

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against MICHAEL F. SWENSEN,  
a Minnesota Attorney,  
Registration No. 216847.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 10, 1991. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Linnea Johnson Matter

1. From 1999 through 2004 respondent represented Linnea Johnson in various real estate transactions and related litigation matters.

2. As to all of the various transactions set forth below pertaining to the Edgewater Drive and Mount Curve properties, respondent, in entering into the various transactions with Johnson, failed to comply with the provisions of Rule 1.8(a), Minnesota Rules of Professional Conduct (MRPC). Specifically, respondent did not advise Johnson in writing of the desirability of seeking the advice of independent

counsel in the transactions; the transactions and the terms on which respondent acquired his interest in the properties were not fair and reasonable; the terms of the entire transactions were not fully disclosed and transmitted in writing to Johnson; and respondent failed to obtain from Johnson a written consent to the transactions separate from the various transactional documents.

A. Edgewater Drive Property

3. Respondent and his wife, Patricia Ryerson, also an attorney, found investment property at 4882 Edgewater Drive, Mound, Minnesota (hereinafter Edgewater). Respondent and Ryerson told Johnson that she should buy the property and respondent and Ryerson would then renovate the property and sell it at a profit. The three of them would split the profits 50/50. Johnson agreed and on February 18, 1999, Johnson signed a purchase agreement for the Edgewater property and deposited \$2,000 in earnest money toward the purchase price.

4. Ryerson told Johnson that it would be easier to get a loan for the property with Elton Berton on the title. Johnson trusted respondent and Ryerson and agreed to include Berton's name on the title. Although Berton purportedly signed the purchase agreement and title to the property was placed in his and Johnson's names, he did not contribute in any way to the purchase of the Edgewater property.

5. On May 19, 1999, a closing took place on the Edgewater property. Ryerson signed documents as P.O.A. for Berton pursuant to a statutory short form power of attorney dated May 19, 1999, and a specific power of attorney dated May 20, 1999. Berton's signatures on both of these powers of attorney were forged.

6. The contract sales price for the Edgewater property was \$235,000. This amount plus settlement charges, well sealing charges, and a \$33,000 escrow for work orders, resulted in a gross amount due from Johnson at closing of \$274,436.38. Johnson paid this by taking a mortgage loan of \$176,250 and contributing \$96,186.38 in cash in addition to the \$2,000 previously paid as earnest money. Berton contributed no

out-of-pocket funds toward the purchase of the property but was listed as a borrower on the \$176,250 promissory note and mortgage.

7. After the closing, Johnson paid directly \$37,939.70 for repairs to the property and paid to respondent and Ryerson \$25,804.41 for supplies to be used in the improvement of the Edgewater property. The repairs to the Edgewater property were completed by September 1999 and Johnson received a refund of the \$33,000 she had paid into escrow for repairs. After completion of the repairs and despite Johnson's request to respondent and Ryerson that the property then be sold as originally agreed, no action was taken to place the property on the market for sale. Instead, respondent and Ryerson repeatedly assured Johnson that they would obtain refinancing for the property and purchase her interest in the property.

8. Starting in September 1999, the property was rented out and respondent and Ryerson collected the rents. From the rental payments, respondent and Ryerson were to pay the amounts due on the mortgage loan. Respondent and Ryerson failed to make those payments and, instead, converted the funds to their own use.

9. In February 2003, mortgage foreclosure proceedings were commenced with respect to the Edgewater property. A sheriff's sale was held on March 27, 2003, and the property was sold to Mortgage Electronic Registration Systems, Inc. (an assignee of the original mortgagee) for \$191,389.49.

10. The last day for redemption from the foreclosure sale was September 27, 2003. Neither respondent nor Ryerson had told Johnson that the Edgewater property was in foreclosure or that it had been sold at the sheriff's sale.

11. Shortly before September 26, 2003, respondent falsely told Johnson that they had obtained refinancing for the Edgewater property. In fact, no such refinancing had been obtained. Respondent and Ryerson asked Johnson to attend a closing on the purported refinancing on September 23, 2003.

12. At the September 23 closing, Johnson learned for the first time that the property was in foreclosure and that the period for redemption would expire on

September 27. She also was told for the first time that the purported refinancing was actually being structured as a sale of the property to Mark O'Brien.

13. Upon learning the true nature of the status of the property and the nature of the refinancing, Johnson became upset and objected to the closing. Because of Johnson's objections, the closing did not then proceed.

