

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 05-025
)	DIA NOS. 06DOCRE007
R. CONRAD DOAN)	
Salesperson (S34722))	
)	FINDINGS OF FACT,
BILL RAMSEY REALTORS, INC.)	CONCLUSIONS OF LAW,
2623 Falls Avenue)	DECISION AND ORDER
Waterloo, IA 50701)	

On April 19, 2006, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against R. Conrad Doan (Respondent). The Statement of Charges alleged that while acting as a dual agent, Respondent engaged in practices harmful and detrimental to the public, knowingly made misleading, deceptive, untrue or fraudulent representations, and failed to exercise reasonable care in providing brokerage services to all parties, in violation of Iowa Code sections 543B.29(3); 543B.34(1), (8); 543B.56(1)(a), (b), (c); 543B.56(2)(a), (b), (c) (2003); 193E IAC 12.5(1)(b), (c); and 193E IAC 18.14(5)"s" by:

1. Failing to properly address the term of the purchase agreement referring to a safe water test;
2. Failing to provide a copy of the failed water test to the buyer;
3. Failing to obtain a subsequent test prior to closing; and
4. Advising and assuring the buyers the test was satisfactory.

A hearing was initially scheduled for September 14, 2006 but was continued. A telephone prehearing conference was held on May 18, 2007. The hearing was held on May 24, 2007 at 9:30 a.m. Respondent R. Conrad Doan appeared and was represented by attorney Timothy Ament. Assistant Attorney General David Van Comperolle represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Judy Stevens, Broker; Dan Berry, Broker; James O'Neill and Laurie Dawley, public members. 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 at the

election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2007).

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 testimony of the witnesses and the following exhibits:

Exhibit 1:	Statement of Charges
Exhibit 2:	Purchase Agreement, 4/18/04
Exhibit 3:	Consensual Dual Agency Agreement
Exhibit 4:	Complaint to Commission
Exhibit 5:	Keystone Laboratories Analytical Report, 4/28/04
Exhibit 6:	Letter, 8/10/04 (Black Hawk County Health Department to Kyle Kruse)
Exhibit 7:	Letter dated 9/21/04 (Black Hawk County Health Department to Kyle Kruse)
Exhibit 8:	Request for Response, February 2005
Exhibit 9:	Plumbing bill, 5/26/04
Exhibit 10:	Email, 7/7/04

FINDINGS OF FACT

1. At all times relevant to this decision, Respondent was a licensed salesperson assigned to Bill Ramsey Realtors, Inc., a licensed real estate firm in Waterloo, Iowa. Respondent's Iowa real estate salesperson license (S34722) was first issued on February 18, 1994 and is in full force and effect. (Testimony of Respondent; Exhibit 1)

2. On or about July 19, 2003, Respondent listed the rural property located at 4713 Independence Avenue, Waterloo, Iowa on behalf of an estate. Respondent's contact person for the estate was Marge Werner, who is the successor trustee for the estate and the decedent's daughter (hereinafter, "seller"). The listing price was \$129,000. (Testimony of Respondent; Exhibit 2)

3. On April 18, 2004, buyers Lucinda Kruse and Curtis Kruse (hereinafter, "buyers") and the seller signed a consent to dual agency. (Exhibit 3) By consenting to the dual agency, the buyers understood that Respondent would represent the interests of both the buyers and the seller. Respondent wrote the buyers' \$105,000 offer for the property, which the seller accepted. At the buyers' request, Respondent included four written contingencies in the purchase agreement. The fourth contingency stated: "Seller provides safe water test results." The buyers specifically requested this contingency because they previously lived on a dairy farm where the water was tested monthly, and they knew that water safety was an important issue for rural properties. Respondent offered to make the arrangements for the water test and to pay for it. (Exhibit 2; Testimony of Lucinda Kruse; Respondent)

4. On or about April 26, 2004, Respondent collected a water sample from the property's outside hydrant using a collection bottle from Keystone Laboratories. On April 28, 2004, Keystone Laboratories provided Respondent with a written report showing total coliforms of 200.5 MPN/100ml for the submitted sample. The Keystone report stated that coliforms of less than 1.0 mpn/100 ml is acceptable. The number of coliforms in the sample was 200 times the level considered safe. The report further states that the local county board of health or the IDNR should be contacted for further information on the health effects of any information in the report. The report then states, in bold italics, "**Keystone Laboratories cannot provide health risk or decontamination advice.**" (Exhibit 5; Testimony of Respondent)

