

FILED September 11, 2020 (Date)
INEL
Board / Commission
[Signature]
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION
200 EAST GRAND, SUITE 350
DES MOINES, IOWA 50309

IN RE:)
) **CASE NUMBER: 20-160**
Dennis J. McGuire)
1421 Park Wild Ave.) **CONSENT AGREEMENT AND ORDER**
Omaha, NE 68108)
)
APPLICANT)

The Iowa Real Estate Commission (Commission) and **Dennis J. McGuire** (Applicant) enter into this Consent Agreement and Order (Agreement) pursuant to Iowa Code Sections 17A.10, 272C.3(4) and 543B.19 (2020).

1. The parties acknowledge the following:

- A. On or about July 24, 2020, the Applicant submitted an Application for Individual License (Application) electronically to the Commission for a new Iowa real estate salesperson license. On the Application, the Applicant answered question 2.4 by stating that a professional licensing authority in Iowa or another jurisdiction had taken disciplinary action against him.
- B. In explanation of his response to question 2.4, the Applicant disclosed on the Application that he entered into a Stipulation and Consent Order with the Nebraska Real Estate Commission on August 18, 2016. As a result of the Order, the Applicant's salesperson was suspended for a period of one year, with the first thirty days served on suspension, and the remainder stayed and served on probation; the Applicant was to pay a \$500 civil penalty; and the Applicant was to complete a three-hour continuing education course. A true and accurate copy of said order is attached as EXHIBIT A. In accepting the Stipulation and Consent Order, the Nebraska Real Estate Commission found that the Applicant had demonstrated negligence or unworthiness to act as a salesperson, failed to perform the terms of a written agreement with a client, and failed to exercise reasonable skill and care while acting as licensee representing a seller.
- C. An applicant for a real estate salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction, may be denied a license by

the Commission on the ground of the revocation, suspension, or other discipline. See Iowa Code § 543B.15(4).

- D. The Commission, when considering the denial of a license, shall consider the nature of the offense that led to previous license discipline; any documented aggravating or extenuating circumstances; the time lapsed since the revocation or conduct; the rehabilitation, treatment, or restitution performed by an applicant; and any other factors the Commission deems relevant. See Iowa Code § 543B.15(6).

2. Upon review of the factors delineated in Iowa Code section 543B.15(6), the Commission concludes that the Applicant's professional licensing history as detailed above in subparagraph 1-B does not disqualify him for an Iowa real estate salesperson license. However, because the Applicant's misconduct that led to the professional licensing discipline imposed by the Nebraska Real Estate Commission was sufficiently related to and impacted the conduct of the real estate profession, the Commission finds that the imposition of conditions upon any license issued to the Applicant is an appropriate precaution to safeguard the safety and wellbeing of the public.

3. In recognition of the facts that the Applicant had a professional license disciplined as detailed above in subparagraph 1-B, the Applicant voluntarily agrees that as a condition for receiving a new Iowa real estate salesperson license, the Applicant shall serve a probationary period throughout the duration his first license term.

4. By entering into this Agreement, the Applicant acknowledges and voluntarily waives his right to adjudicate the merits of his pending Application for a new real estate salesperson license through the commencement of a contested case proceeding before the Commission, and all rights attendant to a contested case proceeding including the right to seek judicial review of the Commission's actions.

5. This Agreement shall be made a part of the record of the Applicant and may be considered by the Commission in determining the nature and severity of any disciplinary action to be imposed on the Respondent for any future violations of the laws and rules governing the practice of real estate.

6. The Applicant voluntarily submits this Agreement to the Commission for its consideration. This Agreement is not binding on the Iowa Real Estate Commission until it has been formally approved. If the Commission fails to approve this Agreement, it shall be of no force or effect on either party.

