

DEPARTMENT OF COMMERCE  
PROFESSIONAL LICENSING DIVISION  
1918 S.E. HULSIZER AVENUE  
ANKENY, IOWA

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IN RE:	)	
	)	CASE NUMBER: 89-051
RICKY LEE ESPELAND (B08467)	)	DIA NO: 90DOCRE-9
Broker-Associate	)	
	)	
Regency West No. 3, Suite 110	)	FINDINGS OF FACT,
4800 Westown Parkway	)	CONCLUSIONS OF LAW,
West Des Moines, Iowa 50265	)	DECISION AND ORDER.

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On May 10, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Ricky Lee Espeland, a licensed Iowa Broker-Associate (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of Iowa Code section 117.29(2) and 193E Iowa Administrative Code 1.29.

On July 19, 1990 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa broker's license of the Respondent.

The entire Commission was present for the hearing. The Commissioners are E. Joe Ann Lutz, Jerry Duggan, Marlys Nielsen, Robert Christensen, and James R. Berry. The State was represented by John Parmeter, Assistant Attorney General. The Respondent appeared pro se. Kathy Skinner, Assistant Attorney General, was the Commission's legal advisor. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the administrative law judge. The hearing was closed to the public at the Respondent's request, pursuant to Iowa Code section 258A.6(1). The Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f) to deliberate its decision and instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order.

#### FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117 and 258A as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker. His license number is B08467.

3. The Respondent is a Broker-Associate employed as a salesperson with Gene Stanbrough and Associates. The Respondent describes himself as self-employed. The Commission finds that a more correct characterization is identified in Iowa Code 117.5(1) (1989). Respondent is an independent contractor, but his broker holds his license. (Testimony of Respondent).
4. On April 10, 1989 Respondent listed the property located at 1807 East 32nd, Des Moines, Iowa. Steve and Becky Pettinger were listed as the Sellers. The Pettingers purchased the property on contract from Neva L. Cochran on December 6, 1982. (Testimony of Respondent; State's Exhibits A, B, and C).
5. When Respondent listed the property he saw a title opinion or copies of pencil notes that showed Steve Pettinger had some small liens against him, most of which were about ten years old. Mr. Pettinger also told Respondent that he had a couple of judgments against him, but that he was paying them off, and the sale of the property would clear everything up. (Testimony of Respondent; State's Exhibit C).
6. Respondent showed the property located at 1807 East 32nd to Rodney and Kathryn Rochat on April 27, 1989. An offer to purchase was written on April 27, 1989. The Sellers agreed to the terms on April 30, 1989 for a contract sale. Respondent told the buyers they could have an attorney look over the documents, but they did not want to pay the legal fees. (Testimony of Respondent; State's Exhibit C).
7. The first day that Respondent met the Rochats, they told him they had just filed for bankruptcy and had ruined their credit. They were desperate for a place to live as they were facing foreclosure on their present home. They had a good income, and wanted a house for \$1,000.00 - \$1,700.00 down that they could buy on contract. (Testimony of Respondent; State's Exhibit C).
8. The closing department for Stanbrough and Associates would not close the transaction unless the abstract was brought up to date. Respondent picked up the abstract from August Luthens, the attorney for the title holder of 1807 E. 32nd, and had it brought up to date. When the abstract was brought up to date, all the liens appeared, including one from the IRS which had been filed in February 1989. It was obvious that the \$1,200.00 down payment would be insufficient to pay off all the liens at closing. (Testimony of Respondent; State's Exhibits B, C, and D).
9. The closing department of Stanbrough and Associates notified Respondent that they would not close the transaction because of the liens of record. Stanbrough and Associates considered the transaction terminated. (Testimony of Respondent; State's Exhibit D).
10. Respondent, despite the notice of termination of this transaction by his broker, proceeded to work with the buyers and

sellers to close the transaction. Respondent testified that he felt sorry for the buyers, since they were desperate to find a home. Respondent drew up a contract sale between Stephen L. Pettinger and Rebecca E. Pettinger (the sellers) and Kathy J. Rochat (the buyer). Respondent notarized and recorded the contract on June 12, 1989. (Testimony of Respondent; State's Exhibits A and C).

11. On June 28, 1989, notice of forfeiture was initiated by the legal title holder of the property. The forfeiture states that a contract between the Pettingers and Neva L. Cochran had not been complied with. This forfeiture caused Kathryn J. Rochat to suffer a financial loss. On July 29, 1989 a Release Agreement was executed by the Rochats, Stanbrough and Associates, and Respondent. Pursuant to the terms of the Agreement, Stanbrough and Respondent agreed to tender to the Rochats the sum of \$1,200.00. (Testimony of Respondent; State's Exhibits B and E).

12. As a result of his actions, Stanbrough and Associates placed Respondent on six months' probation with the understanding that any further evidence of any irregularities in his transactions or his reluctance to follow the directions and instructions of his broker will lead to his immediate termination. (State's Exhibit D).

13. Respondent was disciplined by the Commission on September 4, 1987 in case number 86-066. The previous violations were relatively serious and also involved Respondent's relationship with his broker. In that case the Commission suspended Respondent's license for six months, but stayed the suspension, and Respondent served the entire six months on probation. (Index of Disciplinary Actions; Findings of Fact, Conclusions of Law, Decision and Order, Case Number 86-066).

#### CONCLUSIONS OF LAW

1. Iowa Code section 117.29(2) states:

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:

. . .

2. Professional incompetency.

2. 193E Iowa Administrative Code 1.29 states:

A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

3. 193E Iowa Administrative Code 4.3 states:

The following factors are among those which may be considered by the commission in determining the nature and severity of the disciplinary action to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.
7. The impact of a particular activity upon the public.

4. The preponderance of the evidence established that Respondent failed to terminate the transaction after notice from his employing broker and drew up the contract sale, notarized and recorded it. This action constitutes a violation of Iowa Code section 117.29(2) and 193E Iowa Administrative Code 1.29.

DECISION AND ORDER

It is THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker's license of Ricky Lee Espeland, number B08467, shall be SUSPENDED for a period of one year. However, the last six months of the suspension period shall be stayed, and Respondent will be placed on probation for the last six months of the suspension period.

Executed this 20<sup>th</sup> day of August, 1990.

[Redacted signature]

E. De Ann Lutz, Chair  
Iowa Real Estate Commission

[Redacted signature]

Margaret LaMarche  
Administrative Law Judge

[Redacted signature]

K. Marie Thayer  
Administrator  
Professional Licensing Division

ML/jmm

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on 08/20/90

[Redacted signature]