5. Respondent claimed that he asked the Keystone employee who ran the laboratory test how to remedy the contamination and that the employee advised him to put chlorine bleach in the well to kill the coliform. The Commission determined that Respondent's testimony was not credible. Respondent did not name the Keystone employee who allegedly provided this advice, nor did he provide any evidence to corroborate his claim that he relied on the advice of a laboratory employee. Based on the degree of contamination in the water sample, the bold disclaimer in the Keystone laboratory report that decontamination advice would not be provided, and their own professional experience, the Commission concluded that it is very unlikely that a Keystone Laboratory employee would give the decontamination advice Respondent claims to have received. (Testimony of Respondent; Exhibit 5)

6. The closing was to take place on or before June 1, 2004. On or about May 14, 2004, the parties met for closing, but the closing was canceled because the buyers were dissatisfied with the loan terms offered by their financial institution. Respondent did not provide the water test results to the buyers on May 14, 2004, and he did not verbally inform them about the unsatisfactory water test. After the buyers contacted a different financial institution for financing, the closing was rescheduled for Friday, May 28, 2004. (Testimony of Lucinda Kruse; Respondent; Exhibit 2)

7. The buyers were purchasing the property for their son, Kyle, to use as his residence. The seller verbally agreed to allow the buyers early possession of the property, but there was no written early possession agreement. Kyle claims he was only given access to the garage and the well house; Respondent claims that Kyle had a key to the house and started removing the carpeting. Respondent further claims that he contacted Kyle at his place of employment, told him about the coliform problem with the well, and advised him that the "fix" was to pour chlorine bleach down the well. Kyle agrees that Respondent told him to pour bleach down the well but denies he was ever told that the water was unsafe. Kyle testified that he thought that the bleach was used to "clean the pipes."

On or about May 26, 2004, Kyle called Respondent to report that there was no water at the house. Respondent went to investigate and discovered that there was about two feet of water in the well pit, and the water pump was not working. Respondent also noticed two gallons of Clorox bleach just inside the well house door. It was later determined that the well pump had been struck by lightning.

Respondent arranged for a plumber to replace the pump for a total cost of \$1,250. Respondent testified that he told the plumber that the water had an elevated coliform level and asked him what the cure was. The plumber told Respondent not to use chlorine bleach because it is corrosive to the pipes and advised Respondent to use chlorine pellets. The plumber put a total of two pounds of chlorine pellets into the well casing and reportedly told Respondent to run the water until he smelled the chlorine, and then it should be "ok." Respondent told the buyers prior to closing that the pump had been struck by lightning and was replaced. He also told them that the well had been treated with chlorine tablets. (Testimony of Respondent; Lucinda Kruse; Kyle Kruse; Exhibit 9)

8. The closing was held on May 28, 2004. Respondent did not provide the buyers with a copy of the April 28, 2004 unsatisfactory water test and never obtained a second, satisfactory water test. Lucinda Kruse testified that she asked for the water test at closing, and Respondent claimed that he could not find it and would mail it to her. Respondent denies that the buyers asked him for the water test result at closing and claimed that he had the water test result with him in his file. However, Respondent admits that he later mailed the water test result to the buyers at their request. The buyers never signed a written waiver of the satisfactory water test contingency and maintain that they never verbally waived the contingency. (Testimony of Lucinda Kruse; Respondent)

9. The Tuesday after the closing, Respondent went to the tap outside the well house to run the water to determine if it still smelled of chlorine. Respondent later received a telephone call from Curtis Kruse asking him why he was at the well house. Respondent testified that Curtis Kruse stated that he never saw the water test result, and Respondent told Curtis Kruse that he would mail it. (Testimony of Respondent)

10. Kyle Kruse lives at the property with his fiancé. When he first moved in, Kyle took a few showers while remodeling but did not drink the water or use it to wash dishes. The water was yellow in color and had a foul odor. The buyers eventually called the Black Hawk County Health Department, and Keystone Laboratories tested a water sample for them on July 8, 2004. The results revealed unsafe bacteria levels (165.2 mp coliform bacteria) and unsafe fecal bacteria levels (129.8 mp fecal bacteria). Any amount of coliform or fecal bacteria greater than 1 mpn indicates that the water is unsafe for human consumption. (Exhibit 6) A second test was conducted on August 31, 2004 and showed even higher levels of contamination. (Exhibit 7)

