

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

IN RE:)	
)	
JOHN W. ELDER)	CASE NUMBER: 02-025
Broker (B08396))	
)	STATEMENT
)	OF
CENTRAL REALTY COMPANY)	CHARGES
4524 81ST COURT)	
URBANDALE IA 50322)	
)	

1. The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapter's 17A, 543B, and 272C (2001, 2003).
2. Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.
3. Respondent John W. Elder was at all material times during the following events, a licensed Officer Broker in charge of Central Realty Company, a licensed real estate corporation license number F00213, in Urbandale, Iowa. His license, number B08396 issued March 29, 1984, is in full force and effect through December 31, 2004.

COUNT I

The Respondent is charged with engaging in practices harmful or detrimental to the public in violation of Iowa Code sections 543B.29(3); and 543B.34(1), (8), & (11) (2001), and 193E Iowa Admin. Code 4.54(19) by:

- a. renting a single-family dwelling he owned, knowing foreclosure was imminent;
- b. renting the property to two separate renters for the same time period, and
- c. renting the property, knowing the required rental occupancy permit from the City of Urbandale had not been properly obtained.

02-025


CIRCUMSTANCES OF THE COMPLAINT

1. On December 5, 2001, the City of Urbandale Building Inspection Department inspected a single family dwelling owned by Respondent located at 40021 100th Street, Urbandale, Iowa. A rental permit could not be granted based on the unsatisfactory condition of the property. Respondent was notified by letter dated January 11, 2002, of a list of repairs he would need to make before the property could qualify for a rental permit. Respondent failed to comply with the City's request to schedule a meeting with the building inspector. Respondent failed to make all or a significant portion of the repairs.
2. On March 6, 2002, the City of Urbandale filed a civil citation against Respondent for violating the Housing Code and allowing non-owner occupancy without the required inspection certificate.
3. Shortly thereafter, on or about March 15, 2002, Respondent accepted the sum of \$400 from Tim Rios purportedly for rental of the property. Respondent knew that foreclosure was imminent and that the property was not properly certified for occupancy as a rental property. Rios is reported to have started making repairs to the property.
4. One day later, on or about March 16, 2002, knowing foreclosure was imminent, knowing the property did not have the required occupancy permit, and knowing the property had been rented to Rios, the Respondent rented the property to Diane Kruger-Rameh. Respondent collected a \$150 deposit and \$250.00 for the second half March rent. Respondent was to complete necessary repairs.
5. Just four days later, on March 20, 2002, Respondent deeded the property in lieu of foreclosure to Polk County Bank.
6. Respondent did not disclose to Rios or Kruger-Rameh the pending foreclosure action against the property, the lack of occupancy permit or the pending civil citation by the City of Urbandale. Respondent did not refund money collected from Kruger-Rameh or Rios.

FINDING OF PROBABLE CAUSE

On February 27, 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 20th day of MARCH, 2003.


Roger L. Hansen, Executive Officer
Iowa Real Estate Commission

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

JUL 28 2003

IN THE MATTER OF:)	CASE NO. 02-025
)	DIA NO. 02DOCRE002
JOHN W. ELDER)	
Broker (B08396))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
RESPONDENT)	DECISION AND ORDER

On March 20, 2003, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against John W. Elder (Respondent). The Statement of Charges alleged that the Respondent engaged in practices harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(3)(2001), 543B.34(1), (8), & (11)(2001) and 193E IAC 4.54(19), by:

- a. renting a single-family dwelling he owned, knowing foreclosure was imminent;
- b. renting the property to two separate renters for the same time period; and
- c. renting the property, knowing the required rental occupancy permit from the city of Urbandale had not been properly obtained.

A Notice of Hearing scheduled a telephonic prehearing conference for May 16, 2003 and a hearing for May 29, 2003 at 9:30 a.m.

The hearing was held on May 29, 2003 at 9:30 a.m. The Respondent, John W. Elder, appeared and was represented by his counsel, Keith Uhl. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Commission members were present for the hearing: James Hughes, Broker, Chairperson; Dorothy F. Woline, Broker; Patty Daniels, Salesperson; Laurie Dawley, Public Member; and James O'Neill, Public Member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2003).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2003), to deliberate its decision.

