

CIRCUMSTANCES OF THE COMPLAINT

1. In January and February, 2001, Respondent asked the Commission for informal advice or opinion relating to the Respondent's proposed promotional plan that included offering reduced interest rates through his mortgage company to buyers using his brokerage services.
2. On or about March 12, Respondent was informed that the proposal included at least the appearance of indirect benefit to the real estate broker given the common ownership and the connection between the two businesses, which may violate IAC 193E-1.31(6) and / or (7).
3. On or about April 4, 2001, while shopping for mortgage rates, Michael Barker, met with Respondent. Respondent advised Barker that he could finance the mortgage at a reduced rate if Barker also used him as his real estate agent.
4. On or about April 5, 2001, Barker informed his real estate agent that he would have to use the Respondent in order to obtain the reduced rate mortgage. On or about April 20, 2001, a complaint was filed with the Commission.
5. The tying arrangement proposed and offered by Respondent is potentially injurious to the public as it may have an adverse impact on consumer choice. Consumers may, for instance, feel compelled to maintain relations with a real estate professional they'd prefer to terminate due to the adverse financial consequences of such a decision.

FINDING OF PROBABLE CAUSE

On October 25, 2001 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 28th day of FEBRUARY, 2001.


Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 01-034
)	DIA NO. 02DOCRE005
GREGORY O. FRANICH)	
Broker (B41111))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
RESPONDENT)	DECISION AND ORDER

On February 28, 2002, the Iowa Real Estate Commission (Commission) found probable cause to file a Complaint against Gregory Franich (Respondent). The Complaint alleged that the Respondent engaged in practices harmful or detrimental to the public by offering Symmetry Mortgage Corporation loans to prospective buyers at a reduced interest rate conditioned upon use of Symmetry real estate brokerage services, in violation of Iowa Code section 543B.29(3)(2001) and 193E IAC 1.31(6), 1.31(7), 4.54(17), and 4.54(19). A Notice of Hearing scheduled a prehearing conference for April 12, 2002 and a hearing for April 18, 2002.

The hearing was held on April 18, 2002 at approximately 10:45 a.m. The Respondent, Gregory O. Franich, appeared and was represented by his counsel, Catherine Cartee and Mark Fowler. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Commission members were present for the hearing: Robert Miller, Salesperson, Chairperson; James Hughes, Broker; Evelyn Rank, Public Member; Dorothy F. Woline, Broker; and Barbara Leestamper, 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)(2001). The record was held open until Thursday, April 25, 2002 at 4:30 p.m. to allow the parties to supplement their legal arguments. The state filed a post-hearing memorandum on April 23, 2002.

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2001), to deliberate its decision. 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. On April 29, 2002, the Commission voted to approve the written decision in a meeting held by telephone conference call.

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THE RECORD

The record includes the Statement of Charges, Notice of Hearing, State's Prehearing Conference Report, Respondent's Prehearing Conference Report, Memorandum of Law In Support Of Respondent, the testimony of the witnesses, State Exhibits 1-6 and Respondent Exhibits A-G, and the State's Post-Hearing Memorandum.

ISSUES

Whether the Respondent offered MB a lower interest rate mortgage on the condition that MB also use the Respondent as his real estate broker?

Whether through his website the Respondent offered prospective Iowa real estate clients a lower interest rate mortgage on the condition that the prospective clients also use the Respondent as their real estate broker?

Whether the Respondent's offer of a lower rate mortgage on the condition that prospective clients also use his services as a real estate broker constitutes unethical conduct or a practice harmful or detrimental to the public in violation of Iowa Code section 543B.29(3), as defined by 193E IAC 1.31(6) and (7)?

Whether the application of the prohibition in 193E IAC 1.31(6) and (7) to the facts in this case violates the Respondent's substantive due process rights, the Sherman Act, and the Iowa Competition Act?

