

BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 SE HULSIZER .  
ANKENY, IOWA

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IN RE:	)	
	)	
DEBRA S. GORHAM      (S35175)	)	CASE NUMBER: 95-108
Salesperson	)	STATEMENT OF CHARGES
	)	
1420 Osborn Street	)	
Burlington, Iowa 52601-1962	)	
	)	

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The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1995).

Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.

DEBRA S. GORHAM is, and was at all material times during the following events, a licensed salesperson assigned to Bolick Realty and Construction Company, Burlington, Iowa, a licensed real estate firm, Robert E. Herber, broker officer and designated broker in charge. Her license number is S35175.

COUNT I

The Respondent is charged with professional incompetency and engaging in a practice harmful or detrimental to the public by failing to obtain written authorization of the owner to rent a property and failing to obtain the signature of the seller on an early possession rental agreement, in violation of Iowa Code sections 543B.29(2) and (3), and 543B.34(8) and (11) (1995), and 193E IAC sections 1.30 and 4.40(10).

COUNT II

The Respondent is charged with professional incompetency and engaging in a practice harmful or detrimental to the public by residing in a property listed for sale without the written agreement of the owner, in violation of 543B.29(2) and (3), and 543B.34 (8) and (11) (1995) and 193E IAC sections 1.30 and 4.40(19).

### CIRCUMSTANCES OF THE COMPLAINT

1. On July 10, 1995, Respondent listed the property at 531 S. Central, Burlington, Iowa, Sherry Beach, owner.
2. Without written authorization to rent the property, Respondent prepared an agreement on September 2, 1995, providing for Rex and Sandra Taber to rent the property located at 531 S. Central, Burlington, Iowa, for 30 days until all terms of the sale of the property are arranged. The Tabers moved into the property September 2, 1995. Respondent failed to obtain the signature of the owner, Sherry Beach.
3. On September 5, 1995, Respondent prepared a purchase agreement for the property for \$33,000, on contract with Rex and Sandy Taber, buyers.
4. The Tabers occupied the property for approximately 10 days, subsequently moved out of the property, and sued Beach for \$505.00 due to a malfunctioning hot water heater.
5. On or about October 10, 1995, Respondent prepared a purchase agreement for the property for \$55,000, on contract with Larry Williams, Jr. buyer. The contract provided for an \$8,000 down payment work allowance, \$43,000 on contract and contingent upon First National Acceptance Company buying the contract. First National Acceptance Company did not buy the contract and the transaction did not close.
6. On October 17, 1995 Respondent prepared and entered into an option to purchase contract with Larry Williams, Jr. to purchase the property in two years for \$35,410. Respondent moved into the property, resided there for over two months without a written agreement and of the owner Sherry Beach. During this time, Respondent paid no rent or payments.

FINDING OF PROBABLE CAUSE

On April 18, 1996, 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.

Executed this 9<sup>th</sup> day of SEPTEMBER, 1996.



Roger L. Hansen, Executive Secretary  
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General

BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 S.E. HULSIZER  
ANKENY, IOWA

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IN RE:	)	DIA NO. 96DOCRE-6
	)	CASE NO. 95-108
DEBRA S. GORHAM (S35175)	)	
Salesperson	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
105 S. 6th Street	)	DECISION AND ORDER
Burlington, Iowa 52601	)	

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On September 9, 1996, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Debra S. Gorham, a licensed Iowa salesperson (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29(2) and (3); 543B.34(8) and (11)(1995); and 193E IAC 1.30 and 4.40(10) and (19). A Notice of Hearing set the hearing for November 14, 1996 at 9:30 a.m.

The hearing was held on November 14, 1996 at 9:30 a.m. The following members of the Commission were present and participated in making the decision: Russ Nading, Acting Chairperson; Terry Rogers; and Mark Odden. The State was represented by Pam Griebel, Assistant Attorney General. The Respondent appeared and was not represented by counsel. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

The hearing was recorded by a certified court reporter. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code section 272C.6(1)(1995). After hearing the testimony and examining the exhibits, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(1995) to deliberate their decision. The administrative law judge was instructed to draft the Findings of Fact, Conclusions of Law, Decision and Order, in accordance with the Commission's deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, Acknowledgment, testimony of the witnesses, and the following exhibits:

- State Exhibit A: Acknowledgement of Service, 10/4/96
- State Exhibit B: Exclusive Listing Agreement, 2/8/95, 531 S. Central
- State Exhibit C: Exclusive Listing Agreement, 7/10/95, 531 S. Central

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State Exhibit D: Advance rental agreement, 9/2/95

State Exhibit E: Real Estate Sales Contract, 9/5/95  
E-1: Second page to Exhibit E

State Exhibit F: Receipt, \$425.00, 9/5/95

State Exhibit G: Letter dated 9/8/95 (Tabers to Beach)

