

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

IN RE:)
)
)

DAVID F. SERBA)
Broker (B22141))

404 West Street)
Grinnell, Iowa 501122360)

CASE NUMBER: 98-058

STATEMENT OF
CHARGES

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.

DAVID F. SERBA was at all material times during the following events, a licensed real estate broker officer and designated broker in charge of D. F. Seaba, Inc., a licensed real estate firm in Grinnell, Iowa, license number F02721. His license, number B22141, is in full force and effect through 12-31-2000.

COUNT I

Respondent is charged with engaging in a practice harmful or detrimental to the public by failing to provide supervision, as designated broker, to a salesperson assigned to the firm and by closing a real estate transaction knowing the Seller Property Condition Disclosure Statement had not been obtained from the sellers or delivered to the buyers as required, in violation of Iowa Code sections 558A.2(1), 558A.5(2), 543B29(3) (practice harmful or detrimental to the public) and 543B. 62(3)(b) and 193E - IAC sections 1.39(2), 1.39(3), 2.16 and 4.40(19) (1997).

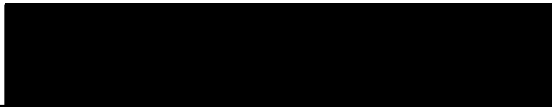
CIRCUMSTANCES OF THE COMPLAINT

1. On September 5, 1997 Dennis H. Stephens, salesperson, licensed with D. F. Seaba, Inc. Realty, listed property owned by Thomas L. Arne II and Nancy J. Arne, located at 2064 210th Drive, Goldfield, Iowa, for \$90,000. Stephens failed to obtain the required Seller Property Condition Disclosure Statement from the sellers at the time of listing. Respondent and Stephens failed to obtain the required disclosure at any subsequent time.
2. On September 9, 1997, Stephens prepared an offer to purchase for \$90,000 with Douglas and Sharon Maxson, buyers. The offer was accepted by the sellers.
3. The Respondent and Stephens were disclosed dual agents in this transaction.
4. Respondent knew Stephens obtained the signature of the buyer clients, Douglas and Sharon Maxson, on a blank Seller Property Condition Statement form.
5. Respondent knew Stephens obtained the signatures of the buyer clients, Douglas and Sharon Maxson, on the offer to purchase without first delivering the required disclosure to them.
6. Respondent knew Stephens obtained the signatures of the seller clients, Thomas Arne II and Nancy Arne, accepting the offer to purchase without first delivering the required disclosure to the buyers.
7. Respondent closed the transaction knowing a Seller Property Condition Disclosure Statement had not been obtained from the sellers and provided to the buyers as required.

FINDING OF PROBABLE CAUSE

On November 5, 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.

Dated this 25th day of MAY, 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. 99DOCRE006
)	CASE NO. 98-58
)	
DAVID F. SEABA)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
)	

On May 25, 1999, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against David F. Seaba, a licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29(3) & .62(3)b; 558A.2(1), .5(2) and 193E Iowa Administrative Code sections 1.39(2), 1.39(3), 2.16 and 4.40(19). A Notice of Hearing set the hearing for July 1 at 9:30 a.m.

The hearing was held on July 1, 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 Leestampter, 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.

Prior to the hearing the Assistant Attorney General moved to consolidate this case with the case of In Re: Dennis H. Stephens, Case No. 98-057. This motion was granted and both hearings were heard at the same time without objection.

