

BEFORE THE IOWA REAL ESTATE COMMISSION  
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ANKENY, IOWA

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IN RE:	)	CASE NUMBER: 91-027
E. ELAINE MILLER (S13070)	)	
Salesperson	)	STATEMENT OF CHARGES
IOWA REALTY, INC.	)	
3501 Westown Parkway	)	
West Des Moines, IA 50265	)	

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The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 117, and 258A (1991).

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

E. Elaine Miller is, and was at all times during the following events, a licensed real estate salesperson. Her license number is S13070. E. Elaine Miller is currently a salesperson assigned to Iowa Realty, Inc.; West Des Moines, Iowa.

COUNT I

The Respondent is charged with knowingly making misleading, deceptive, untrue or fraudulent statements in the practice of the profession or engaging in unethical conduct or practices harmful or detrimental to the public, in violation of Iowa Code section 117.29(3).

CIRCUMSTANCES OF THE COMPLAINT

1. Janis L. Lewis (Seller) listed property located at 662 58th Street, West Des Moines, Iowa with Stanbrough-Coldwell Banker of Des Moines, Iowa, Karen "Kay" Eyler, Salesperson (S24582), Listing Agent. The listing stated that a 24 hour notice to show the property was required and that a security system protected the property.
2. Janis L. Lewis (Seller) and Karen "Kay" Eyler (Listing Agent) agreed that the property would not be shown the weekend of April 28, 1991, because both the seller and listing agent would be out of town and unavailable.

3. On the afternoon of April 24, 1991, the Respondent left a message on the sellers' answering machine indicating that she would like to show their property around four o'clock and indicating that the sellers should call her if there was a problem.
4. The Respondent met her buyers at the property that afternoon and determined that there was no lock box on the property.
5. The Respondent then called Kay Eyler, the listing agent, to inquire about showing the property.
6. Kay Eyler's office told the Respondent that Kay Eyler was out of town and that Laurie Dunham was handling Kay Eyler's calls.
7. On April 25, the Respondent had a telephone conversation with Laurie Dunham in which Respondent explained that she was attempting to show the property.
8. Laurie Dunham looked up the listing and indicated to the Respondent that a showing required twenty-four hours notice and that a security system protected the property.
9. The Respondent insisted that Ms. Eyler bring her the key, but Laurie Dunham indicated that she did not know where the key was located and suggested that the Respondent contact the sellers to enable her to properly show the property.
10. On Friday, April 25 the Respondent telephoned Laurie Dunham to determine if Ms. Dunham had contacted the sellers. Ms. Dunham indicated that she had been unable to contact the sellers and that the property could not be shown until the sellers returned.
11. On Sunday, April 27 the Respondent again contacted Laurie Dunham insisting that Ms. Dunham call Kay Eyler to determine how the property was to be shown.
12. Laurie Dunham contacted Kay Eyler in Chicago, and Kay Eyler indicated that the property could not be shown until she returned, but that she would be returning approximately 5:30 that evening.
13. Ms. Dunham informed the Respondent of Kay Eyler's position and gave the Respondent Ms. Eyler's phone number in Chicago. The Respondent asked Ms. Dunham to leave the key in Ms. Dunham's box at her office so that the Respondent could show the property if she obtained permission from Kay Eyler.

14. The Respondent called Kay Eyler in Chicago but she did not receive an answer to her call.

15. On Sunday, April 28 the Respondent showed the property without the permission of Kay Eyler, Laurie Dunham or the sellers.

FINDING OF PROBABLE CAUSE

On July 22, 1992 the Investigative Committee of 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: 3-15-93

  
Roger L. Hansen, Executive Secretary  
for the Iowa Real Estate Commission

cc: David Nelson, Attorney  
Iowa Realty, Inc.

Sherie Barnett, Assistant Attorney General

BEFORE THE IOWA REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF: )

E. ELAINE MILLER )

License Number S13070 )

CASE NO. 91-027 )

STIPULATION AND )  
CONSENT ORDER )

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The Iowa Real Estate Commission and E. Elaine Miller (Respondent) each hereby agrees with the other and stipulate as follows:

1. It is agreed that the Respondent has a right to a hearing on the allegations specified in the Statement of Charges in this case, however, the parties agree that these allegations shall be resolved without proceeding to hearing.

2. The Respondent currently holds a license to practice real estate (S13070) which is in full force and effect.

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

4. A Statement of Charges was filed against the Respondent on November 11, 1992.

5. Respondent admits the allegations contained in the Statement of Charges with the exception of numbered paragraphs 2 and 8 through 12. Respondent denies the allegations in paragraphs 2 and 8 through 12 as incomplete

or inaccurate. The parties agree that the following factual allegations are supported by the evidence:

2. Janis L. Lews (Seller) and Karen "Kay" Eyler (Listing Agent) agreed that the property would not be shown the weekend of April 28, 1991, because both the seller and listing agent would be out of town and unavailable. However, Ms. Dunham was not aware that said property was not to be shown.

8. Laurie Dunham looked up the listing and indicated to the Respondent that a showing required twenty-four hours notice and that a security system was in place and was informed by another agent there was a key in Kay's desk.

9. On Friday, April 25 Laurie Dunham indicated that Respondent should contact the sellers about showing the property and that she would also try to contact the sellers.

10. On Saturday, April 26, Respondent and Laurie Dunham had contact several times, and Ms. Dunham indicated that she had been unable to contact the sellers.

11. On Sunday, April 27, the Respondent again contacted Ms. Dunham to see if arrangements had been made to show the property.

12. Laurie Dunham contacted Kay Eyler in Chicago, and Kay informed Laurie that the sellers were out of town and that she preferred that the property not be shown and that if the Respondent had any questions to contact her in Chicago.

6. If this Stipulation and Consent Order is approved by the Commission it will be filed and upon filing it will become a public record.

7. 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.

8. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 117.2(3) and 117.34(2) (1993).

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

10. 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.

11. This Stipulation and Consent Order shall become effective on the date it is accepted by the Commission.

THEREFORE, IT IS HEREBY ORDERED that Respondent is REPRIMANDED.

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

The Respondent waives her right to hearing on these allegations and voluntarily enters into this Stipulation and Consent Order on this 15th day of April, 1993.

  
Respondent

Subscribed and Sworn to before me on this 15th day of

April, 1993.

  
*Barbara K. Freed, Notary Public*

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on the 22<sup>ND</sup> day of

APRIL, 1993.

  
Chairperson of the Iowa Real Estate Commission