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 Symmetry Mortgage Corporation, a licensed real estate firm in Bettendorf, Iowa. The Respondent has the trade name of Symmetry Real Estate registered with the Commission; Symmetry Real Estate is not a separate corporation. The Respondent's real estate broker license (B41111) is in full force and effect through December 31, 2003. (State Exhibit 1; Testimony of Roger Hansen; Respondent)

2. The Respondent was originally licensed as a real estate broker in Illinois in August 2000 and received his Iowa broker's license by reciprocity. The Respondent has a B.A. in Finance and has been employed in the mortgage lending business since 1996. He owns Symmetry Mortgage Corporation with his wife and her parents. Symmetry Mortgage Corporation was licensed in Iowa in January 2001 and in Illinois in April 2001. (Testimony of

Respondent)

3. Symmetry Mortgage Corporation has relationships with three lenders who make the actual mortgage loans to his customers. Two of the lenders are based in Michigan; one is in Wisconsin. In an attempt to expand his real estate business, the Respondent devised a marketing plan or value-added service whereby he would offer mortgages to his real estate clients at .25-.375% below regular market rates. At these interest rates, the Respondent would only break even on the mortgage, thereby forgoing a profit on the mortgage in order to make a profit on the real estate commission. The availability of a lower interest rate on the loan was conditioned upon using the Respondent as the real estate broker for the transaction. The buyer was not required to use the Respondent as the real estate broker, but if they did not use the Respondent as the broker then the higher, for profit interest rate would be charged on the loan. (Testimony of Respondent)

4. In letters dated January 19, 2001 and February 27, 2001, the Respondent and his attorney asked the Commission for its review and informal advice on his proposed marketing plan to offer reduced interest rate real estate financing through his mortgage company as a value added service to buyers who also used his services as a real estate broker. As described to the Commission, financing through Symmetry Mortgage Corporation would not be conditioned upon using the Respondent as the real estate broker for the transaction, but if the Respondent's services as a broker were used, the interest rate would be less than that offered to those who did not use his broker services. (Testimony of Roger Hansen; Respondent; State Exhibit 4)

5. The Commission responded to the request for informal advice on March 12, 2001 and expressed a number of concerns about the proposal. The Commission stated that the arrangement may violate 193E IAC 1.31(6) and/or (7) because it was at least an indirect benefit to the real estate broker given the common ownership and tie in between the two businesses. The Commission felt the disclosure was potentially misleading because it did not alert borrowers that if they changed brokers, their interest rate would substantially increase. The Commission also expressed concerns about the proposal's compliance with truth-in-lending laws, anti-trust, and laws governing the mortgage lender. Finally, the Commission informed the Respondent that he could seek a formal declaratory order from the Commission on the application of the Commission's laws and rules to a hypothetical set of facts. The Respondent did not request a declaratory order. (Testimony of Roger Hansen; Respondent; State Exhibit 4)

6. On April 20, 2001, the Commission received a complaint from Sharon Tahere, a licensed real estate salesperson, alleging that the Respondent, while acting as a mortgage lender with Symmetry

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Mortgage Corporation for prospective buyers of property, offered a lower interest rate to buyers if the buyers would change realty companies and hire Symmetry Real Estate as a buyer's real estate agent.

a. The complaint alleged that the Respondent met with a prospective buyer, MB, on April 4, 2001, and offered him a lower interest rate on a mortgage if he used Respondent's services as a real estate broker. MB had been working with Sharon Tahere to find a property but they did not have an exclusive buyer contract.

b. The complaint also attached an internet home page for Symmetry Mortgage Corporation which advertised financing as a value added service when Symmetry Real Estate is used as the realtor. The home page gave a Bettendorf, Iowa address and a photograph of the Respondent with the statement ❖Licensed Iowa and Illinois Real Estate Broker.❖ A chart on the web site listed the ❖real estate client interest rate❖ for various types of loans. The web site disclosed that Symmetry Mortgage Corp. and Symmetry Real Estate Co. are affiliated for the purpose of providing maximum value added service to its customers. It also included the following statement in bold print:

While the interest rate and closing costs are lower for our Real Estate Clients, there is no condition requiring use of Symmetry Mortgage Corp. for those Real Estate Clients. Likewise your mortgage loan approval or closing is not conditioned on the use of Symmetry Real Estate Co. as your realtor.

(Testimony of Roger Hansen; Sharon Tahere; Connie Schumaker; Respondent; State Exhibit 2)

7. On May 22, 2001, the Commission wrote to the Respondent, explaining the nature of the complaint and asking for an explanation. He replied on May 28, 2001, attaching copies of his previous correspondence with the Commission. He also enclosed purported copies of 193E IAC 1.31(6) and (7) which he had received from the Iowa Association of Realtors. They provided:

(6) Any arrangement in which a real estate licensee enters into an agreement with a financial institution in to which the making of a loan is conditioned upon payment of a real estate commission to the real estate licensee.

