

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NOS. 03-141, 04-092
)	DIA NO. 05DOCRE004
LETICIA SCHWARTZ)	
Salesperson No. S30106)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
RESPONDENT)	DECISION AND ORDER

On March 4, 2005, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Leticia Schwartz (Respondent). The Statement of Charges alleged that Respondent:

Count I: Engaged in practices which are harmful or detrimental to the public and made false representations by signing the seller's name to listing extensions without the seller's knowledge or authorization, in violation of Iowa Code sections 543B.29(8), 543B.34(1), (3), (8), & (11), 543B.56(1)(a), (b) and 543B.56(2)(a) (2003) and 193E IAC 12.3(1)"b" and "c", 12.3(1)"c"(7) and 18.14(5)"j" and "s."¹

Count II: Engaged in practices which are harmful or detrimental to the public and failed to diligently exercise reasonable skill and care in providing brokerage services to all parties by providing the buyer with a key to access the property without written consent and allowing the buyer to move into the property prior to obtaining written early occupancy agreement, in violation of Iowa Code sections 543B.29(3), 543B.34(8), 543B.56(1)"b"(2003) and 193E IAC 18.14(5)"s."

A telephonic prehearing conference was held on July 8, 2005, by agreement of the parties. The hearing was held on July 14, 2005 at 9:30 a.m. The Respondent, Leticia Schwartz, appeared and was represented by attorney Michael Moreland. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at hearing: Laurie Dawley, Vice-Chairperson, public member; Don Marple, Broker; E. Karl Reichert, Broker; Patty Daniels, Salesperson; Lori Diehl, Salesperson; and James O'Neill, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in

¹ The parties stipulate that the reference in the Statement of Charges to 18.4(5) was a typographical error and should have been 18.14(5).

conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1) (2005).

At the commencement of the hearing the parties stipulated that Paragraph 5 of the Circumstances supporting Case No. 03-141 would be stricken from the Statement of Charges. The state presented no evidence with respect to paragraph 5 and the Commission makes no finding. After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f) (2005), 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.

THE RECORD

The record includes the state's Prehearing Conference Report; testimony of the witnesses; State Exhibits 1-21 and Respondent Exhibits 1-8 (see Exhibit indexes for description).

FINDINGS OF FACT

1. The Respondent is a licensed real estate Salesperson in Ottumwa, Iowa. Her license number S30106 was issued on November 15, 1989 and is in full force and effect through December 31, 2006. At all times material to Case Number 03-141, the Respondent was a licensed Salesperson assigned to Crossroads, Inc., a licensed real estate firm. At all times material to Case Number 04-092, the Respondent was a licensed Salesperson assigned to Veatch Enterprises, Inc., d/b/a First Choice Realtors. (Testimony of Respondent; State Exhibits 8, 19)

Case No. 03-141

In all of the real estate transactions referenced in Case No. 03-141, the Respondent listed the property for sale and represented the seller.

2. On or about August 26, 2002, the Respondent signed the seller's name to a price change form for the property located at 521 E. Court in Ottumwa, Iowa. The seller did not know that the Respondent signed her name to the price change form and did not legally authorize the Respondent to sign her name. The Respondent did not initial the seller's signature on the price

change form, nor did she make any notation to indicate that she had signed the form on behalf of the seller.

On or about November 9, 2002, the Respondent signed the same seller's name to a listing extension form for the property located at 521 E. Court. Once again, the seller did not know that the Respondent signed her name to the listing extension form and did not legally authorize the Respondent to sign her name. The Respondent did not initial the signature, nor did she make any notation to indicate that she had signed the form on behalf of the seller.

The Respondent could not specifically recall signing these two documents but acknowledged that she must have signed them. At the Respondent's request, the seller submitted an affidavit stating that she asked the Respondent to drop the listing price for her property and to extend the listing agreement. However, the seller does not state that she authorized the Respondent to sign her name to legal documents. (Testimony of Chuck Wood; Respondent; State Exhibits 5, 9; Respondent Exhibit 4)

3. On or about September 20, 2002, the Respondent signed the seller's name to a listing extension form for the property located at 820 Allison in Ottumwa, Iowa. The seller did not know that the Respondent signed her name to the listing extension form and did not legally authorize the Respondent to sign her name. The Respondent did not initial the signature, nor did she make any notation to indicate that she had signed the form on behalf of the seller.