State Exhibit H: Small Claims Original Notice, Des Moines  
County District Court, filed 9/11/95

State Exhibit I: Purchase Agreement dated 10/10/95 (Wil-  
liams to Beach)

State Exhibit J: Real Estate Contract dated 10/10/95  
(Beach to Williams)

State Exhibit K: Assignment of Seller's Interest in Real  
Estate, 10/16/95 (Beach to First National  
Acceptance)

State Exhibit L: Seller's Affidavit, 10/16/95

State Exhibit M: Quit Claim Deed, 10/16/95

State Exhibit N: Warranty Deed, 10/16/95

State Exhibit O: Notice dated 10/16/95, regarding Acceler-  
ated Cash Program-Lump Sum Payment

State Exhibit P: Closing Statement

State Exhibit Q: Option Contract, 10/17/95 (Williams to  
Respondent and husband)

State Exhibit R: Abstract Statement dated 12/18/95 and  
Agreement to Pay Bill

State Exhibit S: Complaint dated 12/4/95

State Exhibit T: Letter dated 12/19/95 (Hansen to Heberer)

State Exhibit U: Letter dated 12/22/95 (Loeschen to Han-  
sen)

State Exhibit V: Letter dated 2/29/96 (Heberer to Respon-  
dent)

- State Exhibit W: Letter dated 2/29/96 (Heberer to Commission)
- State Exhibit X: Same as Exhibit D, with signature of Sherry Beach
- State Exhibit Y: Heberer Summary of Events
- State Exhibit Z: Unsigned Rental Agreement between Respondent and Sherry Beach
- Z-1: Purchase Agreement between Respondent and Beach (1st page)
- Z-2: (2nd page)
- Respondent Exhibit 1: October 11, 1995 Statement, signed by Beach and Respondent
- Respondent Exhibit 2: Respondent's notes re: conversations with Beach
- Respondent Exhibit 3: Seller's Final Settlement Statement, Bill from Marion D. Lancaster
- Respondent Exhibit 4: Letter dated 1/4/96 (Skewes to Respondent)
- Respondent Exhibit 5: Blank copy of Exhibit J

#### FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 272C, and 543B, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent is a licensed real estate salesperson, license number S35175. Her license is currently inactive. The Respondent was actively licensed and assigned to Bolick Realty and Construction Company, Burlington, Iowa, from June 1994 until February 29, 1996. Robert E. Heberer was the broker officer and broker in charge for Bolick Realty and Construction Company. (Board file; Testimony of Robert Heberer; Roger Hansen; State Exhibit W)
3. On February 8, 1995, the Respondent listed the property at 531 S. Central, Burlington, Iowa, at a listing price of \$36,000. The owner of the property, Sherry Beach, was residing in Fort Madison and the property was vacant. On July 10, 1995, the listing was renewed at a reduced price of \$33,000. (Testimony of Robert Heberer; Respondent; Sherry Beach; State Exhibits B, C)

4. On August 31 or September 1, 1995, the Respondent spoke to her broker about Rex and Sandra Taber, possible renters for the property at 531 S. Central, who might rent with an option to buy. The Tabers were looking for a property that they could move into immediately. Heberer told the Respondent that he did not think it was a good idea, but that it was ultimately the seller's decision. Heberer left town for the weekend. (Testimony of Robert Heberer)

5. The Respondent did not have a written property management agreement for the property at 531 S. Central, nor did she have written authorization from the owner to rent the property. (Testimony of Robert Heberer; Sherry Beach; Respondent)

6. On Saturday, September 2, 1995, the Respondent prepared a written agreement for Rex and Sandra Taber to rent the property at 531 S. Central for 30 days at a price of \$425.00 until the terms for the sale of the property could be arranged. The agreement also provided that the parties to the agreement would meet at Century 21 Beacon Hill Realty on September 5 at 1:30 p.m. The agreement was signed on September 2, 1995 by Sandra and Rex Taber and by the Respondent, as sales agent. (Testimony of Robert Heberer; Respondent; State Exhibit D)

a) The Respondent spoke to Sherry Beach by telephone on September 2, 1995, and Beach orally agreed to rent the house to the Tabers, pending the purchase. Beach did not want to rent the house, but thought it was necessary to the purchase. (Testimony of Respondent; Sherry Beach)

b) The water heater in the house was not working properly, which was disclosed on the seller's disclosure statement. (Testimony of Respondent; Sherry Beach)

c) According to Beach, she thought that they would discuss the possession date at the September 5, 1995 meeting. She did not want the Tabers to move in until the hot water heater was replaced. In fact, the Respondent had authorized the Tabers to move in immediately, on September 2, 1995. The Respondent claims that Sherry Beach orally authorized the Tabers to move in, but Beach testified that she did not know that the Tabers had moved into the house until the September 5, 1995 meeting. On that day, Beach signed the rental agreement. She testified that she felt that she had no choice if she wanted the sale to go through. Beach also signed a receipt for a \$425 rent payment. (Testimony of Sherry Beach; Respondent; State Exhibits F, X)

