

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 08-105
)	DIA NO. 09DOCRE010
Ronald D. Rodgers, RE/MAX)	
Farm and Home Realtors)	
305 East Main Street)	FINDINGS OF FACT,
Knoxville, IA 50138)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Respondent)	

On August 10, 2009, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Ronald D. Rodgers. The Statement of Charges alleged that Respondent engaged in a practice harmful or detrimental to the public and that he failed to exercise reasonable skill and care in providing brokerage services to all parties by failing to disclose a material adverse fact unknown to a party to a transaction, in violation of Iowa Code sections 543B.29(3), 543B.56(1) 543B.5(15), 543B.34(1),(8), and (11), 558A.6(1)(2007) and 193E IAC 12.3(2), 14.1, 14.1(5), 18.2(1), and 18.14(5)(s).

A telephone prehearing conference was held on June 18, 2010. The hearing was held on June 24, 2010. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent appeared and was represented by attorney William Serangeli. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson/ public member; Dan Berry, Broker; Judy Stevens, Broker-Associate; Dick Robert, Broker; Lori Diehl, Salesperson; Patty Daniels, Salesperson; and James O'Neill, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2009). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), to deliberate its decision. The Commission instructed the administrative law judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

On July 14, 2010, Respondent filed a Request to Present Additional Evidence. Respondent took the deposition of land surveyor Abie Davis following the hearing and now asks to reopen the evidentiary record to submit the deposition transcript. The State filed its Response To Request To Present Additional Evidence on July 21, 2010. The Commission has considered Respondent's Request To Present Additional Evidence and has concluded that Respondent failed to establish good cause for his failure to obtain and present the evidence at the time of hearing. In addition, the Commission was not persuaded that the new evidence was material to its decision regarding sanction.

THE RECORD

The record includes the state's Prehearing Conference Report, testimony of the witnesses, and State Exhibits 1-24 (See Exhibit Index for description; Exhibits 22-24 are prior MLS listings for the property) and Respondent Exhibits A-M (See Exhibit List for description; Exhibit M is the Articles of Incorporation for SN, Inc.) The record also includes Respondent's Request To Present Additional Evidence and the State's Response To Request To Present Additional Evidence.

FINDINGS OF FACT

1. Respondent Ronald D. Rodgers (Respondent) is 67 years old and is a lifelong resident of Marion County. He grew up south of Knoxville, in Attica. Respondent moved to Knoxville in 1968 and currently lives on a farm located between Knoxville and Pleasantville. On September 19, 1989, the Commission issued Respondent Iowa real estate broker license number B13402. For the past 15 years, Respondent has been a sole proprietor real estate broker affiliated with the RE/MAX Farm and Home Realtors franchise in Knoxville, Iowa. (State Exhibit 2) Respondent currently employs four real estate salespersons and two secretaries. (Testimony of Respondent)
2. Respondent is also a licensed real estate appraiser. He operates a real estate appraisal business out of the same office as his real estate brokerage business. On November 20, 2001, Respondent prepared an appraisal report for approximately 70 acres of land (hereinafter will be referred to as "70 acres") located at 1675 Hwy #5. The appraisal report was prepared for the estate of Ermal Bennett, which owned the land. The appraisal report provided the following legal description for the appraised property: Pt of the SW SE Section 21; Pt of the NW NE Section 28 T75N-R19W of the 5th P.M. (Testimony of Respondent; Respondent Exhibit B)

Under the comments section in the neighborhood description of the appraisal report, Respondent wrote:

Subject is for the most part an abandoned junk yard, surrounded by heavy timber and steep hills, with highway access. Some older buildings on the site with little to no contributory value. There would be some nice building sites on this 70 acres, but the clean up could off set the profits.

(Respondent Exhibit B, p. 3; State Exhibit 5-1) Under the comments section in the site description, Respondent wrote:

Subject is not typical for area. I understand this use (sic) to be the original Knoxville landfill. I can visualize this being built into an attractive subdivision, but here again the clean up expense could exceed the profits.

