

Iowa Department of Inspections and Appeals
Division of Appeals and Fair Hearings
Lucas State Office Building
Des Moines, Iowa 50319

IOWA REAL ESTATE COMMISSION,

CASE NUMBER 87-056

Complainant

vs.

TERRY A. VRIEZE (B16534)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

Broker-Associate-Respondent

On June 7, 1988 the Iowa Real Estate Commission (hereinafter the Commission) filed a complaint against Terry A. Vrieze, a licensed real estate broker-associate (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Sections 117.29(3), 117.34(6), and 117.34(8) of the 1987 Iowa Code and 193E Iowa Administrative Code Sections 1.35(117) and 4.40(14)(117).

On June 30, 1988 the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny Netcott, Administrative Law Judge, Department of Inspections and Appeals. The Iowa Real Estate Commission was present during the hearing and was represented by Assistant Attorney General Kathy Skinner. The Respondent appeared at the hearing pro se. A full presentation of facts was made by both parties.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Administrative Law Judge. The Administrative Law Judge was instructed by the Commission to prepare the Findings of Fact, Conclusions of Law and Decision and Order.

DISCUSSION

The Respondent testified that he contacted the sellers to request permission to list their property with First Realty and placed four signs to that effect on the farm. The Respondent contends that the property was never listed with All Plan.

Although the Respondent enjoyed working for All Plan, his employment relationship with that company was not promoted as anticipated so that he transferred to First Realty.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Iowa Real Estate Commission has jurisdiction of this matter under Iowa Code Chapter 17A, 117, and 258A, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker.
3. On June 26, 1986 the Respondent became employed as a broker-associate with All Plan Service Corporation (All Plan); the Respondent terminated employment with All Plan on May 11, 1987.
4. On April 29, 1987 the Respondent sent a letter to one of the sellers thanking her for listing the property with All Plan.
5. On May 20, 1987 the Respondent became employed as a broker-associate with First Realty.
6. While licensed to and acting for All Plan, the Respondent negotiated and entered into a listing contract with the sellers of a piece of farm land.
7. The sellers wanted to list their property with All Plan and believed that they had done so by returning the listing contract to the Respondent.
8. After receiving the listing contract back from the sellers, the Respondent filled in the listing date as May 15, 1987, the expiration date as November 14, 1987, and the real estate broker as First Realty.
9. Upon checking on the status of the listing contract, the sellers discovered the listing was with First Realty rather than All Plan.
10. The Respondent delivered a copy of the listing contract to the sellers in August, 1987 at the sellers' request.
11. On August 14, 1987, one of the sellers sent a complaint against the Respondent to the Real Estate Commission.
12. On or about September 3, 1987 the sellers requested cancellation of the First Realty listing. On September 8, 1987 the Respondent issued a cancellation notice.

CONCLUSIONS OF LAW

What The Law Says

Iowa Code Section 117.29(1987) states:

"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:

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established."

Iowa Code Section 117.34(1987) states the Board "may suspend or revoke the license issued under the provisions of this chapter . . . if the licensee is found to be guilty of:

6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

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."

193E Iowa Administrative Code Section 1.35(117) states in relevant part:

"Distribution of executed instruments.

Upon execution of any instrument in connection with a real estate transaction, a licensee shall, as soon as practicable, deliver a legible copy of the original instrument to each of the parties thereto. It shall be the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this requirement."

193E Iowa Administrative Code Section 4.40 provides a list of violations for which civil penalties may be imposed. Paragraph 14 within this list states:

"4.40(14) Failing by a broker associate or salesperson to keep the employing broker informed."

Application of Law

In the case at hand, the facts are very clear. The Respondent negotiated a listing contract with the sellers of a piece of farm land. Both sellers signed the listing contract with the understanding that their listing was with Century 21 All Plan

Service Corporation (All Plan). The listing contract was sent to the sellers for signature with the information on the listing date, expiration date and real estate broker left blank. Upon receipt of the signed listing contract, the Respondent filled in the blank spaces but inserted First Realty as the broker instead of All Plan. The Respondent issued a letter to one of the sellers at the time the contract was forwarded to her for signature thanking her for listing the property with All Plan. There is no evidence in the record that the Respondent informed the sellers that their property was listed with First Realty. One of the sellers testified that they were not informed of the change in listing brokers.

The Respondent is reminded that it is the duty of a real estate licensee to disclose accurate information to clients and to keep the client informed on the status of a listing contract with regard to any changes which take place.

A letter was sent to one of the sellers thanking her for listing the property with All Plan. However, the Respondent contends that the property was never listed with All Plan but only with First Realty. The listing contract indicated the broker as First Realty. The Commission finds the Respondent's testimony to be suspect. The letter and subsequent completion of the listing contract are inconsistent and contradictory.

The Commission finds that the Respondent misled and deceived the sellers into believing their property was listed with All Plan when in fact the listing contract stated the broker was First Realty. By doing so, the Respondent violated Iowa Code Sections 117.29(3) and 117.34(8)(1987).

The Respondent negotiated a listing while licensed to All Plan but completed the listing contract to show that the listing was with First Realty. The Broker-Officer of All Plan was unaware of the Respondent's actions. It appears that a rift between the Respondent and All Plan caused the Respondent to act improperly as an independent agent rather than on behalf of his employing broker. The listing contract was the property of All Plan and not the Respondent's listing. The Respondent acted unlawfully by treating the listing as his own property rather than that of All Plan's. The Commission finds that the Respondent violated Iowa Code Section 117.34(6)(1987) and 193E Iowa Administrative Code Section 4.40(14)(117).

The Respondent did not provide the sellers with a copy of the listing contract until they requested it in August, 1987. The effective date of the listing contract was May 15, 1987. Over three months passed before the sellers received a copy of the contract. By failing to promptly deliver a copy of the listing contract to the sellers, the Commission finds that the Respondent violated Iowa Code Section 117.34(8)(117) and 193E Iowa Administrative Code Section 1.35(117).

DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Sections 117.29(3), 117.34(6), and 117.34(8), as well as 193E Iowa Administrative Code Sections 1.35(117) and 4.40(14)(117).

It is therefore ORDERED by the Iowa Real Estate Commission that the Iowa real estate license of the Respondent be suspended for three (3) months effective on the date this Order is executed. In addition, the Respondent is ORDERED to pay a \$300 civil penalty within ninety (90) days of the signing of this Order and to take twelve (12) hours of real estate broker prelicense education in the area of real estate law, contract law and agency law within twelve (12) months of the date this Order is executed. The ordered real estate license law education cannot be a correspondence course and is in addition to all other real estate education required by law. The Respondent shall contact the Office of the Commission for approval prior to enrolling in a course to fulfill the requirements of this Order. The original certificate of attendance for the additional hours must be submitted to the Office of the Commission within the required time frame.

Executed this 18th day of August, 1988.

[Redacted Signature]

JAMES R. BERRY, CLERK
IOWA REAL ESTATE COMMISSION

[Redacted Signature]

JENNY NETCOTT
ADMINISTRATIVE LAW JUDGE

Date: August 18, 1988.

Date: July 12, 1988.

Issued this 18th day of August, 1988.

[Redacted Signature]

KENNETH L. SMITH
EXECUTIVE SECRETARY
IOWA REAL ESTATE COMMISSION

JJN/jmm

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on Aug 23, 1988

[Redacted Signature]