14. On September 26, 2003, a second closing was held on the sale/refinancing of the property. By this time respondent and Ryerson had convinced Johnson that she had no choice but to go forward with the transaction because if she did not, her entire interest in the property would be lost upon expiration of the mortgage foreclosure redemption period.

15. The agreed upon purchase price in the sale to Mark O'Brien was \$345,000, including a "\$69,000 seller's equity gift." Johnson did not knowingly or willingly agree to make a \$69,000 gift to Mark O'Brien.

16. The proceeds from the September 26 closing on the sale of the property netted \$56,778.33 of which \$45,000 was paid to Johnson and \$11,778.33 was paid to VR Construction. VR Construction is a corporation owned and/or controlled by Ryerson. VR Construction had no legal interest in the Edgewater property. Respondent and Ryerson, via VR Construction, received \$11,778.33 from the property plus rents received and not applied towards property expenses. This despite the fact that they had no legal interest in the property.

B. Mount Curve Property

17. On January 6, 1999, a purchase agreement for the purchase of real property located at 1721 Mount Curve Avenue in Minneapolis (the Mount Curve property) was executed. This agreement was purportedly between Elton E. Burton as purchaser and Joseph Gosnell as seller. In fact, the signatures of Elton E. Burton on the various documents comprising the purchase agreement were forged.

18. In April 1999 respondent and Ryerson approached Johnson about purchasing the Mount Curve property. Respondent and Ryerson proposed Johnson

invest the initial purchase price and money for renovations. Respondent and Ryerson told Johnson they would then renovate the property and obtain refinancing in order to purchase Johnson's interest in the property. Respondent and Ryerson advised Johnson that her investment in the Mount Curve property would reduce her overall tax burden.

19. On July 27, 1999, Johnson entered into a purchase agreement with Joseph Gosnell for the purchase the Mount Curve property for \$910,000. Johnson paid a total of \$12,000 as earnest money to be applied toward the purchase price.

20. On September 23, 1999, the closing of the Mount Curve property took place. Johnson paid \$136,299.82 in cash at closing (in addition to the \$12,000 already paid as earnest money), obtained a mortgage loan from Lifetime Mortgage for \$649,500 and executed a second mortgage note and mortgage to the Gosnells for \$136,500. A warranty deed conveyed the property from Joseph and Barbara Gosnell to Linnea Johnson individually.

21. In January 2000, Ryerson had Johnson sign a blank quit claim deed. She told Johnson that the quit claim deed would only be completed and filed in the event Johnson died and would be used to convey her interest in the Mount Curve property. No consideration was provided for the conveyance of the property to Ryerson. Ryerson later completed the blank deed, backdating it to September 29, 1999, and made it appear that Johnson was conveying to her a one-half interest in the Mount Curve property. Johnson's signature on the deed was notarized by respondent, although he did not witness Johnson's signing of the deed. The deed was recorded with the Hennepin County Registrar of Titles on November 29, 2001, without Johnson's knowledge or consent.

22. The Mount Curve property was rented out from approximately December 1999 through January 2003. Respondent and Ryerson collected the rents and were supposed to use those funds to pay the expenses of the property, including payment of the two mortgages.

23. On or about September 10, 2001, respondent drafted a contract for deed conveying the Mount Curve property from Ryerson to Russell F. Swensen for \$1,200,000. Russell Swensen is respondent's father. The contract for deed makes no reference to Johnson's interest in the property. The signature of Russell Swensen on the contract for deed was not placed there by him. Although Russell Swensen had appointed respondent as his attorney-in-fact, that appointment was in relation to a different transaction. Russell Swensen never authorized respondent to act on his behalf with regard to the Mount Curve property.

24. Respondent did not tell Johnson about the September 10, 2001, contract for deed. Russell Swensen never made any of the payments called for under the contract for deed. The contract for deed was not filed with the Hennepin County Recorder's Office. However, with the contract for deed in hand, respondent and Ryerson began the process of "re-financing" the Mount Curve property by arranging for a mortgage loan from America's Wholesale Lender to Russell Swensen. In fact, neither respondent, Ryerson, nor Russell Swensen had any real legal interest in the Mount Curve property.

25. In order to obtain the mortgage loan, respondent and Ryerson provided false information to the mortgage broker, Alternative Mortgage Options, regarding the contract for deed. Specifically, respondent falsely represented that Russell Swensen had regularly made the payments called for under the contract for deed and Ryerson misrepresented the status of title and her interest in the property. All of the various applications and other documents used in obtaining the mortgage loan purport to have been signed by Russell Swensen. In fact, the signatures on those documents are not those of Russell Swensen. As noted above, although Russell Swensen had appointed respondent as his attorney-in-fact, that appointment was in relation to a different transaction. Russell Swensen never authorized respondent to act on his behalf with regard to the Mount Curve property.