7. The Respondent also prepared a real estate sales contract for the purchase of the property at 531 S. Central by the Tabers. The Respondent did not consult her broker in the preparation of the contract. The real estate sales contract was never signed by the

buyer and seller. (Testimony of Robert Heberer; Sherry Beach; State Exhibits E, E-1)

8. On September 8, 1995, the Tabers wrote to Sherry Beach. They wrote that the Respondent had told them that the hot water heater would be replaced by September 5, 1995. The Tabers had been unable to wash or shower and considered the home uninhabitable. The letter further stated that if the situation was not remedied in 48 hours, they would be forced to move and seek a refund. (State Exhibit G)

a) The Respondent denies that she told the Tabers that the hot water heater would be replaced by September 5, 1995.

b) The hot water heater was not replaced, and the Tabers moved out and sued Sherry Beach for \$505.00 in small claims court.

(Testimony of Respondent; Sherry Beach; State Exhibit H)

9. On October 10, 1995, the Respondent brought a real estate sales contract to her broker for the property at 531 S. Central. The contract had been prepared by the Respondent and had already been signed by the buyer, Larry Williams, Jr., and the seller, Sherry Beach. The contract was for a purchase price of \$43,000, with an \$8,000 down payment/work allowance. The \$35,000 balance was to be paid in monthly installments of \$400 for 183 months. The real estate sales contract also provided that it would be bought by First National or else the contract would be void. The Respondent also prepared a separate option contract, which granted the Respondent and her husband an option to purchase the property from Larry Williams, Jr. (Testimony of Robert Heberer; Respondent; State Exhibits J, Q)

a) The Respondent had arranged to have Sherry Beach's interest in the real estate sales contract purchased by First National Acceptance at a discounted price of \$27,900. The broker felt the real estate sales contract was ambiguous as to whether Beach would also get the \$8,000 down payment, in addition to \$27,900 from First National Acceptance.

b) The broker explained to the Respondent that a purchase agreement, which better explained the transaction, would have to be prepared and signed by the parties. A purchase agreement is usually prepared before the real estate sales contract. The broker prepared a purchase agreement, which was signed by Larry Williams. Sherry Beach never signed the purchase agreement.

c) Sherry Beach came to the broker's office to discuss the transaction and all of the closing documents. Sherry Beach



signed an Assignment of Seller's Interest In Real Estate Contract, a Seller's Affidavit, a Quit Claim Deed, a Warranty Deed, and a Notice of Accelerated Cash Program-Lump Sum Payment. (Testimony of Robert Heberer; State Exhibits K-P)

d) The broker assumed that the Respondent had discussed her option contract with First National Acceptance. Williams would be the contract buyer with First Acceptance and would provide the carpentry work necessary to improve the property. The Respondent and her husband would actually live in the property and ultimately purchase it from Williams. The broker assumed that Beach understood the contracts.

e) The Respondent prepared a rental agreement between herself and Larry Williams, Jr., and the Respondent and her husband moved into the house at 531 S. Central on October 23, 1995. The sale to Williams had not yet closed, and the Respondent did not have written permission from Sherry Beach to rent or move into the house. The Respondent thought that the sale would close the following day. The Respondent did not know that she was required to have a written agreement before renting the property.

f) The assignment of the contract to First National Acceptance never closed, apparently because Beach told First National that she did not want it. The entire sales contract fell through shortly after the Respondent moved into the house. However, the Respondent and her husband remained in the house until February 16, 1996.

g) Sherry Beach retained lawyers to represent her concerning the failed transactions. The broker and the Respondent were initially represented by an attorney retained by the broker's errors and omissions (E & O) insurer. The attorney advised the Respondent to move out of the home, but she did not. According to the Respondent, Beach's attorney gave her an oral extension of time to move out of the house. The errors and omissions insurer eventually determined that it could no longer represent the Respondent, and thereafter their attorney only represented the broker. The broker's insurer eventually paid a settlement to Beach, in return for a release of the broker's liability only.

e) The Respondent prepared a proposed rental agreement and proposed real estate sales contract which she sent to Beach's attorney. The Respondent did not want to pay any money to Beach without a written agreement. The documents were never signed. The Respondent and her family moved out of Beach's house on February 16, 1996. As of the date of the hearing, the Respondent and Sherry Beach had not resolved their disagreements and no rent had been paid.

(Testimony of Robert Heberer; Sherry Beach; Respondent; Respondent Exhibit 4; State Exhibit Z, Z-1, Z-2)

CONCLUSIONS OF LAW

1. Iowa Code sections 543B.29 (2) and (3) (1995) provide 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:

...