(Respondent Exhibit B, p. 3; State Exhibit 5-1)

Respondent's appraisal report concluded that the market value of the 70 acres, as of November 20, 2001, was \$31,000. Under the heading "Conditions of Appraisal" Respondent wrote:

Purpose of this appraisal is to determine market value of the "real property" which is the subject of this report for the express use of estate planning. This report does not include any personal property. Although I had an interesting tour of the farm with all of the old memorabilia, clean up would be a big market concern. There is always the fear that the State or County would force clean up and you could lose your investment plus, if all of the items were to be disposed of properly. Example would be tires, batteries, refrigerators, cars etc. No similar salvage land sales were found in the immediate area. Therefore the appraiser selected similar land sales and adjusted for the cleanup. Not a lot if any value in the old cars and trucks, due to being stripped out and rusty. Several have settled into the soil, making them hard to move and unusable.

The clean up cost is based on conversations with some scrap dealers. If the environmental people got involved it could run in the 100's of \$1,000 and years.

(Respondent Exhibit B, p. 4; State Exhibit 5-2) The appraisal report included some photographs that showed three manufactured homes as well as junked vehicles and equipment on the property. (Respondent Exhibit B, pp. 5-9)

3. The 70 acre property appears on the Marion County Assessor's map as three numbered parcels. (State Exhibit 20). A July 24, 2007 Summary Appraisal Report for the same 70 acres provides additional description of the property, with reference to the assessor's numbered parcels. (Respondent Exhibit E).

a. The front parcel consisted of 3.63 acres, is located closest to the access road, and provides the access for the entire 70 acres. It is identified as 05947000 on the assessor's map, has the address of 1673 Hwy #5, and had one manufactured home on it. (State Exhibit 20; Respondent Exhibit E, references RFPD 083 and 090¹)

b. The middle parcel, identified as 059480000, has 25.57 acres. It had three manufactured homes with the addresses of 1675, 1679, and 1681 Hwy #5. (State Exhibit 20; Respondent Exhibit E, references RFPD 083, 092)

c. The back parcel, identified as 0604500000, has 40 acres. It was primarily wooded and had no improvements of note. (State Exhibit 20; Respondent Exhibit E, references RFPD 083, 094)

4. On or about May 23, 2002, Harlan Dale Bowen purchased the entire 70 acre property from the estate of Ermal Bennett for \$31,000. (Respondent Exhibit A, pp. 18-20) On or about November 4, 2002, Harlan Dale Bowen sold the property to SN, Incorporated (SN) for \$76,000.² (Respondent Exhibit A, p. 20) SN had been incorporated on June 28, 2002 and was owned by Scott Beary and Nicole Beary. Nicole Beary is Respondent's niece. (Respondent Exhibit M; Testimony of Respondent)

At hearing, Respondent denied any involvement in the Beary's purchase of the 70 acre property on November 4, 2002. Respondent implied that his first involvement with the 70 acre property, following the 2001 appraisal, was when he listed the 70 acres for sale on June 6, 2007. (Testimony of Respondent) However, Multiple Listing Service (MLS) records show that Respondent was the exclusive listing agent when SN listed the 70 acres for sale on November 11, 2002 at a price of \$135,000. This was \$59,000 more than

¹ See lower right hand corner of page for reference numbers.

² State Exhibit 15, which is discussed later in this decision, reveals that in the fall of 2002, the Iowa Department of Natural Resources (DNR) required Mr. Bowen to clean up the accumulated solid waste on the property.

the Bearys had paid for the property one week earlier. The November 11, 2002 MLS listing stated:

REDUCED! You can buy a building site here with mature trees and possibly a large pond/lake in the planning. Or you can buy the whole 70 acres and develop it yourself. Just off Hwy 5 on the SE edge of Knoxville.