7. This Agreement shall be public record.


IT IS THEREFORE ORDERED THAT:

8. Upon the Commission's approval of this Agreement, the Applicant shall be issued an Iowa real estate salesperson license subject to a probationary period. During the probationary period, the following terms shall apply:


- A. The Applicant shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate in the state of Iowa.
- B. Any violation of law governing the practice of real estate in the state of Iowa committed by the Applicant during the pendency of the probationary period shall be grounds for the immediate revocation and/or denial of the renewal of the Applicant's real estate salesperson license following notice of the alleged violation and opportunity for hearing before the Commission.
- C. The Applicant shall notify the Commission of the entry of any final order imposing discipline by a professional licensing authority within 15 days as required by 193E Iowa Administrative Code § 5.11. Should the Respondent fail to timely report the entry of any such disciplinary order, the Commission shall have the right to revoke and/or deny the renewal of the Respondent's real estate salesperson license following notice of the alleged violation and opportunity for hearing before the Commission.

9. The probationary period imposed by this order shall end upon the expiration of the Applicant's initial salesperson license on December 31, 2022.

WHEREFORE, the terms of this Consent Agreement and Order are agreed to and accepted by the Iowa Real Estate Commission and the Applicant.


DENNIS J. MC GUIRE
Applicant

9-11-20
Date


TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission

September 11, 2020
Date

**BEFORE THE STATE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA**

Case No. 2015-015

COPY

STATE OF NEBRASKA,)
STATE REAL ESTATE COMMISSION)
OF THE STATE OF NEBRASKA, *ex. rel.*)
Joan Phillips)
Complainant,)
v.)
DENNIS JAMES MCGUIRE)
Respondent.)

**STIPULATION AND CONSENT
ORDER**

Respondent, Dennis James McGuire (hereinafter "McGuire"), and the State of Nebraska, ex rel., State Real Estate Commission of the State of Nebraska, Complainant, (the "Commission") hereby agree and stipulate as follows:

1. On July 17, 2015, a complaint was filed against McGuire for alleged violations of the Nebraska Real Estate License Act. The complaint was issued in the above-captioned case and is incorporated as a part of this Stipulation and Consent Order.
2. McGuire recognizes his right to a hearing on this matter pursuant to law, acknowledges that he knowingly and voluntarily waives his right to said hearing, and acknowledges that he waives his right to any appeal from this Order of the Commission. McGuire agrees that he knowingly and willingly accepts the terms and conditions of this Stipulation and Consent Order.
3. McGuire warrants that the stipulated facts set forth in the Stipulation and Consent Order are accurate and complete and he acknowledges that he has provided all material information in his knowledge, possession, custody or control to the Commission as an affirmative assertion, knowing and intending that the Commission would rely upon the same. McGuire further acknowledges that: (A) He has no knowledge of any information which is material to the pending complaint proceeding which has not already been fully disclosed to the Commission; (B) In deciding to accept this Stipulation and Consent Order, the Commission has reasonably

relied upon the accuracy and completeness of his disclosures and warranties thereof; and (C) The representations contained in this Paragraph 3 are material to and substantially contributed to the Commission's decision to accept this Stipulation and Consent Order. McGuire further acknowledges that if he has made any material misrepresentations to the Commission regarding the subject matter of this complaint preceding, either by omission or commission, the Commission may vacate this Stipulation and Consent Order and re-institute the prosecution of this case against his.

4. The Commission has jurisdiction over this matter.

5. McGuire was and is the holder of a real estate salesperson's license issued by the Commission on April 12, 2005.

BACKGROUND FACTS

6. At all times relevant, McGuire was employed as a real estate salesperson by employing broker Scott M. Vogt, d/b/a CBSHOME, located at 15950 W. Dodge Rd., Suite 300, Omaha, NE 68118.

7. On, May 09, 2015 Joan Phillips ("Seller"), and her husband Rick Phillips ("Seller #2"), signed McGuire's agency disclosure information form, in which McGuire did not have Seller initial the box indicating McGuire was acting as a limited seller's agent. Seller and Seller #2 signed McGuire's exclusive listing agreement with the following terms: list price \$165,000.00, cash to seller, listing to start May 11, 2015, and will terminate September 11, 2015. Seller and Seller #2 completed, and signed, the seller property condition disclosure statement.

8. On June 04, 2015, Seller signed McGuire's listing addendum/status change form, which changed the initial listing price from \$165,000.00 to \$164,000.00.