The hearing was recorded by a certified court reporter. The hearing was not open to the public, pursuant to Iowa Code section 272C.6(1)(1997), after a written request to close the hearing was provided. 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: Proof of Service (Stephens-May 29, 1999; Seaba-June 8, 1999);

- Exhibit B: Complaint Cover Sheet re: Stephens (Salesperson), July 14, 1998;
- Exhibit C: Complaint Cover Sheet re: Seaba (Broker), July 14, 1998;
- Exhibit D: Complaint Addendum (same for both complaints);
- Exhibit E: Letters from Real Estate Commission requesting information from Stephens and Seaba, July 22, 1999;
- Exhibit F: Response from Stephens, August 4, 1998;
- Exhibit G: Response from Seaba, October 8, 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 B22141. He is in charge of D.F. Seaba, Inc., a licensed real estate firm in Grinnell, Iowa, license number F02721. Dennis H. Stephens is a licensed real estate agent, license number S28426.
3. On September 5, 1997, Dennis Stephens signed a listing agreement with Thomas L. Arne II and Nancy J. Arne to sell their property located at 2064 - 210th Drive, Goldfield, Iowa. The property was listed for \$90,000. No seller property condition disclosure statement was provided by the sellers at the time the property was listed.
4. On September 9, 1997, Stephens prepared an offer to purchase the property for \$90,000 with Douglas and Sharon Maxon as buyers. The offer included a clause requiring a seller property condition disclosure statement. A seller property condition disclosure statement was never filled out and provided to the buyers.
5. At closing it was discovered that no seller property condition disclosure statement was in the file, so the buyers were directed to sign a blank form and it would be filled out and provided to them later. The buyers were informed that they could terminate the transaction at this point and wait for the disclosure statement. Since the buyers' belongings were in a truck coming from Indiana, the buyer went forward with the transaction. This statement has never been provided to the buyers.
6. The Respondent is Agent Stephens supervisor and is therefore responsible for the agent's actions.
7. The Respondent testified that the sellers were reluctant to provide a disclosure statement, and that he performed his

obligation by giving them a blank statement and asking them to fill it out.

CONCLUSIONS OF LAW

1. Iowa law requires that "a person interested in transferring real property, or a broker or salesperson acting on behalf of the person, shall deliver a written disclosure statement to a person interested in being transferred the real property. The disclosure statement must be delivered prior to either the transferor making a written offer for the transfer of the real property, or accepting a written offer for the transfer of the real property." Iowa Code § 558A.2(1). Further, a "broker or salesperson representing the transferor shall deliver the disclosure statement to the transferee as required in section 558A.2, unless the transferor or transferee has instructed the broker or salesperson otherwise in writing." Iowa Code § 558A.5(2).

2. Iowa Code section 543B.29 (1993) 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. "A broker is responsible for supervising a salesperson or broker associate . . . " Iowa Code § 543B.62(3)(b) and 193E IAC 2.16.

4. The Iowa Administrative Code echoes the Iowa Code in requiring a disclosure statement to be provided at the time the licensee obtains a listing and a "licensee representing a seller shall deliver the executed statement to a potential buyer, . . . prior to the seller's making a written offer to sell or the seller's accepting a written offer to buy." 193E IAC 1.39(2)(a).

5. The administrative code further requires:

A licensee representing a buyer in a transfer shall notify the buyer of the seller's obligations to deliver the property disclosure statement.

a. If the disclosure statement is not delivered when required, the licensee shall notify the buyer that the buyer may revoke or withdraw the offer.

193E IAC 1.39(3)(a)

6. The undersigned Commission finds by a preponderance of the evidence that the Respondent's agent failed to obtain a disclosure statement prior to listing the property and failed to provide a copy of this disclosure prior to the buyer's submission of a written offer to buy the property in violation of Iowa Code § 558A.2(1) and 193E IAC 1.39(2)a.

7. The Respondent is responsible for the actions of an agent seller pursuant to Iowa Code § 543B.62(3)b and 193E IAC 2.16. The Respondent failed to properly supervise seller Stephens in the transaction at hand. This lack of supervision resulted in the failure of seller Stephens to obtain a disclosure statement from the sellers and provide this to the buyers prior to an offer being tendered.

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

DECISION AND ORDER

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker license of David F. Seaba, No. B22141, is hereby publically REPRIMANDED.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$500.00 within thirty (30) days of service of this decision and order.

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 day of August, 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.