Respondent claims he forgot that he had this listing, which ran for 59 days and was cancelled on January 9, 2003. It is not credible that Respondent would have forgotten listing the property for his niece and her husband under these circumstances. (State Exhibit 22; Respondent Exhibits A, E, M; Testimony of Respondent)

The 70 acres was subsequently listed for sale by Sunrise Realty on January 9, 2003 for \$117,000 and again on July 10, 2003 for \$103,000. Both of these listings described the 70 acres as perfect land for an avid hunter with the possibility of building a 22 acre lake and with 60 acres qualified as a forest reserve. (State Exhibits 24, 23). In his Answer to the Commission's Statement of Charges, Respondent specifically mentioned the two Sunrise Realty listings but did not mention his own earlier listing. (State Exhibit 3)

The 70 acres did not sell in 2002 or in 2003. On July 29, 2005, SN transferred the 70 acres to Timber Rentals, LLC. Scott and Nicole Beary also own Timber Rentals, LLC. The 70 acres was transferred by quitclaim deed for no consideration. (Respondent Exhibits A, E)

5. On June 6, 2007, Respondent became the exclusive listing agent representing the sellers, Scott and Nicole Beary, for the sale of the "back" 63³ acres of the property. The listing included the manufactured home where the Bearys lived (1681 Hwy 5). The listing price was \$150,000, and the listing agreement disclosed that Nicole Beary is Respondent's niece. (Testimony of Respondent; State Exhibit 6)

Respondent's listing did not include the front 7 acres of the property, which provided road access to the back 63 acres. The three additional manufactured homes were located on the front 7 acres. All three of these homes were apparently rented to tenants at the time for \$450 a month. (State Exhibits 6, 7, 8; Respondent Exhibit E, reference RFPD 084; Testimony of Respondent; Penny Zielstorf)

³ The listing apparently included the 40 acre back parcel and 23 acres of the middle parcel.

6. On June 6, 2007, the Bearys signed a Seller Disclosure of Property Condition for the property at 1681 Hwy 5. The second page of the form was left blank, except for the sellers' signatures. This Seller Disclosure form did not have a specific question asking about environmental issues. The Seller Disclosure does not include any statement or information about the property's prior use as a junkyard or as a landfill. (State Exhibit 12)

7. In 2006 and 2007, real estate salesperson Jim McCorkle, who works for Sundance Realty based in Knoxville, Iowa, was helping James and Penny Zielstorf find a wooded property where they could build a log home. In early June 2007, Mr. McCorkle showed the Beary's 63 acre parcel to the Zielstorfs. At that time, the 63 acres appeared "park-like" with heavy vegetation, and the Zielstorfs could not see any obvious defects. Initially, the Zielstorfs were only interested in purchasing the 63 acres. However, they eventually decided to make an offer to purchase the remaining 7 acres as well, due to their concerns about the access road. They planned to gradually tear down the manufactured homes, subdivide the property into 4-5 acre parcels, and build three bedroom log homes on each parcel. (Testimony of Penny Zielstorf; Jim McCorkle; Respondent Exhibit G, pp. 34-35)

8. The Zielstorfs never spoke directly to Respondent prior to purchasing the 70 acre property. Prior to making their purchase offers, they walked the property with Jim McCorkle and Scott Beary. During the walk, Mr. Beary pointed out what he thought would be good building sites. When they came upon an old refrigerator and a hot water heater in a ravine, Scott Beary told the Zielstorfs that a neighbor probably put the items there. The Zielstorfs accepted this explanation at the time. (Testimony of Penny Zielstorf; Jim McCorkle; Respondent Exhibit G, pp. 31-32; Exhibit H, pp. 15-16)

9. On June 25, 2007, the Zielstorfs, through their agent Jim McCorkle, prepared two purchase offers on the 70 acres. The Zielstorfs offered \$150,000 for the back 63 acres and \$105,00 for the front 7 acres. Both offers included an option for the Zielstorfs to inspect the property for any material deficiencies, including any environmental deficiencies, within ten days of final acceptance of the offer or by July 15, 2007. (State Exhibits 13, 14; Testimony of Penny Zielstorf; Jim McCorkle)

Also on June 25, 2007, Jim McCorkle asked the Zielstorfs to sign an "Amendment to Offer to Buy," (Amendment) which had been prepared by Kathy Caviness, the broker/owner of Sundance Realty. The Amendment states that it pertains to property located at:

"1681 Highway 5, Knoxville, Iowa 50138."