(7) Any arrangement in which a real estate licensee who is affiliated with a mortgage broker, bank,

benefits from the practice by the affiliated financial institution of granting mortgage loans conditioned upon the use of the real estate services of the affiliated licensee.

The version of the rules provided by the Iowa Association of Realtors, which is different from the published official version, was relied upon by the Respondent and his attorney in determining whether or not Symmetry's business practices complied with the rules. (Testimony of Respondent; Roger Hansen; State Exhibits 3, 4)

8. The Respondent denies that he offered a lower interest rate mortgage to MB to purchase property in Iowa if he used Respondent's services as a real estate broker. The Respondent maintains that after receiving the Commission's informal review of his proposal and while waiting for a formal opinion, he did not offer his value added service to any Iowa customers, including MB. He continued to offer the lower rate mortgages in Illinois, where it was permitted. The Respondent mistakenly thought that his former attorney had filed a request for a declaratory order with the Commission; now he is waiting for the outcome of this contested case before offering below market interest rate mortgage loans in Iowa.

a. At the hearing before the Commission, MB testified that in June 2000 he moved to Iowa after being hired by a corporation in Muscatine, Iowa. He began looking for a new home in Iowa and was working with Sharon Tahere, a licensed salesperson with Ruhl & Ruhl Realtors, to find a property. MB went to see the Respondent in response to Symmetry Mortgage Corporation's advertisement for mortgage rates in the Quad Cities Times. He was surprised when the Respondent quoted him a higher interest rate than the one advertised in the paper. According to MB, the Respondent told him that if he was MB's realtor, he could get him a lower interest rate. MB was upset that he could not get the advertised interest rate and later related the conversation to Ms. Tahere, who told him that the Respondent's proposal to him was illegal. MB eventually bought property in Davenport. (Testimony of MB)

b. Sharon Tahere told her broker, Connie Schumaker, about the Respondent's conversation with MB. Ms. Schumaker called the Respondent and asked him if he offered MB a better rate on his mortgage if he worked with the Respondent. According to Ms. Schumaker, the Respondent admitted it and said that he had received informal information from the Real Estate Commission that it was legal. She told the Respondent that in her opinion it was not legal. (Testimony of Connie Schumaker; State Exhibit 2)

c. According to the Respondent, MB came to him looking for a \$400,000 loan at 6% interest with 100% loan to value. The Respondent smiled and wished him luck. MB then asked about the advertised interest rate in the newspaper. He told the Respondent that he was looking for property in the Quad Cities: Iowa or Illinois. The Respondent told MB that the only way he could get him the lower advertised interest rate was if MB used him as the realtor to purchase a property in Illinois. The Respondent denies that he offered MB the lower interest rate on a home in Iowa. According to the Respondent, he told MB that he was working with the Real Estate Commission and was hopeful that he would soon be able to offer the lower interest rate in Iowa.

According to the Respondent, Ms. Schumaker was mad when she called him. She told him that lenders are not realtors in their area and asserted that he had tried to take one of her agent's clients. The Respondent told Ms. Schumaker if she had an issue with him she should take it up with the Commission. (Testimony of Respondent)

d. The Respondent presented affidavits of four real estate clients who used his services to purchase real estate in Iowa. All four state that the Respondent never informed them that obtaining a mortgage from Symmetry Mortgage Corporation was conditioned upon using the Respondent as the real estate agent or conversely, that use of the Respondent as a real estate broker was conditioned upon applying for a mortgage through Symmetry Mortgage Corporation. None were offered a reduced rate mortgage in exchange for employing the Respondent as their real estate broker. (Respondent Exhibits A-D)

MB and the Respondent have different recollections about their conversation. The Respondent concedes that they discussed the availability of a lower rate mortgage if MB used the Respondent as his realtor. Since MB was looking for properties in the Quad Cities, which could include Illinois, the Respondent maintains that he differentiated between Illinois, where he could give MB the lower rate, and Iowa, where he was working with the Commission and hopeful that he could soon offer the lower rate. If this is what the Respondent told MB, MB clearly did not understand the nuances of this distinction, because he left their meeting believing that he could get the lower rate in Iowa if he used the Respondent as his real estate broker. This is what he related to Ms. Tahere.