02-025

The members of the Commission instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, Answer; Hearing Acknowledgement; State's Prehearing Conference Report; testimony of the witnesses; State Exhibits 1-13 and Respondent Exhibits A-B.

ISSUES

I. Whether the Iowa Real Estate Commission has jurisdiction under its statutes and rules to discipline a licensed real estate broker when the broker is acting on his own behalf and leasing his own property, rather than acting on behalf of a client?

II. Whether the Respondent in fact rented a single family dwelling he owned to two separate renters for the same time period, knowing foreclosure was imminent and knowing that the required rental occupancy permit from the city of Urbandale had not been properly obtained? If so, do these acts violate Iowa Code sections 543B.29(3)(2001) and 543B.34(1), (8), and (11)(2001)?

FINDINGS OF FACT

1. The Respondent is a licensed real estate broker who was, at all times relevant to the Statement of Charges, a licensed Broker/Officer in charge of Central Realty Company, a licensed real estate corporation (F00213) in Urbandale, Iowa. The Respondent was originally licensed as a salesperson in 1979. His real estate broker license (B08396) was issued on March 29, 1984 and is in full force and effect through December 31, 2004. The Respondent has no employees and is the only person associated with Central Realty Company.

The Respondent has had a limited practice as a real estate broker in the past two to three years and estimates that he was only involved in a "half dozen" real estate contracts in the last calendar year. The Respondent testified that the woman he had lived with for ten years passed away in August 2002 after a lengthy illness, and that he devoted much of his time to caring for her and to various coaching and youth group activities.

The Respondent has also been involved in remodeling houses. (State Exhibits 1, 9; Testimony of Respondent)

2. In November 1999, the Respondent purchased a single-family residence at 4001 100th Street in Urbandale, Iowa with the intention of asking the city for a zoning change and then selling it for a commercial use. The Respondent describes Central Consulting Corporation as a holding corporation he uses for his remodeling projects. (Testimony of Respondent; State Exhibits 10, 13)

On November 23, 1999, a loan and mortgage in the amount of \$84,000 was originated by Polk County Bank to John Elder DBA Central Consulting Corp. for the purchase of the property at 4001 NW 100th. The mortgage was filed on November 29, 1999. Harry D. Elder, the Respondent's father, guaranteed the loan by personally executing the Promissory Note. (State Exhibit 10)

Failure To Obtain Inspection Certificate

3. The Urbandale City Code requires all rental properties with one or two units to be registered with the city, to be inspected every three years for compliance with the city housing code, and to have a valid inspection certificate prior to occupancy by a non-owner. (Testimony of Bill Lloyd; State Exhibit 13, pp. 34-36). The Respondent was notified of this requirement on numerous occasions but knowingly failed to obtain the required inspection certificate, even though he was renting the property.

a. In March 2001, someone who had considered renting the property at 4001 100th St. contacted the city of Urbandale to inquire whether the residence was registered as a rental. Bill Lloyd, a building inspector with the city, consulted the Polk County Assessor's web page and determined that the Respondent owned the property. On March 30, 2001, Mr. Lloyd sent a letter to the Respondent at the mailing address listed by the Polk County Assessor, notifying him that the property was overdue for inspection. This letter was returned as undeliverable. (Testimony of Bill Lloyd; State Exhibit 13, pp. 1-2)

b. Subsequently, Bill Lloyd obtained another address for the Respondent from Home Exchange, the company that listed the property for rental. [Home Exchange lists properties for no charge to the landlord, but charges prospective tenants a fee for the list.] On April 23, 2001, Mr. Lloyd sent another notice to the Respondent at the address he obtained from Home Exchange. The notice informed the Respondent that an inspection is

required every three years, that the inspection includes items necessary to maintain the occupant's safety and health, and that the cost of the inspection was \$50.00. The Respondent was directed to fill out and submit the enclosed inspection application. This letter was not returned to the city of Urbandale, and the Respondent did not reply. (Testimony of Bill Lloyd; State Exhibit 13, pp. 7-9)

