

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

IN RE:)	CASE NUMBER: 89-064
WILLIAM C. FRANCOIS (B04292))	DIA NO: 90DOCRE-10
Broker)	
104 North Tama Street)	FINDINGS OF FACT
Manchester, Iowa 52057)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On May 23, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against William C. Francois, a licensed Iowa Broker (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of 193E Iowa Administrative Code 1.26 and 4.40.

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 in person, and was represented by his counsel, Thomas J. Hanson. 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 open to the public. 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 Chapter 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 B04292.

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3. Respondent listed a one hundred acre farm, known locally as the Ferguson farm, owned by First State Bank of Manchester, Iowa. First State Bank owns First State Realty, by whom Respondent is employed. The asking price was \$1,100.00 an acre. (Testimony of Respondent; State's Exhibit A).
4. In March 1989 Respondent showed the farm to Alfred Hettinger, his wife, and son. It was a bitterly cold day, and the farmhouse was unheated. They spent approximately one-half hour on the property. (Testimony of Respondent, Alfred Hettinger, Randy Hettinger).
5. The testimony concerning what was said after viewing the farm by Alfred Hettinger is conflicting. Alfred Hettinger claims that he told Respondent "I would give \$750.00 per acre." Hettinger said that Respondent refused to write up an offer at that price. Respondent states that Alfred Hettinger told him that he had spoken with Joe Wiewal, President of First State Bank, who said that the property could be obtained for \$75,000.00. Respondent testified that he told Alfred Hettinger that he did not think it could be bought for \$75,000.00. Respondent interpreted Hettinger's statement as an inquiry, not an offer. Randy Hettinger, Alfred's nineteen year old son, recalled that his father asked Respondent if they would take \$750.00 an acre for the farm, and Respondent said no. (Testimony of Alfred Hettinger, Randy Hettinger, and Respondent).
6. Randy Hettinger testified that he thought terms of the sale were discussed by his father and Respondent. However, both Respondent and Alfred Hettinger testified that no terms were discussed beyond the \$750.00 an acre price. (Testimony of Respondent; Alfred and Randy Hettinger).
7. Respondent did not write up an offer of \$750.00 an acre for Alfred Hettinger. On October 5, 1989 Alfred Hettinger, his wife, and son wrote a letter of complaint to the Iowa Real Estate Commission. (Testimony of Respondent; State's Exhibit A).
8. Alfred Hettinger was also upset with Respondent because he sold a farm for which Hettinger's son had a purchase agreement. The purchase agreement, which did not involve Respondent, was subject to receiving financing approval within three weeks. Hettinger's son did not get the approval within three weeks. Respondent sold the farm to another buyer. (Testimony of Alfred Hettinger; Respondent).
9. The Ferguson farm is still listed for sale. Alfred Hettinger has never asked Respondent, nor any other broker or salesperson, to write up an offer of \$750.00 per acre. (Testimony of Respondent; Alfred Hettinger).

CONCLUSIONS OF LAW

1. 193E Iowa Administrative Code 1.26 states:

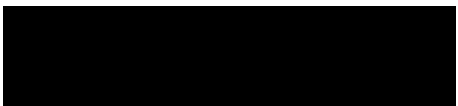
Any and all offers to purchase received by any broker shall be promptly presented to the seller for formal acceptance or rejection. The formal acceptance or rejection of the offers shall be promptly communicated to the prospective purchasers.

2. The preponderance of the evidence failed to establish that Alfred Hettinger made an offer to purchase the Ferguson farm. Both the testimony of Respondent and Randy Hettinger concerning the conversation between Respondent and Alfred Hettinger support the conclusion that Alfred Hettinger made an inquiry, not an offer, for the Ferguson farm. This conclusion is also supported by the other circumstances surrounding the conversation. The prospective buyers were only on the property for about a half hour and no terms of the sale were discussed. Under all of these circumstances, it was reasonable for Respondent to conclude that Alfred Hettinger was making an inquiry, not an offer. Therefore, the evidence does not establish a violation of 193E Iowa Administrative Code 1.26.


DECISION AND ORDER

It is THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the Complaint and Statement of Charges filed against William C. Francois, number B04292 on May 23, 1990, is hereby DISMISSED.


Executed this *20th* day of *August*, 1990.



E. Joe Ann Lutz, Chair
Iowa Real Estate Commission



Margaret LaMarche
Administrative Law Judge



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 *August 20*, 19*90*