The Commission is concerned by these inconsistencies, but was unable to conclude, by a preponderance of evidence, that the Respondent specifically told MB that he could get the lower

interest loan if he bought property in Iowa using the Respondent as his real estate agent.

9. The Respondent concedes that he essentially offered his reduced rate mortgage proposal to potential Iowa clients through his website, which identified him as a licensed real estate broker in both Iowa and Illinois, and which did not distinguish between the interest rates available for real estate transactions in the two states. The Respondent wants the Commission to reach the issue of whether or not his proposal for reduced rate mortgages for real estate clients violates 193E IAC 1.31(6) and/or (7). (Testimony of Respondent; State Exhibit 2)

Before the Respondent received the Commission's informal advice letter on his proposal, he had drafted an ❖affiliated business❖ disclosure for his marketing proposal. The disclosure form is entitled ❖Important ❖Affiliated Business❖ disclosure regarding ❖Value Added❖ features for Symmetry Mortgage Corp. and Symmetry Real Estate Co.❖ The form cites to the Iowa Administrative Code sections relating to prohibited practices. After he received the informal advice of the Commission, the Respondent modified the form to add the statement ❖Illinois Properties Only are Eligible.❖ However, he did not remove the references to his Iowa license or to the Iowa Administrative Code from the disclosure form. At the hearing, the Respondent stated that he will be asking his attorney to draft a new disclosure for him. (Testimony of Respondent; Respondent Exhibit E)

10. The Respondent was the real estate broker in 8-10 real estate transactions in Iowa in 2001. He was also the lender on all but two of these transactions. Symmetry Mortgage Corporation processed 100 mortgage transactions in Iowa in 2001. (Testimony of Respondent)

CONCLUSIONS OF LAW

I. The 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.

193E IAC 1.31(6) and (7) provide, in relevant part:

193E-1.31(543B) Prohibited practices. For purposes of this rule only the term ~~real estate licensee~~ shall mean ~~real estate broker or real estate salesperson~~ as defined in Iowa Code chapter 543B. A licensee participating in any of the practices described in this rule shall be deemed to be engaging in ~~unethical conduct~~ and a ~~practice harmful or detrimental to the public~~ within the meaning of Iowa Code section 543B.29 (3).

...

1.31(6) Any arrangement in which a real estate licensee enters into an agreement with a mortgage broker, bank, savings and loan, or other financial institution pursuant to which the making of a loan is directly or indirectly conditioned upon the payment of a real estate commission to the real estate licensee.

1.31(7) Any arrangement pursuant to which a real estate licensee who is affiliated with a mortgage broker, bank, savings and loan association or other financial institution benefits from the practice by the affiliated financial institution of granting mortgage loans or any other loan or financial services or the availability of other benefits directly or indirectly conditioned upon the use of the real estate services of the affiliated licensee.

This rule is intended only to regulate the licensing of real estate licensees in the state of Iowa. This rule is not intended nor should it be interpreted to supplant Iowa Code chapter 553 (The Iowa Competition Law) or as authorizing or approving business practices which are not specifically prohibited in this rule. The commission, upon receipt of any formal written complaint filed against a licensee alleging a violation of this rule, shall, in addition to evaluating such complaint for license revocation or suspension under Iowa Code chapter 543B, forward a copy of such complaint to the attorney general of the state of Iowa and to the United States Attorney for investigation and appropriate action.

II. Analysis

The preponderance of the evidence failed to establish that the Respondent specifically offered a lower rate mortgage to MB to purchase property in Iowa, conditioned on using the Respondent as his real estate broker, as alleged in the Statement of Charges.

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Based on this record, the Board is unable to conclude that the Respondent specifically offered MB a reduced interest rate if he used his real estate broker services to buy property in Iowa.

However, the Respondent concedes that his website, because it was not limited to Illinois properties, essentially offered Iowa buyers reduced interest rate mortgages through Symmetry Mortgage Corporation, conditioned upon them using his services as a real estate broker on the transaction. The Respondent is asking the Commission to determine whether this offer was permissible under its statutes and rules.