c. Mr. Lloyd later obtained a third address for the Respondent, 4524 81st Ct. in Urbandale, and another notice was sent to him on September 24, 2001. On October 25, 2001, a final notice was sent, warning the Respondent that if he did not respond within seven days, the matter would be turned over to the city's legal department. No response was received and a memo was sent to the city attorney on November 8, 2001. The city attorney sent the Respondent a letter on November 13, 2001, giving him five days to schedule the inspection. (Testimony of Bill Lloyd; State Exhibit 13, pp. 10-11, 14-15)

d. On November 15, 2001, the Respondent submitted a housing inspection application to the city of Urbandale without the required \$50.00 inspection fee. The fee was later paid on December 3, 2001. (State Exhibit 13, pp. 12-13, 16-17)

On December 4, 2001, Urbandale Building Inspector Bill Lloyd and another inspector inspected the property at 4001 100th St. The Respondent met the inspectors at the property and introduced them to the tenants. Following the inspection, twenty-one items were listed on a Notice To Correct Hazard. The inspectors returned on another day and took photographs of the home's exterior. (Testimony of Bill Lloyd; State Exhibit 13, pp. 18-26)

e. In an email to the city attorney dated December 6, 2001, Mr. Lloyd's supervisor attached a list of the required corrections and questioned whether the city should require vacation of the premises, rather than correction, because the house did not appear to be habitable. The most pressing concerns were identified as electrical hazards, no smoke detectors, a big hole in the roof, sewage being dumped out in the yard, and LP gas supplied to the basement without the required combustible gas detector/alarm/evacuation system. (State Exhibit 13, p. 27-29)

f. On January 11, 2002, the city of Urbandale sent the Respondent a letter listing twenty items that had to be corrected at 4001 100th St. Five items were listed as serious and

had to be corrected immediately. Five items were required to be corrected within seven days. The remaining items were required to be corrected within thirty days. On January 15, 2002, the city attorney sent a follow-up letter to the Respondent, warning him that a Municipal Infractions action would be filed if he did not contact the city immediately to arrange for a re-inspection. The city did not receive a response to these letters. (Testimony of Bill Lloyd; State Exhibit 13, pp. 30-32)

g. On March 6, 2002, the city of Urbandale filed a Civil Citation, Municipal Infraction No. CI4027, against the Respondent in Polk County District Court. Respondent was required to appear by filing an Appearance and Answer within twenty days or face a default judgment. The Civil Citation was personally served on the Respondent's father at 4524 81st Ct. in Urbandale, Iowa. (Testimony of Bill Lloyd; State Exhibits 8, 12)

Respondent's Knowledge of Foreclosure Action

4. From October 19, 2001 through March 19, 2002, the Respondent had legal notice and actual knowledge that the bank holding the mortgage on the property at 4001 100th St. had filed a Petition for Foreclosure of Mortgage. As of March 13, 2002, the Respondent had agreed to sign over a deed in lieu of foreclosure, and this agreement had been presented to a Polk County District Judge, who then canceled a hearing scheduled for March 14, 2002.

a. The Respondent defaulted on the Note and Mortgage for the property at 4001 100th St. and as of October 15, 2001, he owed the bank \$112,402.49. On October 18, 2001, attorney Russell Hansen filed a Petition for Foreclosure of Real Estate against Central Consulting Corp. and John Elder on behalf of Polk County Bank. The Petition for Foreclosure was served on the Respondent on October 19, 2001 and was served on his father on October 25, 2001. On November 26, 2001, an attorney filed an appearance on behalf of the Respondent.

b. On February 14, 2002, Mr. Hansen filed a Motion for Summary Judgment on the Petition for Foreclosure, and a hearing was scheduled for March 14, 2002. On March 12, 2002, the Respondent's attorney notified Mr. Hansen that the Respondent would be filing a Written Demand for delay of sale because he was residing in the property, which would delay the sheriff's sale by 6 months. Mr. Hansen went to the property and determined

that it appeared abandoned and unoccupied. Windows were open and there was garbage everywhere.

c. On March 13, 2002, Mr. Hansen notified the Respondent's attorney of his observations and further negotiations were conducted concerning taking a deed in lieu of foreclosure. On or about March 13, 2002, both attorneys had a telephone conversation with the judge assigned to the case, and the Respondent's attorney told the judge that the March 14th hearing was unnecessary because the parties had agreed that the Respondent would execute a deed in lieu of foreclosure in favor of the bank.

d. On March 19, 2002, Mr. Hansen met with the Respondent, and the Respondent signed over the deed to the property at 4001 100th St., in lieu of foreclosure. The deed was filed on March 20, 2002. The bank would have accepted payment in full at any time prior to March 19, 2002 but would not have dismissed the foreclosure action if the Respondent only made a partial payment.