Kyle Kruse was advised not to use the water for drinking, bathing, washing dishes, or laundry. He has been using bottled water for drinking and has carried water from his place of business to his home for cooking and washing dishes. He showers at his business and does laundry at the laundry mat. The buyers have been told that they will have to dig a new well at a different location in order to correct the water contamination problem, but they cannot afford the cost of the new well. (Testimony of Kyle Kruse; Lucinda Kruse; State Exhibit 4)

11. Bill Herman has been a licensed realtor since 1978 and a licensed broker since 1990. Since March of 2001, he has been

retained to perform investigative and peer review activities for the Commission. Bill Herman was asked to review the complaint and the records of this transaction. In his opinion, Respondent breached his fiduciary duty to the buyers and potentially also breached his duty to the seller when he failed to promptly provide the unsatisfactory water test report to the buyers. In addition, the written contingency was never satisfied because Respondent never provided the buyers with a safe water test. Finally, Bill Herman concluded that if Respondent thought that the buyers were waiving the contingency, he should have obtained a written waiver from them. (Testimony of Bill Herman)

Dale Hilsenbeck has been a licensed broker associate in Waterloo since the mid-1970's but has never before testified as an expert witness. In his opinion, Respondent did not breach his duty to the buyers, but this opinion was based on his assumption that Respondent disclosed all that he knew about the well and that the buyers were comfortable with the disclosure and were willing to close. The testimony and evidence at hearing do not support either assumption. In addition, Mr. Hilsenbeck conceded that it would have been a better practice for Respondent to obtain a second water test or obtain a written release of the contingency. (Testimony of Dale Hilsenbeck)

CONCLUSIONS OF LAW

I. The Violations

A. Applicable Law

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of...knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or practice harmful or detrimental to the public. Proof of actual injury need not be established. Iowa Code section 543B.29(3) (2003).

The real estate commission may suspend or revoke a license if the licensee makes any substantial misrepresentation or if the licensee is unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public. Iowa Code section 543B.34(1), (8) (2003).

In providing brokerage services to all parties to a transaction, a licensee is required to act honestly and in good faith, to

diligently exercise reasonable skill and care, and to disclose to each party all material adverse facts that the licensee knows, except for the following:

- (1) Material adverse facts known by the party.
- (2) Material adverse facts the party could discover through a 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 the party.

Iowa Code section 543B.56(1)(a), (b), (c) (2003).

In addition, the licensee is required to:

- 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.58¹, or under other applicable law,
- Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered through a reasonably diligent inspection, and
- Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are consistent with other legal duties of the licensee.

Iowa Code section 543B.56(2)(a), (b), (c) (2003)

The legislature has specifically authorized the Commission to adopt rules to carry out and implement the provisions of Iowa Code chapter 543B. Iowa Code section 543B.9(2003). Pursuant to this authority, the Commission has adopted the following relevant rules:

193E IAC 12.5 provides, in relevant part:

193E-12.5(543B) Disclosed dual agent.

12.5(1) A brokerage which has a company policy that permits disclosed dual agency for in-house

¹ Pertains to licensees, like Respondent, who represent more than one client in a transaction and the requirement that they obtain written consent to the multiple representation.

transactions shall provide a disclosed dual agency consent agreement to the client or prospective client prior to engaging in any activities of a dual agent...

...

b. A dual agent shall be an agent for both the seller and buyer... and shall have the duties and obligations required for a single agent representing a seller ...and for a single agent representing a buyer..., unless otherwise provided for in this rule.

c. A dual agent shall disclose to the client all material adverse facts concerning the property that are actually known by the licensee, pursuant to Iowa Code section 543B.56.

193E IAC 18.14(5) provides, in relevant part:

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

...