Legal Description: NW SE 6 A, W 26 A Except SW 1A, Sect 21-Twn 75 N. R. 19, Marion County, 40 A part of 28-75-19 and MFH Home on 05948, 21-75-19 (total purchase approximately 70 acres m/l-exact legal to be taken from abstracts)

The Amendment further states:

The Buyers have read and accept the DNR report on the above property. The Buyers acknowledge that there could be contaminants that no one is aware of and accept the property in it's existing condition.

(State Exhibit 14-6; Testimony of Jim McCorkle; Penny Zielstorf)

At hearing, Jim McCorkle explained what prompted the preparation of the Amendment. Kathy Caviness had been associated with Sunrise Realty when it listed the 70 acres for sale in 2003. (See State Exhibits 23, 24) Although Ms. Caviness was not the listing agent for the property, she remembered that the Department of Natural Resources (DNR) sent a letter to the property owners at that time about the junkyard clean up. Ms. Caviness wanted to be sure that they disclosed this to the Zielstorfs. She obtained a copy of the DNR's letter from Scott Beary and provided it to the Zielstorfs along with the Amendment.⁴ (Testimony of Jim McCorkle; Penny Zielstorf)

The April 4, 2003 DNR letter was written to Scott Barry (sic) and Dale Bowen and is authored by DNR Environmental Specialist Amy Scott. Ms. Scott wrote that she visited the site on January 31, 2003 and observed a small amount of residual items that remained following clean up of the larger items. The solid waste (including but not limited to numerous vehicles, windows, miscellaneous metal, dimensional lumber and wood, a large pile of 4' fluorescent light bulbs, and large metal tanks) that was present in spring 2002 had apparently been removed and disposed of. The Sunrise Realty office had provided the DNR with copies of two landfill receipts for 3.41 tons of solid

⁴ Respondent claimed that when Scott Beary was filling out the listing agreement and the property disclosures he told Scott that the property had been a junkyard and that they had to put that somewhere. Respondent further claimed that when Scott Beary showed him the DNR letter, he told Scott they would make it an addendum to the disclosure by putting it in the folder with the Property Disclosure and the MLS sheet. He further claimed that he made the DNR letter "available to prospective purchasers", through their agents and also provided it to Jim McCorkle before the purchase agreement was written. (Testimony of Respondent; State Exhibit 3). This testimony was not credible.

waste. The DNR informed Mr. Beary and Mr. Bowen that they must still provide recycling receipts for the metal and numerous vehicles by May 15, 2003. (State Exhibit 15; Respondent Exhibit C; Testimony of Jim McCorkle, Respondent)

A copy of the April 4, 2003 DNR letter was attached to the Amendment, and it bears the signatures of Penny Zielstorf and Jim Zielstorf. (State Exhibit 15; Testimony of Jim McCorkle; Penny Zielstorf) Although the Amendment refers to 70 acres, the Zielstorfs believed that it only related to the above ground junkyard, which Mr. McCorkle told them was only on the front parcel. (State Exhibit 14-6; Testimony of Penny Zielstorf; Jim McCorkle) Mr. McCorkle agrees that he probably told the Zielstorfs that the junkyard was only on the front parcel, but states he told them this because that is what Respondent told him. Nevertheless, Mr. McCorkle believed that the Amendment applied to the entire 70 acres. Respondent never told Jim McCorkle or the Zielstorfs that the 70 acres had previously been the site of the Knoxville city dump/landfill. If they had been told this information, they would never have gone through with the purchase. (Testimony of Jim McCorkle; Penny Zielstorf)

10. On July 3, 2007, Scott and Nicole Beary completed and signed "Seller Disclosure of Property Condition" forms for the front 7 acres. They answered "no" to the questions asking if they were aware of any neighborhood or stigmatizing conditions or problems affecting the property or if they were aware of any environmental concerns. (State Exhibits 9, 10, 11) Scott Beary and Nicole Beary also signed and accepted both Purchase Agreements and Addendums, and the Amendment to Offer to Buy on July 3, 2007. (State Exhibits 13, 14) Respondent agreed that a prior use of property as a landfill was a material adverse fact that should be disclosed to a prospective purchaser. (Testimony of Respondent)