(Testimony of Russell Hansen; Respondent; State Exhibits 10; 11)

Respondent's Rental of Property To Two Separate Tenants

Diane Krueger-Rameh

5. On March 16, 2002, the Respondent rented the property at 4001 100th St. to Diane Krueger-Rameh for the period from March 15-March 31, 2002, knowing that the property had a long list of uncorrected hazards, knowing that he did not have the required inspection certificate to permit occupancy by a tenant, and knowing that on March 13, 2002 he had agreed to sign over the deed to the property to the bank, in lieu of foreclosure.

Diane Krueger-Rameh has submitted a written complaint to the Commission, dated April 4, 2002, and also testified at the hearing by telephone. She prepared her written complaint using her own detailed notes of her interaction with the Respondent. She started keeping notes on March 24, 2002, after she learned that the Respondent no longer owned the property that he had rented to her. Ms. Krueger-Rameh is a hydro geologist and is accustomed to keeping meticulous records in her professional work. Her written complaint and her testimony were both consistent, detailed, and far more credible than the contrary testimony offered by the Respondent.

a. Ms. Krueger-Rameh reports that she saw the listing for 4001 100th St. on March 15, 2002, at Home Exchange. The property was offered for rent on a month-to-month basis at \$550.00 a month. Ms. Krueger-Rameh was looking for a rental with a large yard near her work. She wanted a month-to-month rental because she was going through a divorce and was hoping to obtain a transfer out of state. She has since obtained the transfer and has moved to another state.

Ms. Krueger-Rameh met with the Respondent at the property on March 16, 2002. The Respondent showed her the house briefly and told her that some repairs were needed and he would work on those. Specifically, the Respondent told her that the ceiling had leaked in the past but had been fixed, and the ceiling tile needed to be replaced. He also told her that he would replace the carpet and provide paint for her. He never told her that there were city code violations. He told her that he did not want to do a lot of work on the house because it would be bulldozed in a few years.

b. The Respondent told Ms. Krueger-Rameh that if she wanted the house, she had to start paying that day for the second half of March. Although she wanted to start renting on April 1, 2002, she did not want to lose the house. The Respondent originally wanted a \$250.00 deposit, but told her that he would reduce it to \$150.00 if she would remove the large amount of trash in and around the house. Ms. Krueger-Rameh also agreed to rake the yard. The Respondent charged her \$250.00 for rent for the last half of March. He originally wanted all of the money in cash. Ms. Krueger-Rameh had some cash and could get a maximum of \$200 from the ATM at the convenience store across the street. The Respondent eventually agreed to take \$350.00 in cash and a \$50.00 check. The Respondent told her that she could pay April rent by check.

c. Ms. Krueger-Rameh insisted on a receipt for the deposit and rent. The Respondent told her that he did not have any receipt forms or paper, but Ms. Krueger-Rameh found some paper at the convenience store and told him what she wanted on the receipt. The receipt, which is dated 3/16/02, states "Received of Diane Krueger, \$400.00 (dep. 150.00 and March rent 250.00)." The receipt also has the address of the property and the Respondent's signature. Ms. Krueger-Rameh provided a copy of the receipt and the carbon copy of her \$50.00 check to the Commission. (State Exhibit 3, last two pages) The Respondent testified that he did not retain any record of the money that he accepted from Ms. Krueger-Rameh.

d. The Respondent did not have a key to the property with him when Ms. Krueger-Rameh rented the property. She could not recall if he said he would drop one off for her. Ms. Krueger-Rameh asked the Respondent for his address so that she could send him the rent for April, and he told her that he would get his address to her before the April rent was due. Ms. Krueger-Rameh told the Respondent that she would be out of town for work from March 17th to March 22nd and told him that she expected him to get some of the repairs done on the house while she was gone.