The Respondent asserts that she called the seller at work and obtained the seller's consent to extend the listing agreement. The seller works for the Wapello County Recorder's Office. In her work as a real estate Salesperson, the Respondent frequently visits the Wapello County Recorder's Office to conduct business, and could have easily presented the listing extension to the seller for her signature. At the Respondent's request, the seller provided an affidavit stating that while she did not recall receiving a call from the Respondent asking her to extend the listing agreement, she could have taken the call and not remembered it. However, the seller does not state that she ever authorized the Respondent to sign her name to a legal document. (Testimony of Chuck Wood; Respondent; State Exhibits 4, 9; Respondent Exhibit 3)

4. On or about November 5, 2002, the Respondent signed the seller's name to a listing extension form for the property

located at 2520 Kenwood in Ottumwa, Iowa. The Respondent did not initial the signature, nor did she make any notation to indicate that she had signed the form on behalf of the seller. The Respondent insists that the seller, who was a social friend, authorized her to sign his name to the listing extension. Although the seller submitted an affidavit on the Respondent's behalf, he never states that he authorized the Respondent to sign his name to the listing extension. (Testimony of Chuck Wood; Respondent; State Exhibits 6, 9; Respondent Exhibit 1)

5. On or about January 4, 2003, the Respondent signed the seller's name to a listing extension form for the property located at 10403 Mink Boulevard in Bloomfield, Iowa. The seller did not know that the Respondent signed her name to the listing extension form and did not legally authorize the Respondent to sign her name. The Respondent did not initial the signature, nor did she make any notation to indicate that she had signed the form on behalf of the seller.

The Respondent admitted that she signed the seller's name without legal authorization and that she also failed to contact the seller to authorize the listing extension. A local complaint was filed concerning this incident, and an Ethics Panel of the Ottumwa Board of Realtors ordered the Respondent to pay a \$2,500 fine and to complete an educational course in Real Estate Law within six months. The Respondent testified that she has paid the fine and completed the course as ordered by the Ottumwa Board of Realtors Ethics Panel. The Respondent has also hired her adult son as a real estate assistant and has now instituted a record-keeping system to track expiration date of listing agreements. (Testimony of Chuck Wood; Respondent; State Exhibits 7-9)

Case No. 04-092

6. On or about May 20, 2004, the Respondent, as agent for the buyer, prepared an offer for the property located at #12 Asbury Circle in Ottumwa, Iowa. The executor for the estate was selling the property. The seller, who was represented by another real estate agent, accepted the offer prior to May 22, 2004. (Testimony of Bill Herman; State Exhibits 15, 16)

On or about May 21, 2004, the seller, through her agent, gave the buyer verbal permission to move some of his large items into the property at #12 Asbury Circle. In a complaint to the Commission, the seller states that the Respondent was supposed to stay at the property while the buyer moved his items in, then

lock the house and return the key to the lockbox. The Respondent denies that she was ever asked to remain on the property while the buyer moved his items in and insists that she would never have agreed to such a stipulation because she would not have had time. The parties to the transaction had no written agreement concerning the early move-in.

On May 23, 2004, the Respondent gave the buyer the key from the lockbox and then left the property. The buyer admits that while he only had permission to move in large items, he ended up moving "most" of his possessions because he had friends to help him. The buyer returned to the property on May 24, 2004 and moved some of the seller's personal items to the garage. The buyer returned the key to the Respondent on May 25, 2004, and the Respondent returned the key to the lockbox. On May 25, 2004, the Respondent gave the seller's agent a \$100 check made out to the seller, in consideration for the seller's kindness in allowing the buyer to move some items into the property prior to closing. The seller did not ask for the \$100 payment, which came from the Respondent's own funds.