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

B. Discussion

The preponderance of the evidence established that Respondent knowingly made misleading representations in his practice as a real estate salesperson, engaged in practices harmful or detrimental to the public, and failed to diligently exercise reasonable care in providing brokerage services to all parties when he failed to properly address the contingency in the purchase agreement pertaining to a safe water test, when he failed to provide a copy of the failed water test to the buyers and failed to obtain a subsequent test prior to closing, and when he led the buyers to believe that the water was safe. Respondent has violated Iowa Code sections 543B.29(3); 543B.34(1), (8); 543B.56(1)(a), (b), (c); 543B.56(2)(a), (b), (c) (2003); and 193E IAC 12.5(1)(b) and (c).

As a dual agent, Respondent owed the same duties and obligations to both the seller and the buyers. At the buyers' request, Respondent included a written contingency to the purchase agreement that stated, "seller provides safe water test results." Respondent had a clear duty to ensure either that the buyers' written contingency was met and safe water test results were provided prior to closing or that the buyers made an

informed and voluntary decision to waive the contingency. Respondent failed to fulfill either of these obligations.

Respondent volunteered to obtain the water test on behalf of the seller. The test result from Keystone Laboratories established that the water was substantially contaminated. Respondent should have promptly provided copies of this report to both the buyers and the seller so that both parties could make informed choices about any remedial actions necessary to correct the problem and whether to proceed with the transaction. Respondent admits that the buyers did not get a copy of the laboratory report until after the closing. It is also doubtful that he provided the unsatisfactory water results to the seller. In a July 7, 2004 e-mail (Exhibit 10) the seller told Respondent, "You know the water is safe and can prove it with Keystone and inform me." Based on this e-mail, it appears that the seller was under the impression that Respondent had obtained a safe water test.

Respondent claims that he verbally informed Kyle Kruse about the water test results and the actions to take to correct the problem, but Kyle Kruse was not the buyer and was not Respondent's client. Kyle was not authorized to waive the buyers' contingency. Respondent's duty was to inform the buyers. Moreover, Kyle denies that Respondent ever told him that the water was unsafe.

Lucinda Kruse credibly testified that she and her husband did not know about the laboratory results until after the closing and never understood that the chlorine bleach or pellets were being used for any purpose other than maintenance. She also credibly testified that she understood the importance of rural water tests and would never have closed on the property if she knew the results of the first water test and if she knew that Respondent had not obtained a safe water test result. It is very unlikely that the buyers would have closed if they understood the status of the water test results.

In conclusion, Respondent's actions with respect to the water test fell far short of satisfying his professional obligations to the buyers, who trusted him to represent their interests. Respondent failed to disclose material adverse facts known to him, failed to obtain a safe water test result as required by the buyers' written contingency, and misled the buyers into believing that the water was safe, in violation of Iowa Code sections 543B.29(3); 543B.34(1), (8); 543B.56(1), (2), and 193E IAC 12.5(1)(b) and (c). The Commission did not believe that

Respondent verbally informed the buyers of the actual results of the unsatisfactory water test and did not believe that the buyers knowingly waived the safe water test contingency prior to closing.

II. Sanction

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the circumstances leading to the violations, the severity of the violations, and the harm to the public. 193E IAC 18.14(6). It is likely that the interests of both the buyers and the seller were harmed by Respondent's actions and his failure to fulfill his legal obligations as dual agent.

ORDER

IT IS THEREFORE ORDERED that Respondent R. Conrad Doan, Salesperson License (S34722), shall personally complete the eight-hour Commission approved broker pre-license education courses entitled: "Real Estate Law and Agency Law" and "Contract Law and Contract Writing." The original certificate of attendance for both courses must be submitted to the Commission office with a cover letter to the Commission's Executive Officer, referring to Case No. 05-025. These sixteen (16) hours shall be in addition to any real estate continuing education required by law for license renewal and must be completed within one year of the date of this Order.

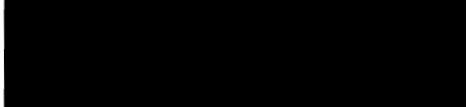
IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Commission in the amount of two thousand five hundred dollars (\$2500) no later than thirty (30) calendar days after the issuance of this Decision and Order. The civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 05-025.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that 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 28th day of June, 2007.


James E. Hughes, Chairperson
Iowa Real Estate Commission

cc: Timothy D. Ament
3604 Kimball Ave.
Waterloo, IA 50704 (CERTIFIED)

David Van Compernelle
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.