e. Ms. Krueger-Rameh spent a few hours on March 16th and the next day picking up and removing trash. She wiped down the kitchen counter and bathroom sink. She still did not have a key and entered the house through an open window. On Saturday, March 23rd, after returning from her business trip, Ms. Krueger-Rameh worked at the house for about eight hours removing trash from outside the house and to the shed. She also raked the front and side yards. She observed new cupboard doors, several space heaters, two lamps, some rolled area rugs, and a shop vac in the house. She assumed that they belonged to the Respondent and that he had started working on the house. On March 24th, she called the Respondent and asked when he would be completing the repairs. He falsely told her that he had been served with papers by the bank the day before, and he would be meeting with the bank the next morning to get things worked out. He told her not to do anything else to the house or yard, but to wait until he called her.

f. On March 25, 2002, Ms. Krueger-Rameh looked the property up on the Polk County Assessor's Web Page and learned that it had been deeded to Polk County Bank on March 20, 2002. She called the bank and the Respondent. The Respondent did not return her call. She spoke to Assistant Vice President Jeremy Hill at Polk County Bank, who told her that the bank would not rent the house to her because it was uninhabitable and that the bank was trying to sell the property as commercial ground. (State Exhibit 10) He also told her that the Respondent was a licensed real estate broker and that it was unethical to rent a house that he knew would no longer be his. Ms. Krueger-Rameh also contacted the city of Urbandale building inspector. (State Exhibit 13, p. 39)

g. Ms. Krueger-Rameh continued to leave messages for the Respondent asking for her money to be returned, but he did not return her calls. She discovered that he had cashed her \$50.00

check on March 18, 2002. As of the date of the hearing, the Respondent had not returned the \$400 to Ms. Krueger-Rameh.

(Testimony of Diane Krueger-Rameh; State Exhibits 3, 10, 13)

Tim Rios

6. On or about March 15, 2002, the Respondent rented the property at 4001 100th Street to Tim Rios for the period of time from on or about March 15, 2002 to March 31, 2002, knowing that the property had a long list of uncorrected hazards, knowing that he did not have the required inspection certificate to permit occupancy by a tenant, and knowing that on March 13, 2002 he had agreed to sign over the deed to the property in lieu of foreclosure.

Tim Rios was a credible witness who testified to conversations with the Respondent that were strikingly similar to those reported by Diane Krueger-Rameh. Tim Rios did not keep notes or a written record of his transactions with the Respondent and at the time of his testimony was uncertain of the exact date that he rented the property, although he was certain that it was in the middle of the month of March 2002. After learning that Tim Rios had also rented the property from the Respondent, Jeremy Hill at Polk County Bank told Mr. Rios to contact Diane Krueger-Rameh. (State Exhibit 10). Diane Krueger-Rameh's written complaint indicates that Mr. Rios contacted her and told her that he rented the property on March 15, 2002. (State Exhibit 3)

a. Mr. Rios currently works for a manufacturing company but has had previous experience in all aspects of construction. In mid-March 2002, Mr. Rios' girlfriend saw the Home Exchange listing for the property at 4001 100th St in Urbandale and contacted the Respondent. When Mr. Rios got home that night, his girlfriend asked him to drive by the property. He later called the Respondent, who told him that he had several people who wanted to see the property. Mr. Rios told the Respondent that he wanted to rent it, and they agreed to meet at the Dahl's store at the corner of Merle Hay and Arora Ave.

b. The Respondent wanted \$500 cash (rent and deposit) to rent the property for the second half of March. However, the Respondent agreed to take \$100 off of the deposit if Mr. Rios would take the garbage by the garage to the dump. Mr. Rios withdrew \$200 in cash from the ATM machine at Dahls, which was the maximum daily withdrawal. The Respondent agreed to take a

check for the remaining \$200 after Mr. Rios showed him his ATM receipt that revealed he had over \$900 remaining in his account. Mr. Rios understood that he began renting the property when he provided the money to the Respondent. The Respondent did not tell him that he owed any more money for March 2002. The Respondent did not give Mr. Rios a key but told him that the back door was unlocked, and he would bring him a key. The Respondent told Tim Rios that he could pay April rent by check.