A. 193E IAC 1.31(6)

The Respondent owns Symmetry Mortgage Corporation and is a licensed real estate broker, using Symmetry Real Estate Company as a licensed trade name. The Respondent's proposed "value added service" or "marketing tool" constitutes an "arrangement" entered into between himself (as the real estate broker) and a mortgage broker (Symmetry Mortgage Corporation) which he also owns. Symmetry Mortgage Corporation is offering lower than market rate loans, directly conditioned upon the payment of a real estate commission to the Respondent. If the Respondent does not get the real estate commission, then the buyer does not get the lower interest loan and must pay a higher interest rate. Such an arrangement falls squarely within the conduct described and prohibited by 193E IAC 1.31(6).

The policy reasons underlying the prohibition in the rule include fostering fair competition and enhancing consumer choice as well as protecting the broker's fiduciary and loyalty duties to clients from conflicts of interest. While the rules, when originally adopted in 1981, likely contemplated a tying arrangement between two independent businesses, Symmetry's common ownership of both the real estate and lending services may raise even greater concerns.

The Respondent argues that his arrangement is not prohibited because eligibility for a mortgage through Symmetry Mortgage Corp. is not tied to or conditioned upon using him as the broker. A buyer can obtain a mortgage at a higher interest rate from Symmetry Mortgage without using the Respondent's broker services and can use the Respondent's broker services without obtaining a mortgage through Symmetry. This argument ignores the fact that the lower interest (no profit) loan is directly conditioned upon and tied to the use of the Respondent's broker services.

Whether the lender and broker are tied together through common ownership or a side agreement, a broker's duty of loyalty to a client is compromised when a broker is motivated to tie a client to a particular lender. Further, in a community where one or more financial institutions are or could become dominant, allowing a real estate agent with a connection to a financial institution to exploit the connection in the real estate market could have a detrimental impact on the community, the interests of the public, and fair competition in the marketplace. See October 3, 1980, Letter from Solicitor General Mark Schantz to Administrative Rules Review Committee. (State Exhibit 6)

The Respondent also argues that his offering of lower than market interest rate loans to his real estate clients is not injurious to the public and only professional competitors have complained about his marketing tool. There is no requirement that a member of the public must be harmed or injured before the Commission may take disciplinary action against a licensee for a violation of Iowa Code section 543B.29(3)(2001). When feasible, it is preferable for the Commission to take action before the public is harmed by unethical conduct or a practice harmful or detrimental to the public.

B. 193E IAC 1.31(7)

Similarly, the Respondent's marketing strategy or proposal is a prohibited practice as defined by 193E IAC 1.31(7) because it is an arrangement, from which the Respondent, as the licensed broker affiliated with his own mortgage company, benefits when Symmetry Mortgage Corporation grants lower than market interest loans directly conditioned upon the use of the Respondent's services as a real estate broker. The benefit to the Respondent is a real estate commission that he might not otherwise earn, but for the tying arrangement with Symmetry Mortgage.

The Respondent argues that other real estate companies offer similar incentives or other perks to their customers (see Respondent Exhibits 6 and 7), which require him to respond in kind in order to compete on a level playing field and which led him to believe that his proposal would not violate any regulation or statute. However, the Commission must apply the law to the specific facts before it in the contested case and cannot rule on other arrangements or practices unless they are properly presented either through a contested case or a formal request for declaratory order. Based on this record, the Commission unanimously agrees that offering lower interest mortgage loans conditioned upon the use of a particular real estate broker falls

squarely within the prohibitions outlined in the Commission's rules and constitutes a practice harmful or detrimental to the public, in violation of Iowa Code section 543B.29(3) (2001), as defined by 193E IAC 1.31(6) and (7).

III. Constitutional Arguments

The Respondent contends that his proposed business practice is nothing more than a marketing tool and its prohibition would not protect the public, but would violate his substantive due process rights, the Sherman Act and the Iowa Competition Act.

A. *Applicability of the Sherman Act and the Iowa Competition Act*

The Commission's rules fall within the "state action" exemption of the Sherman Act [15 U.S.C. §§ 1,2] because they were properly promulgated pursuant to a broad statutory mandate to regulate the profession. See Northwestern Bell v. Iowa Utilities Board, 477 N.W.2d 678, 685 (Iowa 1991). Through Iowa Code chapter 543B, the Legislature has vested the Commission with broad regulatory authority, including the responsibility to impose discipline for practices "harmful or detrimental to the public" and to "promulgate rules to carry out and administer" the provisions of Iowa Code chapter 543B. Iowa Code sections 543B.9, 543B.29(3). See also Milholin v. Vorhies, 320 N.W.2d 552, 554 (Iowa 1982) (Legislature has delegated the Commission with far-reaching statutory authority in order to regulate the profession and protect the public).

