

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 SE HULSIZER
ANKENY, IOWA**

IN RE:)	
)	
)	CASE NUMBER A04-121
MICHAEL T. KELLY)	
Broker (B25830))	STIPULATION
)	AND
DAVE KELLY & Co.)	ORDER
1102 HWY 9 EAST)	
PO BOX 8)	
DECORAH, IA 52101)	

On this 24th day of FEBRUARY, 2005, the Iowa Real Estate Commission and **MICHAEL T. KELLY**, each hereby agree with the other and stipulate as follows:

1. The allegations specified in the Statement of Charges in this case shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order.

2. The Respondent has a right to a hearing on the charges, but waives the right to hearing and all attendant rights, including the right to appeal, by freely and voluntarily agreeing to this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.

3. The Respondent was issued a real estate broker license on January 12, 1998, which is in full force and effect through December 31, 2006.

4. The Iowa Real Estate Commission has jurisdiction over the parties and subject matter jurisdiction over each allegation in the Statement of Charges.

5. A Statement of Charges will be filed against Respondent together with this voluntary Stipulation and Consent Order.

6. Respondent admits each and every allegation in the Statement of Charges.

7. If this Stipulation and Consent Order is approved by the Commission it will be filed, along with the Statement of Charges, and upon filing both documents will become public records.

8. This Stipulation and Consent Order shall be made a part of the record of the Respondent and may be considered by the Commission in determining the nature and severity of any disciplinary action to be imposed on the Respondent for any future violations of the laws and rules governing the practice of real estate.

9. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2003).

10. This Stipulation and Consent Order shall be presented to the Commission in closed session by the prosecuting attorney and/or Commission staff. Respondent waives any right of notice of this meeting or any right which the Respondent might have to participate in the discussion of this Stipulation and Consent Order among the Commission, the Commission staff and the prosecuting attorney.

11. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

THEREFORE IT IS ORDERED that the Respondent is **Reprimanded**.

IT IS FURTHER ORDERED that the Respondent shall personally attend the Commission approved eight (8) hour broker pre-license education course: "Iowa Real Estate Trust Accounts." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of this agreement by the Commission and must come under a cover letter addressed to the Commission's Executive Officer and refer to case A04-121.

IT IS FURTHER ORDERED AND AGREED that the Respondent shall establish and properly maintain trust account records.

IT IS FURTHER ORDERED AND AGREED at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

FOR THE RESPONDENT:

This Stipulation and Consent Order is voluntarily entered into by **MICHAEL T. KELLY** on this 12th day of JANUARY, 2005.



MICHAEL T. KELLY, Respondent

State of IOWA)

County of Winneshiek

Signed and sworn to before me on this 12th day of JANUARY, 2005, by



Notary Public, State of Iowa

Printed Name: ~~XXXX~~ Sandra K. Lien

My Commission Expires: 10-15-05

FOR THE COMMISSION:

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on this 24th day of FEBRUARY, 2005.



James E. Hughes, Chair
Iowa Real Estate Commission

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 SE HULSIZER
ANKENY, IOWA**

IN RE:)	
)	
)	CASE NUMBER A04-121
MICHAEL T. KELLY)	
Broker (B25830))	STATEMENT
)	OF
Dave Kelly & Co.)	CHARGES
1102 HWY 9 EAST)	
PO BOX 8)	
DECORAH, IA 52101)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (2003).

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

MICHAEL T. KELLY was at all material times, during the following events, a licensed broker officer in charge of Dave Kelly & Co., a licensed real estate firm (F03772) in Decorah, Iowa. His license, number B25830 was issued January 12, 1998 and is in full force and effect through 12-31-2006.

COUNT I

The Respondent is charged with engaging in numerous practices involving his trust account which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), and 543B.34(7) (2003) and 193E--IAC sections 13.1(6) and 13.1(6)(a)(3) and 18.14(5)(e) by the following:

- a.. failing to maintain adequate trust account records at all times,
 - b. failing to perform monthly reconciliations of the general ledger with individual ledgers and bank records to ensure agreement,
 - c. the individual ledgers balance was \$497.03 more than the reconciled bank balance, and
 - d. failing to keep a monthly balance of the journal.
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CIRCUMSTANCES OF THE COMPLAINT

1. On or about August 10, 2004, an audit was conducted by Jeff Evans.
2. The audit found the following violations:
 - A). A \$497.03 overage in the individual ledgers balance,
 - B). No journal balance was available due to an error in the electronic bookkeeping system in April, and
 - C). Failing to do a monthly written reconciliation of the general ledger, individual ledgers, and bank statement.

FINDING OF PROBABLE CAUSE

On September 16, 2004 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 24th day of FEBRUARY, 2005.



Roger L. Hansen, Executive Officer
Iowa Real Estate Commission