c. Mr. Rios knew that the property needed a lot of work, although he never saw the list of required repairs prepared by the city of Urbandale, nor did he know that Urbandale had refused to issue an inspection certificate for the property. Mr. Rios agreed that he would work on the repairs himself and hoped that by doing so the rent would remain low. Mr. Rios transferred the electric utility to his own name and attempted to have the water turned on, but discovered that there was an outstanding water lien. He tried to call the Respondent about the water lien, but the Respondent did not return his calls. He moved paint and cupboard faces into the property, intending to start the repairs. These were the items that Diane Krueger-Rameh found in the house when she returned from her business trip.

d. The Respondent later called Tim Rios and told him not to do any more work on the house because the bank was taking it over. Mr. Rios contacted Jeremy Hill at Polk County Bank, who told him the same information he had given to Diane Krueger-Rameh; that the bank would not rent the property because it was uninhabitable. Mr. Rios and his girlfriend were residing in a duplex and had already given notice to their landlord that they were moving out April 1st. Luckily, the duplex had not yet been rented, and they were able to stay in their duplex in April.

e. Mr. Rios asked the Respondent to return his \$400, but the Respondent told him that the bank had frozen his account. Mr. Rios told the Respondent that he did not believe him, and the Respondent hung up on him. Later, Mr. Rios went to the Respondent's house with his girlfriend and her brother to try to get his money back, but the Respondent slammed the door in his face. The Respondent still has not returned the \$400 to Mr. Rios.

(Testimony of Tim Rios; State Exhibits 3, 10)

Respondent's Testimony

7. While some of the Respondent's testimony corroborated the testimony of both Diane Krueger-Rameh and Tim Rios, his claim that he took the \$400 from each of them only to "hold" the property and not as deposit and rent for March 2002 was not credible. The Respondent had no records concerning either transaction and was not sure whether he spoke to Tim Rios first or whether he spoke to Diane Krueger-Rameh first. The Respondent's claim that he believed he could still avoid foreclosure by renting or selling the property was also not credible.

The Respondent characterizes the property at 4001 100th St. as very desirable because even though it was in a state of disrepair, it was a two-bedroom house with a full acre of land in an area surrounded by beautiful homes worth over \$200,000. The Respondent was asking below market rent and was willing to allow pets. At the hearing, the Respondent seemed confused about what he was charging to rent the property. He testified that he had previously rented it for \$500, but thought that he was asking \$450 in March 2002. The Respondent claims that he could have rented the property "dozens of times" in March 2002, despite its condition. (Testimony of Respondent; Respondent Exhibit A)

a. According to the Respondent, Tim Rios called him after seeing the listing for the property on Home Exchange. The Respondent told Mr. Rios that the door was unlocked and he could go look at the property. According to the Respondent, the city's list of repairs was on the kitchen counter in plain view. The consistent testimony of Tim Rios and Diane Krueger-Rameh that they never saw the city's list of repairs is more credible than the Respondent's claim that the list was on the kitchen counter at all times. The Commission does not believe that either tenant would have rented the property if they had seen the complete list of hazardous items, including the septic system defects.

b. The Respondent testified that after viewing the property, Tim Rios called him and said that he wanted to rent it. The Respondent told him that he could rent it if he agreed to make various repairs. The Respondent also told him that he needed to pay a deposit that day if he wanted to hold it. The Respondent admits taking the \$400 from Tim Rios, but claims that Mr. Rios knew that it was a nonrefundable deposit to hold the property and he had to pay additional rent before he could get

the key. According to the Respondent, Tim Rios never came up with the balance, so he forfeited the deposit and lost the property. The Respondent's testimony was not credible, especially in light of the fact that Tim Rios began working on the property, started transferring utilities to his name, and moved personal items into the property.

