times material to this proceeding, was licensed as a securities agent, having been licensed for four securities broker-dealer firms from 1989 through June 5, 2001. Additionally, since at least 1979 and at all material time periods, Respondent Boettcher was a licensed Wisconsin insurance agent (license # 00351981), and during 1995 through February 1998, Boettcher was employed as an insurance agent in charge of the day-to-day operations of Capital Insurance Agency, Waupun, Wisconsin. Such agency was owned by Mr. Donald Murray who did not work on site, and who would stop by the agency office once per week on average. (Transcript page 32)

As set forth above in Findings of Fact number 4, on May 3, 2001 the Wisconsin Office of the Commissioner of Insurance, following an October 10, 2000 hearing, issued a Final Decision containing an insurance agent license revocation sanction based on findings that, while employed at Capital Insurance Agency from 1995 to 1998, Boettcher engaged in conduct constituting six separate violations of sec. 628.34(1) of the Insurance statutes, as particularized in paragraphs (3) through (10) of the Final Decision Findings, constituting sufficient grounds for OCI to revoke Boettcher's insurance agent license pursuant to sec. 628.10(2)(b), Wis. Stats. The OCI Final Decision also contained a Conclusion of Law in paragraph (15) stating that Boettcher's "methods and practices in the conduct of [insurance] business endanger the legitimate interest of customers and the public."

The Opinion of the OCI's Final Decision stated that "...an insurance agent has to accurately process and maintain documents concerning the status of coverage and premium payments relating to insurance policies." The Opinion additionally goes on to say that "The profession calls for absolute trustworthiness to ensure that applicants for insurance obtain the coverage they apply for on a timely basis, and that insurance companies receive their premium payments promptly. The consequences of an insurance agent's failure to remit premiums or pay refunds promptly are serious."

Similarly, for Wisconsin Uniform Securities Law purposes, record-keeping failures by a securities agent relating to his or her securities customer accounts-- regarding such things as securities transaction orders, trade confirmations, and timely payment for transactions-- can result in serious adverse consequences to securities customers.

During the Division's hearing proceeding, Boettcher acknowledged that he bears responsibility that insurance/performance bond coverage was not obtained in the several instances cited in the OCI's final decision where customer funds were given over by to the insurance agency, but which funds and necessary paperwork were not remitted to the insurance companies to effectuate coverage for performance bonds. (Transcript page 30) Respondent Boettcher contends that he never converted any such funds to his own use or otherwise misapplied funds, and that all funds were paid to Capital Insurance Agency, not to him. (Transcript pages 6, 23, 39 and 40) Indeed, no allegations of misappropriation or conversion by Boettcher of insurance customer funds were alleged in this proceeding or in the OCI proceeding.

Boettcher's testimony in this hearing proceeding also acknowledged a failure of record-keeping resulting in performance bond insurance coverages not being obtained in the 5 instances per the OCI Finding in numbered paragraph 14. (Transcript pages 39 and 47). Several pages of the

hearing testimony from Respondent Boettcher in this proceeding described the premium payment and record-keeping systems used at the insurance Agency. (Transcript pages 35 to 39) Such hearing testimony also referenced the responsibilities of Boettcher and the other full-time employee at the Agency, Kris Mathison, whose recordkeeping duties included forwarding insurance premiums and following up to verify insurance coverages/policies were obtained. (Transcript ages 42 to 49). The hearing testimony demonstrated that the recordkeeping and oversight/follow-up procedures were split between Boettcher and the other full-time person and were not well structured, resulting in a recordkeeping and follow-up system that was inadequate to prevent the several instances where there were failures to obtain performance bond insurance coverages for customers.

As stated above, the insurance agent license revocation sanction imposed under the March 2001 OCI Final Decision was based on several specific instances of Insurance statute and code violations. Additionally, the May 2001 OCI Final Decision revoking Boettcher's insurance license was not the first time Boettcher was the subject of disciplinary sanctions by OCI for insurance record-keeping inadequacies. As particularized in Findings of Fact number 5 above, the OCI on December 1985 ordered a two-week suspension sanction of Boettcher's insurance license, together with a \$500 forfeiture, for failing to maintain adequate business records. Significantly, in an April 23, 2001 letter from OC I Attorney Robert Luck (Exhibit 6) responding to Boettcher's April 15 letter to Insurance Commissioner O'Connell (wherein Boettcher contended that a suspension and not a revocation was warranted in the 2001 OCI proceeding), OCI Attorney Luck stated that a revocation was appropriate because Boettcher had been the subject of prior discipline (the suspension under the December 1985 OCI Order) for similar recordkeeping problems.