On May 26, 2004, the parties executed a written Rental Agreement for occupancy prior to closing. The Rental Agreement, which was effective May 28, 2004, was contingent upon the buyer paying the \$3000 down payment into a trust account but did not require any additional rental payment. The buyer was also responsible for all utilities and assumed all liability for the premises. The buyer acknowledged that he had inspected the premises and accepted it in "as is" condition. The Rental Agreement made no reference to the buyer's early possession on May 23-25, 2004. (Testimony of Bill Herman; Respondent; State Exhibits 11-16, 18)

7. The closing was held on June 28, 2004. On July 6, 2004, the seller filed her complaint with the Commission, alleging that the Respondent allowed the buyer unsupervised access to the property for a number of days prior to the early possession date of May 28, 2004. The seller alleged that the buyer moved in all of his household items, contrary to their verbal agreement, and removed items of the estate from the garage. The seller also alleged that the buyer took some of the items in the garage to the dump. (Testimony of Bill Herman; Respondent; State Exhibits 10; 17)

CONCLUSIONS OF LAW

I. Case No. 03-141 [Count I]

A. Applicable Law

Iowa Code section 543B.29(8) (2003) provides, 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:

...

8. Willful or repeated violations of the provisions of the Act.

Iowa Code section 543B.34(1), (3), (8) and (11) (2003) provide, in relevant part:

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or other duly authorized representative or designee to investigate the actions of any ...real estate salesperson...and may suspend or revoke a license issued under this chapter at any time..., or if the licensee...is found guilty of any of the following:

1. Making any substantial misrepresentation.

...

3. Pursuing a continued and flagrant course of misrepresentation, ...

...

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

...

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Iowa Code section 543B.56(2003) provides, in relevant part:

543B.56 Duties of licensees.

1. *Duties to all parties in a transaction.* 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.

...

2. *Duties to a client.* In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.

193E IAC 12.3 provides, in relevant part:

193E-12.3(543B) Single agent representing a seller or landlord.

12.3(1) Duty to seller or landlord. A licensee representing a seller ...as an exclusive seller's agent...shall have the following duties and obligations:

...

b. Exercise reasonable skill and care for the seller...

c. Promote the interests of the seller...with utmost care, integrity, honesty, and loyalty, including but not limited to the following:

...

(7) Providing brokerage services to all parties to the transaction honestly and in good faith;

...

193E IAC 18.14(5)"j" and "s" provide:

18.14(5) Violations for which civil penalties may be imposed. The following is a nonexclusive list of violations upon which civil penalties may be imposed.

...

j. Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.

...

s. Violating any of the remaining provisions in 193E-chapters 1 to 20 inclusive, which have not heretofore been specified in this rule.

B. Discussion

The preponderance of the evidence established that the Respondent repeatedly violated Iowa Code sections 543B.29(8), 543B.34(1), (3), (8), & (11), 543B.56(1)(a) and (b), and 193E IAC 12.3(1)"b" and "c"(7) when she signed the names of four sellers on four listing extension agreements and signed the name of one of the sellers to a price change form, without any legal authority to do so. It was misleading, deceptive, and a substantial and serious misrepresentation for the Respondent to sign sellers' names to legal documents that are relied upon by others as binding contracts. The Respondent failed to put her clients' interests ahead of her own interests. It was *not* in the sellers' interest for the Respondent to essentially forge the sellers' names to the listing extension agreements.

Even if the Commission accepted the Respondent's claim that three of the four sellers verbally agreed to the listing agreement extensions (and the one price change), this would not mitigate the very serious and substantial nature of her misrepresentations.² The sellers did not give the Respondent legal authority, e.g. power of attorney, to *sign their name* to a contract. Indeed, none of the sellers knew that the Respondent signed their name. The Respondent made no notation on the documents to alert a reader that she was the signer. In fact, it is apparent from reviewing the documents that the Respondent signed each seller's name with a handwriting style that was different from her own signature.