c. The Respondent testified that Diane Krueger-Rameh contacted him, and he met her at the property. The Respondent claims she was not concerned about all the repairs and told him she had a nephew who could lay the carpet. The Respondent agrees that while Ms. Krueger-Rameh wanted to rent the property beginning April 1st, he told her that a lot of people wanted it, and he would not wait until April to rent it. The Respondent asserts that Ms. Krueger-Rameh also paid a \$400 deposit to "hold" the property, that this money was nonrefundable, and that it was understood that she could not move in until she paid additional money. According to the Respondent, when Ms. Krueger-Rameh returned from out of town, she called him and told him that she did not realize how many repairs were needed and she no longer wanted to rent the property. Ms. Krueger-Rameh denies ever telling the Respondent this, and her testimony was more credible than the Respondent's testimony.

d. The Respondent denies that he knew that foreclosure was imminent on the property. The Respondent testified that in March 2002 he had a pending \$275,000 offer to sell the property for use as a car wash. If this sale had gone through, he could have paid the bank what he owed. However, the Respondent's own exhibit shows that this offer was withdrawn on March 13, 2002, the same day that the Respondent agreed to sign over a deed in lieu of foreclosure (Respondent Exhibit B). The Respondent's claim that he had another pending viable offer to purchase the property was not substantiated by any documentation and was not credible.

(Testimony of Respondent; Respondent Exhibits A, B)

CONCLUSIONS OF LAW

I. Jurisdiction

The Iowa Supreme Court ordinarily considers legislation that regulates conduct for the public good as remedial and therefore entitled to liberal construction. McCracken v. Iowa Dept. of Human Services, 595 N.W.2d 779, 784 (Iowa 1999). The Iowa Supreme Court has previously stated that the overriding purpose

of [chapter 543B] and its delegation of authority to the commission is remedial in nature and intended to protect the public interest. Milholin v. Vorhies, 320 N.W.2d 552, 554 (Iowa 1982).

The Commission is vested with far-reaching authority to license, regulate, and discipline brokers and salespersons, as provided in Iowa Code sections 543B.29 and 543B.34. Milholin, 320 N.W.2d at 554. While the prohibitions contained in some of these statutes' subsections apply only to transactions in which the licensee is acting for another as a real estate broker or salesperson, see e.g. Iowa Code sections 543B.29(7), (9), (10); 543B.34(4), (5), (6), this is not true of the code sections under which the Respondent is charged, which contain prohibitions of a more general nature. Moreover, the last paragraph of Iowa Code section 543B.29 specifically provides:

A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except subsections 4, 5, 6, and 9, with respect to that property.

While the jurisdictional issue raised by the Respondent has not been addressed by the Iowa appellate courts, the state cites to a decision of the Mississippi Supreme Court, which upheld the Mississippi Real Estate's Commission authority to discipline a licensed real estate broker based on misrepresentations that she made in the sale of her own property. Mississippi Real Estate Commission v. Hennessee, 672 So. 2d 1209 (Miss. 1996). The principles cited by the Mississippi Supreme Court in support of its holding are also relevant to the Iowa regulatory scheme and support the Commission's determination of jurisdiction in this case. Specifically, the court observed that allowing a licensed real estate professional to:

...not be held responsible for misrepresentations made during the course of the sale of property wholly owned by the broker, while simultaneously holding that a broker will be responsible for making misrepresentations during the sale of another's property, would create logically inconsistent results.

Id. at 1217.

Quoting a Pennsylvania Court, the Hennessee Court noted:

A broker who is dishonest or incompetent in the real estate activities in which he [or she] is involved as owner, is not likely to be honest or competent in his [or her] activities which are purely brokerage in nature.

Id., citing, Real Estate Commission v. Tice, 200 Pa. Super. 553, 190 A.2d 188, 190-191 (1963).

The Commission has considered all of the arguments made by the parties concerning its jurisdiction or lack of jurisdiction to impose discipline on the Respondent based on the facts of this case. The Commission is satisfied that under the facts presented, its statutes do provide jurisdiction to discipline the Respondent. The Respondent's Motion To Dismiss is DENIED.

II. The Allegations

A. Applicable Law

Iowa Code section 543B.29(3) (2001) provides, in relevant part:

543B.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

3. ..engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Iowa Code section 543B.34(1), (8), and (11) (2001) provide, in relevant part:

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license

issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found guilty of any of the following:

1. Making any substantial misrepresentation.

...