In contrast to the OCI proceeding relating to Boettcher that involved several specific insurance statute violations based on record-keeping failures, and where Boettcher was the subject of a 1985 insurance license suspension for similar record-keeping failures, Boettcher's CRD securities agent database information (Exhibit 1) does not disclose any securities-related customer complaints, arbitration proceedings or regulatory disciplinary actions during the time Boettcher held a securities agent license from January 1989 to June 2001. Such was confirmed by hearing testimony from Kenneth Hojnacki, Director of the Division's Bureau of Licensing and Compliance. (Transcript page 14) Director Hojnacki's hearing testimony also noted that Boettcher's CRD securities agent database information did disclose the 1985 and 2001 OCI Orders that imposed sanctions, as well as the existence of two IRS tax liens from 1979 and 1987, one relating to operation of a tavern. (Transcript pages 10 to 12)

Additionally, Boettcher's CRD securities agent database information contained a statement by Boettcher's most recent securities broker-dealer employer-- which firm terminated Boettcher's securities agent employment with the firm on June 7, 2001 based on OCI's revocation of Boettcher's insurance license-- that the broker-dealer would be contacting Boettcher's securities customers to determine if there were any problems in the securities accounts of his customers. I take judicial notice that the CRD database does not contain any entries subsequent to June 7, 2001, stating that the broker-dealer found evidence of any problems in the securities accounts of any of Boettcher's customers.

Lastly, it is noted that the record in this proceeding does not contain any information that there have ever been any securities-related complaints of any nature directed to the Division by any of Boettcher's securities customers.

On the basis of the foregoing, while it is my determination that the May 3, 2001 OCI Final Decision revoking the insurance agent license of Boettcher based on findings of six separate violations of the Insurance statutes in sec. 628.34(1), Wis. Stats., as particularized in paragraphs (3) through (10) of the Decision findings therein, constitute sufficient cause under section

551.34(2) of the Wisconsin Securities Law for sanctioning Respondent Boettcher's Wisconsin securities agent license, in view of the considerations in the 3 preceding paragraphs, it is also my determination that a suspension sanction of the duration specified below--rather than a revocation--is warranted in this proceeding.

Notwithstanding such suspension-rather-than-revocation determination, because I view the Insurance statute violations based on the various record-keeping failures set forth in the OCI Final Decision to be serious and a cause for concern from a Securities Law standpoint should Boettcher 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, the Division shall impose pursuant to sec. 551.32(7), Wis. Stats., in connection with the license application process, such additional and specific supervisory procedures regarding Boettcher's prospective securities activities as may be warranted to prevent against record-keeping failures that could adversely affect Wisconsin customers. As such, Respondent Boettcher should consider this license suspension sanction, together with the related additional supervisory oversight procedures on any future securities activities by Boettcher, that are imposed in this Decision and Order to be in the nature of a "first offender" -type securities sanction comparable to Boettcher's 1985 suspension by OCI of his insurance agent license for his first insurance-related record-keeping violation. Such also constitutes a determination of "zero future tolerance" for any securities record-keeping failures that might occur in the future by Boettcher in a securities agent capacity resulting in harm to securities customers.

* * * * *

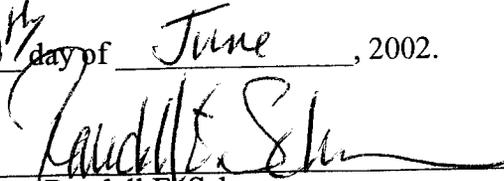
NOW THEREFORE, based on the Findings of Fact and Conclusions of Law in this proceeding,

IT IS ORDERED THAT:

(1) The Wisconsin securities agent license of William L. Boettcher is suspended for a period of forty-five (45) days, commencing from the last effective date of his license.

(2) In connection with any future securities license application filed by William L. Boettcher under the Wisconsin Uniform Securities Law, the Division shall impose pursuant to sec. 551.32(7), Wis. Stats., in connection with the license application process, such additional and specific supervisory procedures regarding Boettcher's prospective securities activities as may be warranted to prevent against record-keeping failures that could adversely affect Wisconsin customers.

DATED at Madison, Wisconsin this 20th day of June, 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

* * * * *