26. On November 29, 2001, as a part of the scheme to "refinance" Russell Swensen's interest in the Mount Curve property, Ryerson filed the backdated quit claim

deed, signed by Johnson in January 2000, contrary to respondent and Ryerson's promise not to file the deed unless Johnson died (*see* paragraph 21 above).

27. On October 4, 2002, the personal representative of the estate of Joseph Gosnell commenced a mortgage foreclosure action on the second mortgage encumbering the Mount Curve property alleging default due to nonpayment of the sums due under the note and mortgage from August 2002.

28. Upon being served with the mortgage foreclosure pleadings Johnson called Ryerson. Ryerson told Johnson that there was some confusion between the representatives of the estate and the dealings respondent had with the now deceased Gosnells. Ryerson told Johnson that she and respondent had obtained refinancing on the Mount Curve property and that everything would be fine.

29. On January 16, 2003, respondent had Johnson sign a quit claim deed transferring all of Johnson's interest in the Mount Curve property to Ryerson. Respondent falsely told Johnson that a buyer had been found for the property and that, upon closing of the sale, she would be repaid her investment. No consideration was paid to Johnson by respondent or Ryerson for the conveyance of the property to Ryerson.

30. The closing for the "refinancing" and transfer of title to the Mount Curve property to Russell Swensen took place on January 16, 2003. At the closing respondent and Ryerson conveyed the Mount Curve property to Russell Swensen by warranty deed. The HUD-1 settlement statement, at line 104, itemized a "payoff for contract for deed to Patricia Ryerson" in the amount of \$955,025. In fact, the contract for deed was a sham transaction that was used, together with the quit claim deeds obtained from Johnson under false pretenses, to divest Johnson of her interest in the property. The purported payoff of the Ryerson/Russell Swensen contract for deed was accomplished by Russell Swensen obtaining a \$995,000 mortgage loan from America's Wholesale Lender. Although the mortgage documents were signed by respondent purportedly as

attorney-in-fact for Russell Swensen, Russell Swensen had never authorized respondent to act on his behalf in regards to the Mount Curve property.

31. Johnson invested a total of \$149,299.82 in cash in the Mount Curve property at or before the September 23, 1999, closing. Thereafter, she invested an additional \$48,000 in the property by contributing towards improvements on the property. At the January 16, 2003, Ryerson was issued checks totaling \$132,388.07 in payment of her purported interest in the false September 10, 2001, contract for deed. Respondent and Ryerson paid none of the closing proceeds to Johnson, but instead converted the proceeds to their own use.

32. On November 26, 2003, Ryerson met with Russell Swensen at a local bookstore. She told Russell Swensen that respondent needed him to sign some blank documents pertaining to property in Delano, Minnesota. Swensen signed the blank documents, at least one of which was a quit claim deed.

33. Ryerson completed the blank quit claim deed to transfer ownership of the Mount Curve property from Russell Swensen to Mark O'Brien. Ryerson recorded this deed on May 28, 2004.

34. O'Brien has testified that he purchased the Mount Curve property from Russell Swensen for "back taxes and payments" but also testified that he did not know the amount of the monthly payments or annual taxes due on the property and that he did not live in the property.

35. In or about October 2004, Johnson commenced litigation against respondent, Ryerson, and Mark O'Brien seeking recovery of the Edgewater and Mount Curve properties and damages for fraud and breach of fiduciary duties.

36. On June 16, 2005, a mortgage foreclosure proceeding was commenced on behalf of Mortgage Electronic Registration Systems, Inc., the successor in interest to America's Wholesale Lender, seeking to foreclose on the \$995,000 mortgage loan taken out by Russell Swensen.

37. In June 2005, as a part of a settlement agreement between respondent, Ryerson, and Johnson, the Mount Curve property was re-conveyed to Johnson by quit claim deed from Russell Swensen.

38. A foreclosure sale on the \$995,000 mortgage was held on September 1, 2005, and the property was purchased by Mike Reimann.

39. Respondent's conduct in the Linnea Johnson matter violated Rules 1.8(a) and 8.4(c), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

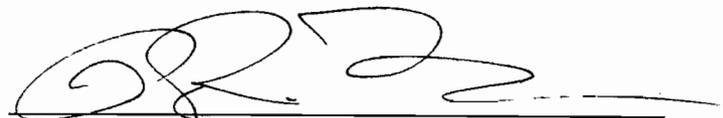
Dated: May 24, 2007.



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