11. Scott Beary also signed a Groundwater Hazard Statement that indicated that there were no known solid waste disposal sites and no known hazardous waste on the property. (State Exhibit 16) The Zielstorfs never requested an environmental inspection of the property. (Testimony of Penny Zielstorf; Respondent Exhibit G, pp. 41-42)

12. The Zielstorfs closed on the purchase of the 70 acres at the end of July 2007. (State Exhibit 17) They put up a home for collateral and took out a 100% mortgage for \$258,000 through Liberty Bank. (Testimony of Penny Zielstorf; Respondent Exhibit G, pp. 36-37, Respondent Exhibit A, p. 37) On September 3, 2007, the Zielstorfs moved into the manufactured home at 1681 Hwy #5. After they moved in, James Zielstorf noticed a lot of broken glass on a bank behind their house after a steady rain. When they were at a fast food restaurant for lunch one day, James Zielstorf told the restaurant

manager about the property he had purchased. The manager put his hand on James Zielstorf's shoulder and asked "you mean you bought the old landfill?" The Zielstorfs were so shocked by his comment that they left without waiting for their food. They immediately started digging on their land and in courthouse records to find out if this was true. (Testimony of Penny Zielstorf)

While building a garage, the Zielstorfs pulled "all kinds of stuff" out of the ground. When the vegetation starting dying off in the fall, they began to notice items like bicycle wheels and hubcaps sticking out of the ground. They did not have to dig more than about 2½ feet to find buried garbage. The Zielstorfs eventually found records at city hall concerning the city's lease of the property for use as a dump in 1964 (State Exhibit 18). They also found a newspaper article from May 13, 1965 about the "new Knoxville city dump ground" being opened on property that had the same legal description as the back portion of the real estate they had just purchased. (State Exhibit 19; Testimony of Penny Zielstorf)

13. Kim Bennett is the son of the property's former owner, Ermal Bennett. After seeing a television news report about the Zielstorfs' property in 2008, Kim Bennett contacted the Zielstorfs and provided them with a copy of Respondent's 2001 appraisal report. (State Exhibit 5; Testimony of Penny Zielstorf) Kim Bennett later told Commission staff that the property was used as a garbage dump for the city of Knoxville and surrounding residents from approximately 1964 until 1975 and that pretty much everyone he knew dumped their garbage there. (State Exhibit 4-2) The Abstract of Title for the 70 acres shows that Ermal Bennett purchased the 70 acres on November 20, 1973, subject to the "present lease to the city of Knoxville, Iowa." (Respondent Exhibit A, p. 13). The DNR required all cities to close their dumps by 1975 and to place two feet of dirt on top of the dump areas. (State Exhibit 4-2)

14. If the Zielstorfs had known that the 70 acres had been used as a landfill/city dump and that there was buried garbage on the property, they never would have purchased it from the Bearys. (Testimony of Penny Zielstorf)

15. Bill Herman is now retired but previously worked for the Commission as a consultant conducting investigations and peer reviews. Mr. Herman was licensed as a real estate salesperson in 1978 and as a broker in 1991 and has taught real estate continuing education courses. He reviewed the investigative file in this case and offered the following professional opinions:

- The prior use of the Bearys' property as a landfill was a material adverse fact because the use of a property as a landfill poses environmental and health concerns;
- As the seller's agent, Respondent had a duty to disclose this material adverse fact to all parties, including the buyers; and
- Respondent had a duty to correct the Seller's Property Disclosure Statement if he knew that it contained errors or omissions.

(Testimony of Bill Herman; State Exhibit 4-1)

CONCLUSIONS OF LAW

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of a practice harmful or detrimental to the public.⁵ A license may also be suspended or revoked if a licensee makes any substantial misrepresentation,⁶ is unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public,⁷ or engages in any other conduct which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under Iowa Code chapter 543B.⁸

In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

- a.* Provide brokerage services to all parties to the transaction honestly and in good faith.
- b.* Diligently exercise reasonable skill and care in providing brokerage services to all parties.
- c.* Disclose to each party all material adverse facts that the licensee knows except for the following:

- (1) Material adverse facts known by the party.

⁵ Iowa Code section 543B.29(3)(2007).