9. On June 22, 2015, Seller, and Seller #2, signed McGuire's listing addendum/status change form, which changed the listing price from \$164,000.00 to \$160,000.00.

10. On June 24, 2015, Seller, Seller #2, and McGuire's managing broker signed a listing cancellation agreement terminating the May 09, 2015, exclusive listing agreement.

11. On, June 26, 2015, Seller sent a text message to McGuire asking where McGuire put the property's key that was contained in McGuire's lock box. Seller's Agent responded, "In the bush next to the porch." Seller then texted McGuire, "You threw our key in the bush? Cancel our listing." McGuire responded, "Is that what you want?" Seller replied, "I told you that Monday."

12. On June 26, 2015, McGuire e-mailed Seller a copy of the signed listing cancellation agreement, along with the statement, "Here you go, you mentally unbalanced bitch. I feel sorry for Seller #2."

FINDINGS

13. The Commission incorporates the allegations as outlined in Paragraphs 1 through 12 above as if fully set forth herein.

14. The Commission finds that McGuire has violated unfair trade statute Neb. Rev. Stat. § 81-885.24(29) (demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson) for using profane language directed at Seller, and for losing custody of the key to the Sellers property requiring Sellers to have the property rekeyed.

15. The Commission finds that McGuire has violated unfair trade statute Neb. Rev. Stat. § 81-885.24(16) (violating any provision of sections 76-2401 to 76-2430), and agency statute Neb. Rev. Stat. § 76-2417(1) (Aa licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including)...: by losing custody of the key to the property causing Sellers to have to rekey the property.

16. McGuire admits that the allegations as stated in Paragraphs 1 through 15 above are true. McGuire agrees with the actions of the Commission and accepts the discipline which shall be made a part of his permanent record maintained by the Commission.

17. McGuire has no prior disciplinary actions against his Nebraska real estate salesperson's license.

18. The following disciplinary action is imposed upon McGuire in the public interest and for the protection of public health, safety, and welfare:


ACCORDINGLY, IT IS ORDERED, AS FOLLOWS:

A. The Nebraska salesperson's License of Dennis James McGuire is suspended for a period of one (1) year, with the first thirty (30) days served on suspension, and the remainder stayed and served on probation. The suspension period shall commence within thirty (30) days of the signing of this Order by the Chairperson of the Commission.

B. Within thirty (30) days of the signing of this Order by the Chairperson of the Commission, Respondent Dennis James McGuire shall pay a civil fine in the amount of \$500.00. Said civil fine shall be paid to the Commission under separate cover letter addressed to Commission Director Greg Lemon with specific reference made to Case No. 2015-015.

C. Within six (6) months of the signing of this Order by the Chairperson of the Commission, Respondent Dennis James McGuire shall complete one (1) three (3) hour continuing education course, above and beyond the mandatory hours required for renewal, in professionalism. The course shall be selected from the following: 1) Course 0748R- Professionalism Required: High Standards of Professional Conduct, 2) Course 0349- Risk Management for Real Estate Professionals, or 3) Course 0497R- Ethics & Professional Practice.

Dated this 12 day of August, 2016.


Dennis James McGuire

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

NOW on this 12 day of August, 2016, before me, a duly appointed and qualified Notary Public, personally appeared Dennis James McGuire, known to me to be the same and identical person who signed the above and foregoing Stipulation and Consent Order and acknowledge the execution of the same to be his voluntary act and deed.



Notary Seal


Notary Public Signature

Case No. 2015-015

Accepted and approved this th 18 day of August 2016.

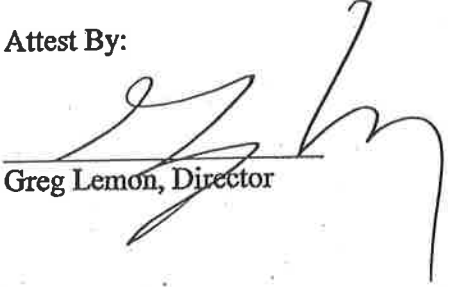


STATE OF NEBRASKA, *ex rel.*,
STATE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA,
Complainant

By:


John A. Gale, Chairperson

Attest By:


Greg Lemon, Director