II. Case No. 04-092 [Count II]

Iowa Code section 543B.29(3) and (10)(2003) 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 The Respondent made no attempt to document these conversations in her records and in most cases could only provide the Commission with vague assurances that she would have spoken to the sellers before signing the documents for them.

...
3. ..engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
...

See Count I for the text of Iowa Code sections 543B.34(8), 543B.56(1)(b)(2003), and 193E IAC 18.14(5)(s).

The Respondent denies that she agreed to be present while the buyer moved his large items into the property #12 Asbury Circle, as alleged by the complaining seller. Since the seller's agent was not interviewed and did not testify, the Commission was unable to conclude, by a preponderance of the evidence, that the Respondent agreed to be present during the move and to retain control over the key. However, even if the Respondent's version of events is accepted as true, the facts establish a violation of the statutes and rules cited in Count II.

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543B.29(3), 543B.34(8), and 543B.56(1)(b)(2003). The Respondent engaged in a practice that was harmful and detrimental to the public and failed to exercise reasonable skill and care when she provided the buyer a key and unsupervised access to the property for two consecutive days without safeguarding the buyer's interests by obtaining a written agreement for early possession. The Respondent appeared unaware of the potential pitfalls this informal arrangement presented for her client. Without a written agreement, it was unclear who was liable in the case of damages, loss, or injuries while the buyer had temporary possession of the property. The dispute that arose in this case could have been prevented if the Respondent had asked for a written agreement before turning the key over to the buyer.³

III. Sanction

In determining the appropriate sanction and the appropriate civil penalty, the Commission considered the factors outlined in its rules, including the number and seriousness of the violations, the public interest, and the deterrent effect of the chosen sanctions. 193E IAC 18.14(2), (6).

³ The Commission did not address the corresponding responsibilities of the seller's agent because they were not at issue in this case.

ORDER

IT IS THEREFORE ORDERED that the Respondent's Salesperson License (S30106) is hereby SUSPENDED for a period of one (1) year, effective immediately upon issuance of this decision. IT IS FURTHER ORDERED that the one-year suspension is IMMEDIATELY STAYED, and the Respondent's Salesperson License is placed on PROBATION for a period of one year, subject to the following terms and conditions:

1. The Respondent shall pay a civil penalty of \$1250 for each of the four (4) misrepresentation violations in Count I, for a total civil penalty of \$5,000, within thirty (30) days of the issuance of this Decision and Order.

2. The Respondent shall complete a twelve-hour ethics course, pre-approved by the Commission, and shall submit the certificate of completion to the Commission office. The course must be completed and verification must be received before the expiration of the one-year period of probation. This course **may not** be used for license renewal.

3. The Respondent shall fully comply with all statutes and rules governing her practice as a licensed real estate Salesperson in the state of Iowa.


4. If it is determined that the Respondent has failed to fully comply with the conditions of probation, the Commission may vacate the stay and impose the one-year license suspension. Upon successful completion of the one-year probationary period, the Respondent's Salesperson license will be restored without restrictions.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

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Dated this 8th day of SEPTEMBER, 2005.


Laurie Dawley, Vice-Chairperson
Iowa Real Estate Commission

cc: Michael J. Moreland
HARRISON, MORELAND & WEBBER, P.C.
129 West Fourth Street
P.O. Box 250
Ottumwa, Iowa 52501 (CERTIFIED)

John Lundquist
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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.

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

IN RE:)	
)	
)	CASE NUMBERS: 03-141 & 04-092
LETICIA SCHWARTZ)	
Salesperson (S30106))	STATEMENT
)	OF
FIRST CHOICE REALTOR)	CHARGES
2818 N COURT)	
OTTUMWA, IA 52501)	
)	

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.