⁶ Iowa Code section 543B.34(1)(2007).

⁷ Iowa Code section 543B.34(8)(2007).

⁸ Iowa Code section 543B.34(11)(2007).

- (2) Material adverse facts the party could discover through reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.
- (3) Material adverse facts the disclosure of which is prohibited by law.
- (4) Material adverse facts that are known to a person who conducts an inspection on behalf of a party.⁹

“Material adverse fact” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party’s decision about the terms of the contract or agreement.

For purposes of this subsection, *“adverse fact”* means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

- a. Significantly and adversely affecting the value of the property.
- b. Significantly reducing the structural integrity of improvement to real estate.
- c. Presenting a significant health risk to occupants of the property.¹⁰

The legislature has authorized the Commission to adopt rules to carry out and administer the provisions of Iowa Code chapter 543B and chapter 558A.¹¹ Pursuant to this authority, the Commission has adopted rules at 193E IAC chapters 12, 14, and 18.

193E IAC 12.3(2) specifies the duty a single agent representing a seller owes to a buyer. Specifically, a licensee acting as an exclusive seller’s agent shall disclose to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code section 543B.56.

193E IAC 14.1 concerns property condition disclosure requirements. 193E IAC 14.1(5) pertains to amended disclosure statements and provides that a licensee’s obligations with respect to any amended disclosure statement are the same as the licensee’s obligations with respect to the original disclosure statement. A disclosure statement

⁹ Iowa Code section 543B.56(1)(2007).

¹⁰ Iowa Code section 543B.5(15)(2007).

¹¹ Iowa Code section 543B.9(2007).

must be amended if information disclosed is or becomes inaccurate or misleading or is supplemented unless one of the stated exceptions applies.

The preponderance of the evidence in this record established that:

- 1) Respondent knew that the 70 acres he listed for sale had previously been the site of a city dump/landfill;
- 2) This information constituted a "material adverse fact" as defined by Iowa Code section 543B.5(15)(2007); and
- 3) Respondent failed to disclose this material adverse fact to the buyers prior to their purchase of the property, in violation of Iowa Code section 543B.56(1)(2007) and 193E IAC 12.3(2) and 14.1.

Respondent's failure to disclose the material adverse fact constituted conduct or practice harmful or detrimental to the public, in violation of Iowa Code section 543B.29(3). It also constituted failure to diligently exercise reasonable skill and care in providing brokerage services, in violation of Iowa Code section 543B.56(1)(2007). In addition, Respondent has violated Iowa Code section 543B.34(1),(8), and (11)(2007) because his failure to disclose constituted a substantial misrepresentation, improper and dishonest dealings, and unworthiness or incompetence to act as a licensed real estate broker or salesperson in such manner as to safeguard the public.

Respondent knew that there had previously been *both* a junkyard and a city dump/landfill on the 70 acre property when he listed it for sale on June 6, 2007. On November 20, 2001, Respondent appraised the 70 acre property for an estate. In his appraisal report, Respondent discussed both the junkyard and the landfill. After describing the property as "...for the most part, an "abandoned junkyard..," Respondent noted that there would be some nice building sites on the 70 acres but "clean up could off set the profits." (Respondent Exhibit C, p. 3) Respondent included photographs depicting a large number of abandoned vehicles and other "junk" on the surface of the property at the time of his appraisal. In the site description, Respondent wrote: "I understand this use (sic) to be the *original Knoxville landfill*. I can visualize this being an attractive subdivision, but here *again* the clean up expense could exceed the profits." (Respondent Exhibit C, p. 3, emphasis added)

Respondent's descriptions of the property in his appraisal report reveal that he recognized and differentiated between the clean up issues presented by a surface

junkyard and the more significant environmental issues presented by a landfill. Respondent wrote: "The clean up cost is based on conversations with scrap dealers, **If the environmental people got involved it could run into the 100's of \$1,000 and years.**" (Respondent Exhibit C, p. 3, emphasis added)

Although Respondent apparently conducted no research in 2001 to confirm that the property was a former landfill, he also did not question the accuracy of this information. The property was being used as the city dump when Ermal Bennett acquired it, and Respondent prepared his appraisal for Ermal Bennett's estate. Respondent also resided in the Knoxville area throughout the time that the property was used as the city dump. Moreover, Respondent's appraisal report states that the property used to be a landfill as though it was a fact, and Respondent testified at hearing that he assumed it to be true.