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

...

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

B. Discussion

The preponderance of the evidence established that the Respondent leased his own property at 4001 100th St. in Urbandale, Iowa to two unrelated tenants for the second half of March 2002, by accepting \$150 deposits and \$250 in rent from each of the tenants. Neither tenant knew about the other at the time that the property was rented. Obviously, these two tenants could not simultaneously occupy the same property. Moreover, at the time that he rented the property, the Respondent knew that he did not have the required certificate of inspection from the city of Urbandale. The Respondent knew that the property required extensive repairs for serious defects presenting a risk to tenant health and safety, including defective electrical wiring, absence of smoke detectors, an inappropriate LP gas line with no evacuation system or alarm, and a defective septic system. Finally, as of March 13, 2002, the Respondent had committed to signing over a deed in lieu of foreclosure to the bank and had obtained cancellation of a pending court proceeding because of this commitment. Despite this, on or about March 15 and March 16, 2002, the Respondent rented the property to two separate tenants for the remainder of March on a month-to month basis, without telling either party that he was about to sign over the deed to the bank in lieu of foreclosure. The Respondent in fact signed over the deed on March 19, 2002. Finally, the Respondent has refused to respond to either tenant's request for return of the \$400 that they paid to him.

These facts constitute practices harmful or detrimental to the public, in violation of Iowa Code section 543B.29(3)(2001).

They also constitute substantial misrepresentations, in violation of Iowa Code section 543B.34(1)(2001). These acts demonstrate that the Respondent is unworthy to act as a real estate broker in such manner as to safeguard the public, in violation of Iowa Code section 543B.34(8)(2001). The Respondent's conduct demonstrates bad faith and improper and dishonest dealings, in violation of Iowa Code section 543B.34(11)(2001).

III. Sanction

By his misrepresentations in renting his own property, the Respondent has harmed two members of the public. If the Respondent acts in this manner when conducting a real estate transaction on his own behalf, he cannot be trusted to act ethically or honestly when conducting real estate transactions on behalf of others.

In determining what sanction to impose in this case, the Commission has considered the factors outlined in its rules, including the relative seriousness of the violation as it relates to assuring citizens professional competency, the egregious facts of the violations, the fact that it is the Respondent's first violation, and the impact that the violations had on the public. 193E IAC 4.44. [now found at 193E IAC 18.14(2)] The Commission has determined that the nature of these violations demonstrates the Respondent's complete lack of understanding of the ethical obligations and professional responsibility of a licensed broker in the state of Iowa. Therefore, in order to deter such conduct in the future and to assure protection of the public, the Respondent's license will be suspended for a minimum period of one year, and he will be required to retake the broker prelicense education and the broker examination before he may be reinstated as a real estate broker in the state of Iowa. The Respondent will also be required to pay a \$1,000 fine and to refund the \$400 payments made to him by Diane Krueger-Rameh and Tim Rios.

ORDER

IT IS THEREFORE ORDERED that the Respondent's Broker License (B08396) is hereby SUSPENDED for a minimum period of one (1) year, effective immediately upon issuance of this decision.

IT IS FURTHER ORDERED that the Respondent's Broker License may not be reinstated until at least one year has elapsed and he has met the following conditions:

02-025

1. Completion of the Broker prelicense education requirements. See 193E IAC 16.3(1).
2. Successful completion of the real estate broker exam.
3. Payment of a civil penalty of one thousand dollars (\$1,000) to the Iowa Real Estate Commission.
4. Submission of verification that he has refunded the \$400 deposit and rent payments made by Diane Krueger-Rameh and Tim Rios.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193E IAC 4.56 [now found at 193 IAC 7.41], that the Respondent shall pay \$75.00 to the Iowa Real Estate Commission within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this 25th day of July, 2003.


James Hughes, Chairperson
Iowa Real Estate Commission

cc: Keith Uhl
Uhl Law Firm
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(CERTIFIED)

Pamela Griebel
Assistant Attorney General
Hoover State Office Building
(LOCAL)

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. 193E IAC 4.52.