2. Professional incompetency
3. ...engaging in...practice harmful or detrimental to the public. Proof of injury need not be established.

2. 193E IAC 1.30 provides in relevant part:

**193E-1.30 (543B) Property management.** A licensee shall not rent or lease real estate, offer to rent or lease real estate, negotiate or offer or agree to negotiate the rental or leasing of real estate, list or offer to list real estate for the leasing or rental of real estate, assist or direct in the negotiation of any transaction calculated or intended to result in the leasing or rental of real estate or show property to prospective renters or lessees of real estate unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

3. 193E IAC 4.40(10) and (19) provide, in relevant part:

**193E-4.40 (543B) Violations for which civil penalties may be imposed.**

**4.40(10)** Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in contracts

...

**4.40(19)** Violating any of the remaining provisions in 193E-Chapters 1-6 inclusive, which have not heretofore been specified in this rule.

Count I

4. The preponderance of the evidence established that the Respondent violated Iowa Code sections 543B.29(2) and (3) (1995) and 193E IAC 1.30 when she failed to obtain written authorization of

the owner to rent a property and failed to obtain the signature of the seller on an early possession rental agreement. The Respondent admitted that she did not have a written property management agreement or a written rental agreement signed by Sherry Beach before she allowed Rex and Sandra Taber to move into the property at 531 S. Central. The rental agreement was not signed by Beach until three days after the Tabers moved in. The Respondent further admitted that she did not know that, as a licensed salesperson, she was required to have such a written agreement.

Count II

5. The preponderance of the evidence established that the Respondent violated Iowa Code section 543B.29(2) and (3)(1995) and 193E IAC 1.30 when she resided in a property listed for sale without the written agreement of the owner. Again, the Respondent admitted that she did not have a written rental agreement with Sherry Beach before she and her family moved into the property at 531 S. Central. The Respondent had a rental agreement with Larry Williams, Jr., but the sale of the property to Williams had not closed, and he was not the owner of the property.

DECISION AND ORDER

The Respondent's actions and testimony regarding the two transactions at issue establish that her knowledge of the statutes and rules governing the practice of real estate in Iowa is severely deficient. The Respondent did not know that she was required to have written authorization from the owner of the real estate prior to renting the property and allowing a renter to move in. Moreover, she made the same mistake twice, with the same property, in a very short period of time. Although her first error should have alerted her to the consequences of proceeding without a written rental agreement, she moved into the property without written authorization from its owner. The Respondent has performed incompetently as a salesperson and her actions were harmful or detrimental to the public she was entrusted to serve.

In reaching these conclusions, it was not necessary for the Commission to resolve the many differences which still exist between the Respondent and Sherry Beach. Since the issues presented by the Statement of Charges were confined to the absence of written rental agreements, the Commission need not resolve the many conflicts still existing between the Respondent and Sherry Beach.

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the salesperson license of Debra S. Gorham, No. S35175, is hereby INDEFINITELY SUSPENDED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED, that prior to reinstatement of her salesperson license, the Respondent must complete the following fifty-six (56) hours of continuing education credits:


- 1) Thirty-six (36) hours of continuing education as required by 193E IAC 3.2(2) of all persons licensed after June 1, 1994. These hours must include twelve (12) hours of Developing Professionalism and Ethical Business Practices, twelve (12) hours of Buying Practices, and twelve (12) hours of Listing Practices, AND
- 2) In addition, the Respondent must complete twelve (12) hours of continuing education in Introduction to Real Estate/License Laws and eight (8) hours of continuing education in Contract Law/Contract Writing.

In imposing this sanction, the Commission has considered the relative seriousness of the two violations and their direct relationship to the Respondent's competency to function as a licensed salesperson. 193E IAC 4.3(1) and (2). The Commission has tailored a continuing education program to address the identified deficiencies in the Respondent's professional knowledge. The Commission has concluded that the facts of these violations and the public interest require that the above outlined program of continuing education be completed before the Respondent is allowed to continue as licensed real estate salesperson in Iowa.

The Respondent is also reminded that her license has been on inactive status. Although it is now also suspended, she is required to renew the license on inactive status by paying her license fee, prior to December 31, 1996, in order to prevent the license from expiring.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.41, that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty (30) days of the date of this Order. In addition, the Executive Secretary shall bill the Respondent for any transcript costs associated with this hearing, and the Respondent shall remit payment within thirty (30) days of receipt of the bill.

Issued this 12<sup>th</sup> day of December, 1996.

  
Russ Nading  
Acting Chairperson  
Iowa Real Estate Commission

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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 4.35.

cc: Pamela Griebel  
Assistant Attorney General  
Department of Justice  
Hoover State Office Building  
Des Moines, Iowa 50309

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