The prior use of the 70 acres as a city dump/landfill constitutes a "material adverse fact," as defined by statute. There is no doubt that a competent licensee would immediately recognize that the prior use of the property as a city dump/landfill significantly and adversely affects the property's value, significantly reduces the structural integrity of improvements to the real estate, and presents a potential significant health hazard to the occupants of the property.¹²

Respondent's niece and her husband purchased the 70 acres less than a year after Respondent's November 2001 appraisal. At hearing, Respondent implied that he had no knowledge of their purchase until he was asked to list the property in June 2007, and claimed he did not remember appraising the property in 2001 until "it was brought to his attention." Neither claim was credible. In fact, Respondent listed the 70 acres for sale one week after it was purchased by his niece and her husband and less than one year after he prepared the appraisal report. Respondent listed the property at more than four times the value he had given the property less than a year earlier in his appraisal report. Respondent's MLS listing suggested purchasing a "building site" or "developing" the entire 70 acres.

Respondent again listed the 70 acres for his niece and her husband in June 2007. Respondent knew the history of the property, including the fact that it had been previously been used as a junkyard and as a city dump/landfill. Nevertheless, the Seller's Property Disclosures for the 70 acres did not disclose either fact, and three of the disclosures affirmatively stated that the seller was not aware of any environmental

¹² Iowa Code section 543B.5(5)(15)(2007).

concerns. The Groundwater Hazard Statement stated that there was no known solid waste disposal site on the property. Respondent had a duty to review these disclosures and to ensure that they included any material adverse fact that he knew about.¹³ Respondent failed to do so.

Respondent makes no claim that he either disclosed or that he recommended disclosure of the fact that the property had been previously used as a city dump/landfill. Respondent did claim that he told the sellers that they needed to provide information about the junkyard with their property disclosures. Respondent further claimed that after Scott Beary showed him the DNR letter, he made copies of it, included it in the folder with the MLS listing, and then provided it to all prospective purchasers through their agents. This claim was entirely inconsistent with Penny Zielstorff's credible testimony that she and her husband first became aware of junk on the property when they saw two discarded appliances in a ravine while walking the property with Jim McCorkle and Scott Beary. It is also inconsistent with Mr. McCorkle's testimony that his broker remembered that the DNR had issued a letter and that the broker had to contact Scott Beary to get a copy of it. Finally, it is undisputed that it was Mr. McCorkle's broker, not Respondent, who provided the DNR letter to the purchasers and who prepared the Amendment to Offer to Purchase that acknowledged the DNR letter. Based on this record, Respondent's claim that he provided the DNR letter to Jim McCorkle was not credible.

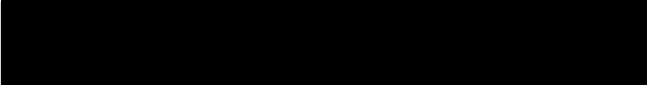
Respondent's failure to disclose a known material adverse fact was a grievous violation of his ethical responsibilities as a licensed real estate broker, which had devastating results for these buyers. Respondent has shown himself to be unworthy and incompetent to act as a licensed real estate broker (or as a salesperson) in a manner that safeguards the public interest. Under the circumstances, the Commission believes that the only sanction that will adequately protect the public is revocation of Respondent's license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Broker License No. B13402, issued to Respondent Ronald D. Rodgers, is hereby REVOKED.

¹³ Iowa Code sections 543B.56(1)(2007); 193E IAC 12.3(2), 14.1.

Dated this 21st day of July, 2010.


Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: William B. Serangeli
SCHNEIDER, STILES, SERANGELI, & MOUNTSIER, P.C.
604 Locust Street, Suite 1000
Des Moines, IA 50309 [CERTIFIED]

John Lundquist
Assistant Attorney General
Hoover State Office Building (LOCAL)

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. If a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.