

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 SE HULSIZER
ANKENY, IOWA**

IN RE:

DAVID J. CLEARY
Salesperson (S40390)

Iowa Realty
100 1ST AVE NE STE 116
Cedar Rapids, IA 52401-1109

CASE NUMBER: 03-079

STIPULATION
AND
ORDER

On this 16th day of JUNE, 2005, the Iowa Real Estate Commission and **DAVID J. CLEARY**, each hereby agree with the other and stipulate as follows:

1. The allegations specified in the Statement of Charges in this case shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order.
2. The Respondent has a right to a hearing on the charges, but waives the right to hearing and all attendant rights, including the right to appeal, by freely and voluntarily agreeing to this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
3. The Respondent was issued a real estate salesperson license on March 23, 2000, and is in full force and effect through December 31, 2005.
4. The Iowa Real Estate Commission has jurisdiction over the parties and subject matter jurisdiction over each allegation in the Statement of Charges.
5. A Statement of Charges will be filed against Respondent together with this voluntary Stipulation and Consent Order.
6. Respondent denies the allegations in the charges, but agrees to resolve the charges by entering into this Consent Order.
7. If this Stipulation and Consent Order is approved by the Commission it will be filed, along with the Statement of Charges, and upon filing both documents will become public records.

8. This Stipulation and Consent Order shall be made a part of the record of the Respondent 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.

9. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2003).

10. This Stipulation and Consent Order shall be presented to the Commission in closed session by the prosecuting attorney and/or Commission staff. Respondent waives any right of notice of this meeting or any right which the Respondent might have to participate in the discussion of this Stipulation and Consent Order among the Commission, the Commission staff and the prosecuting attorney.

11. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

THEREFORE IT IS ORDERED that the Respondent is **Reprimanded**.

IT IS FURTHER ORDERED that the Respondent shall personally attend the twelve (12) hour Commission approved continuing education course "Developing Professionalism and Ethical Practices." These hours shall be in addition to any real estate continuing education required by law for license renewal, except four (4) hours can be used to satisfy the mandatory ethics requirement for renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within twelve (12) months of the signing of this agreement by the Commission. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Officer and must refer to case 03-079.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty in the amount of \$ 500 within thirty (30) days of acceptance of this Stipulation and Consent Order by the Commission and come under a cover letter addressed to the Commission's Executive Officer and refer to case 03-079.

IT IS FURTHER ORDERED AND AGREED that at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

FOR THE RESPONDENT:

This Stipulation and Consent Order is voluntarily entered into by **DAVID J. CLEARY** on this 31st day of May, 2005.

[Redacted Signature]

DAVID J. CLEARY, Respondent

State of Iowa)

County of Linn)

Signed and sworn to before me on this 31st day of June, 2005, by

[Redacted Signature]

Notary Public, State of Iowa

Printed Name: HARRIETTE COOPER

My Commission Expires: July 1, 2005



FOR THE COMMISSION:

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on this 16th day of JUNE, 2005.

[Redacted Signature]

James E. Hughes, Chair
Iowa Real Estate Commission

[Redacted Signature]


CIRCUMSTANCES OF THE COMPLAINT

1. On or about June 1, 2002, Respondent listed property located at 44 20th Avenue SW, Cedar Rapids, Iowa for \$47,200. Subsequent extensions were obtained and the listing price lowered. On or about September 1, 2002, the Seller moved to Marengo, Iowa.
2. Between September 1, 2002 and November 30, 2002, without written instructions or written authorization from the Seller, the Respondent removed personal items belonging to the Seller, carpet, window dressings, and shelving from the property. The Respondent additionally painted and made other changes to the property. The Respondent believed the Seller had verbally agreed to the actions.
3. On or about November 1, 2002, after becoming aware of the Seller's displeasure, the Respondent attempted to replace items in question. The Seller subsequently retained the services of an attorney.
4. On June 6, 2003, the transaction closed.

FINDING OF PROBABLE CAUSE

On November 20, 2003 the Iowa Real Estate Commission found probable cause to file this Statement of Charges and to order that a hearing be set in this case.

Dated this 16th day of JUNE, 2005.


Roger L. Hansen, Executive Officer
Iowa Real Estate Commission