LETICIA SCHWARTZ was at all material times, during the following events in case number 03-141 a licensed Salesperson assigned to Crossroads, Inc. a licensed real estate firm, license number F03379, dba RE/MAX Crossroads, in Ottumwa, Iowa. **LETICIA SCHWARTZ** was at all material times, during the following events in case number 04-092, a licensed Salesperson assigned to Veatch Enterprises, Inc. a licensed real estate firm, license number F04689, dba First Choice Realtors, in Ottumwa, Iowa. Her license, number S30106 was issued November 15, 1989 and is in full force and effect through December 31, 2007.

COUNT I

The Respondent engaged in practices which are harmful or detrimental to the public and made fraudulent representations by signing the seller's name to listing extensions without the seller's knowledge or authorization, in violation of Iowa code sections 543B.29(3) (practice harmful or detrimental to the public), 543B.29(8)543B.34(1), (3), (8), & (11) and 543B.56(1)(a), 543B.56(1)(b), and 543B.56(2)(a) (2003) and IAC 193E—12.3(1)(b), 12.3(1)(c), 12.3(1)(c)(7), and 18.4(5)(j) and (s).

COUNT II

The Respondent engaged in practices which are harmful or detrimental to the public and failed to diligently exercise reasonable skill and care in providing brokerage services to all parties by providing the buyer with a key to access the property without written consent and allowing the buyer to move into the property prior to obtaining written early occupancy agreement, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), 543B.34(8), and 543B.56(1)(b) (2003) and IAC 193E--18.14(5)(s).

CIRCUMSTANCES OF COMPLAINT CASE 03-141

1. On or about August 26, 2002, without the seller's authorization or knowledge, Respondent signed the seller's name to a price change form, and on or about November 9, 2002, Respondent signed the seller's name to a listing extension form for the property located at 521 E Court, Ottumwa, Iowa.
2. On or about September 20, 2002, without the seller's authorization or knowledge, Respondent signed the seller's name to a listing extension form for the property located at 820 Allison, Ottumwa, Iowa.
3. On or about November 5, 2002, without the seller's authorization or knowledge, Respondent signed the seller's name to a listing extension form, on or about March 25, 2003, Respondent signed the seller's name to a Partial Release of the Listing Agreement, and on or about March 25, 2003, Respondent signed a change form to withdraw the listing from the MLS, for the property located at 2520 Kenwood, Ottumwa, Iowa.
4. On or about January 4, 2003, without the seller's authorization or knowledge, Respondent signed the name of the seller to a listing extension for the property located at 10403 Mink Boulevard, Bloomfield, Iowa.
- ~~5. On or about November 5, 2002, without the seller's authorization or knowledge, Respondent signed the seller's name to a listing extension for the property located at 114 W. Oakwood, Ottumwa, Iowa.~~
6. On or about September 9, 2003, the Ottumwa Board of Realtors, Professional Standards Committee Decision found the Respondent admitted signing the seller's name, without their authorization or knowledge, to the listing extension for the property located at 10403 Mink Boulevard, Bloomfield, Iowa.

CIRCUMSTANCES OF COMPLAINT CASE 04-092

1. On or about May 20, 2004, Respondent, as agent for the buyer, prepared an offer for \$40,400 for the property listed by Teresa Anderson with Coldwell Banker, located at #12 Asbury Circle, Ottumwa, Iowa. On or about May 25, 2004, the executor for the estate accepted the offer.
2. On or about May 21, 2004, the Complainant, through her agent, verbally agreed that the buyer could access the property to move in large items only and with the Respondent present. Respondent did not obtain this agreement in writing and did not follow the seller's instructions. The Respondent elected to provide the key directly to the buyer for access and was not present for security, or to assure the seller's instructions were followed. The buyer had the key and unsupervised access to the property until May 25, 2004. During this time the buyer proceeded to move into the property and hauled personal items left by the seller to the garage.
3. Respondent arranged for the buyer to pay the seller \$100 for allowing him to move personal property into the house. On or about May 28, 2004, the parties signed an early possession agreement. The transaction closed June 28, 2004.


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03-141 & 04-092
Schwartz

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 4th day of MARCH, 2005.



Roger L. Hansen, Executive Officer
Iowa Real Estate Commission