

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

IN RE:)	
)	
JEROME G. HOEGER (B11322))	CASE NUMBER: 98-032
Broker)	
)	STATEMENT OF
)	CHARGES
14535 R136)	
Dyersville, Iowa 52040)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1997).

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

JEROME G. HOEGER is, and was at all material times during the following events, a licensed sole-proprietor broker in Dyersville, Iowa. His license number is B11322.

COUNT I

The Respondent is charged with engaging in a practice harmful or detrimental to the public by disbursing funds from the trust account prior to closing without the informed written consent of all parties, in violation of Iowa Code section 543B.29(3) (practice harmful or detrimental to the public) and 193E - IAC sections 1.27(7) and 4.40(6)(b) (1998).


CIRCUMSTANCES OF THE COMPLAINT

1. On or about June 16, 1995, Respondent listed the farm belonging to Calvin Coohy located at 2393 280th Avenue, Earlville, Iowa for \$600,000.00.
2. On or about August 28, 1997, Respondent prepared an offer for \$600,000.00 for Ron Salow, buyer that was accepted by the seller. As provided in the purchase agreement, \$5,000.00 was deposited into the Respondent's real estate trust account.
3. The transaction failed to close.
4. On or about February 26, 1998, Respondent disbursed the \$5000.00 earnest money to the buyer without obtaining the written permission of the buyer or the seller.

FINDING OF PROBABLE CAUSE

On July 9, 1998, 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 5th day of DECEMBER, 1998.


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

IN RE:)	DIA NO. 99DOCRE004
)	CASE NO. 98-32
)	
JEROME G HOEGER)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
)	

On December 15, 1998, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Jerome G. Hoeger, a licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code § 543B.29(3) and 193E Iowa Administrative Code sections 1.27(7), 4.40(6)(b). A Notice of Hearing set the hearing for July 1st at 9:30 a.m. The matter was continued to September 23rd at 9:30 a.m.

The hearing was held on September 23, 1999 at 9:30 a.m. The following members of the Commission were present and participated in making the decision: Russ Nading, Chairperson, Robert Miller, Barbara Leestamper, Terry Rogers and Evelyn Rank. The State was represented by Pamela Griebel, Assistant Attorney General. The Respondent appeared but was not represented by counsel. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

The hearing was recorded by a certified court reporter. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(1997). After hearing the testimony and examining the exhibits, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(1997) 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 their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing and the testimony of the witnesses. The following exhibits were introduced on behalf of the State:

- Exhibit A: Hearing Acknowledgment (August 9, 1999);
- Exhibit B: Complaint (April 7, 1999);
- Exhibit C: Letter to Hoeger (April 16, 1998);
- Exhibit D: Hoeger's Response (April 19, 1998);
- Exhibit E: Consultant's Report (June, 1998);
- Exhibit F: Letter from Marc Casey, Atty for Hoeger (October 29, 1998);

The following exhibit was introduced on behalf of the Respondent:

Exhibit 1: Letter from Hoeger, including Small Claims Judgment,
(April 19, 1998).

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 broker, license number B11322.
3. The following facts were stipulated to prior to the hearing by all parties:

On or about June 16, 1995 the Respondent listed the farm belonging to Calvin Coohy, located at 2393 280th Avenue, Earlville, Iowa, for \$600,000.

On or about August 28, 1998, the Respondent prepared an offer for \$600,000 for Ron Salow, buyer, that was accepted by the seller. As provided in the purchase agreement, \$5,000 was deposited in the Respondent's real estate trust account. The transaction failed to close.

On or about February 26, 1998, the Respondent distributed the \$5,000 earnest money to the buyer without obtaining the written permission of the buyer or the seller. This action was done on the advice of counsel.

CONCLUSIONS OF LAW

1. Iowa law requires that:

No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties, except in accordance with this rule. In the event of a dispute over the return or the forfeiture of any earnest money or escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until:

1. The broker is in receipt of a written release from all parties consenting to the disposition of the deposit; or
2. The broker is in receipt of a final judgment of

the court directing the disposition of the deposit; or

3. There is a final decision of a binding alternative dispute resolution process; or

4. A civil action is filed by one or more of the parties to determine the disposition of the deposit, at which time the broker may seek court authorization to pay the deposit into court.

. . . .

b. . . . it shall not be grounds for disciplinary action where, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known address, setting forth the broker's proposed action and the grounds for the decision.

193E IAC 1.27(7)

2. Iowa Code § 543B.29 (1997) provides, in relevant part:

543B.29 Revocation or suspension

A license to practice the profession of real estate broker or 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. . . .

3. The Respondent admitted that he did not follow the Commission's rules in returning the earnest money deposit. He testified that he was acting under the advice of counsel when he returned the money.

4. The Iowa Supreme Court has long followed the lead maxim that advice of counsel is not a defense, however it may be considered in mitigating the penalty to be imposed. See, Palmer College of Chiropractic v. Iowa Dist. Court for Scott County, 412 N.W.2d 617 (Iowa 1987) and Carr v. District Court for Van Buren County, 126 N.W. 791, 147 Iowa 663, Am. Ann. Cas. 1913D, 378 (Iowa 1910).

5. The undersigned Commission finds by a preponderance of the evidence that the Respondent failed to follow the Commission's rules by returning the \$5,000 earnest money in violation of 193E

IAC 1.27(7). This action is found to be a practice which is harmful or detrimental to the public in violation of Iowa Code § 543B.29(3).

6. However, on the Respondent's behalf, the Commission finds that the Respondent has no record of violations of its rules, he was honest and forthright in the hearing, he was acting upon incorrect advice from his attorney and he did not personally gain from the transaction.

DECISION AND ORDER

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker license of Jerome G. Hoeger, No. B1322, is hereby publically REPRIMANDED.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$250.00 within thirty (30) days of service of this decision and order.

IT IS FURTHER ORDERED that the Respondent shall enroll in and complete the eight (8) hour Iowa Real Estate Trust Account course that is apart of the Broker Pre-Licensing program. The Respondent shall be allowed to receive credit towards his continuing education requirements with this course.

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 ^{10th} day of November, 1999.


Russ Nading
Chairperson
Iowa Real Estate Commission

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.