Similarly, the Iowa Competition Law (Iowa Code chapter 553) does not apply to "activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state or of the United States." Iowa Code section 553.6(4) (2001). See also State v. Miner, 331 N.W.2d 683, 689 (Iowa 1983) (The Iowa Competition Law does not attempt to prohibit economic regulations imposed by the state when the state has a significant interest in regulating such economic activity).

Even if subject to Iowa Code chapter 553, the Commission's rules are designed to facilitate, not restrain, fair competition. Tying arrangements are among the handful of arrangements which courts generally find to be "unlawful in and of themselves." State v. Hossan-Maxwell, 181 Conn. 655, 436 A.2d 284, 287 (1980) (citations deleted). See also cases cited by Attorney General in connection with original Petition for Rulemaking

presented to the Commission in 1980. (State Exhibit 5) The Commission's rule is narrowly drawn and clearly and unambiguously states that it is intended only to regulate real estate licensing in Iowa and is not intended nor should it be interpreted to supplant Iowa Code chapter 553.

B. Substantive Due Process Claim

Since rules 1.31(6) and (7) do not infringe upon a fundamental right, the applicable standard of review is the rational basis test. State v. Klawonn, 609 N.W.2d 515, 519-520 (Iowa 2000). The party challenging the rule has the burden of establishing that it is unconstitutional and must negate every reasonable basis upon which it may be sustained. Id. (citations deleted). If the reasonableness of the rule's nexus to its purported end is fairly debatable, it must be allowed to stand. Id. (citations deleted). An economic regulation challenged on substantive due process grounds will not be overturned as long as there is an evil at hand for correction, and...it might be thought that the particular legislative measure was a rational way to correct it. State v. Miner, 331 N.W.2d 683, 688 (Iowa 1983)

As demonstrated in the rule making record and as discussed earlier in this decision, the Commission believes that 193E IAC 1.31(6) and (7) were promulgated to address and correct an identified or potential "evil" in the practice of real estate brokers and salespersons. As previously noted in this decision, the type of tying arrangement proposed by the Respondent creates a conflict of interest which can compromise the real estate licensee's fulfillment of his or her professional obligations and duties to the client. Moreover, the Commission disagrees that the Respondent's proposal cannot adversely affect competition for real estate broker services.

The Respondent rejects the suggestion that marketing proposals like his can adversely affect competition and points out that the consumer's choice of a mortgage lender is usually influenced by several subjective factors in addition to the interest rate. While this may be true, it does not necessarily follow that a tying arrangement such as the one proposed by the Respondent will not have a negative impact on competition and consumer choice in the real estate market. If the Respondent is permitted to offer lower interest mortgage rates conditioned on use of his broker services as a marketing tool, then the larger real estate companies with whom he is trying to compete will also be entitled to make such arrangements with affiliated mortgage brokers. Even if the Respondent's particular tying arrangement did not have an

adverse impact on consumer choice or competition in a real estate market like the Quad Cities, it is clear that such arrangements, if instituted on a large enough scale, would eventually lead to less choice for the consumer.

IV. Sanction

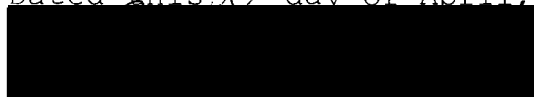
In determining what sanction to impose in this case, the Commission has considered the fact that this is an issue of first impression, that the Respondent initially disclosed his proposal and sought informal advice from the Commission, and that the record did not support the conclusion that the Respondent has made the lower interest rate proposal directly to any Iowa consumer. Under these circumstances, the Commission believes that the violation can be adequately addressed through a permanent prohibition of the tying arrangement proposed by the Respondent.

ORDER

IT IS THEREFORE ORDERED, pursuant to 193E IAC 4.43(2)"a"(5), that the Respondent is hereby permanently prohibited from offering his Iowa real estate clients reduced interest rate mortgages conditioned upon the clients using his services as a real estate broker.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193E IAC 4.56, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this 29th day of April, 2002


Robert Miller, Chairperson
Iowa Real Estate Commission

cc: Catherine Zamora Cartee
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(CERTIFIED)

Pamela Griebel
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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.

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