

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 04-157
)	DIA NOS. 06DOCRE004
STEVEN C. PETERSON)	
Broker (B05949))	
)	FINDINGS OF FACT,
SCP, Inc.)	CONCLUSIONS OF LAW,
d/b/a RE/MAX Associates Realtors)	DECISION AND ORDER
1951 51 st Street NE)	
Cedar Rapids, IA 52402)	

On May 26, 2005, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Steven C. Peterson (Respondent). The Statement of Charges alleged that Respondent engaged in practices harmful and detrimental to the public, in that he failed to exercise reasonable care to provide adequate supervision and guidance to a salesperson acting as his representative, in violation of Iowa Code section 543B.29(3) and 193E IAC 7.11(1) and (2).

The initial hearing date of July 13, 2006 was continued. A telephone prehearing conference was held on May 18, 2007. The hearing was held on May 24, 2007 at 1:30 p.m. Respondent Steven C. Peterson appeared and was represented by attorney Michael McDonough. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Judy Stevens, Broker; Dan Berry, Broker; 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 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)(2007), to deliberate its decision. The Commission instructed the administrative law judge to draft the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Prehearing Conference Reports, testimony of the witnesses, State Exhibits 1-15 and Broker Exhibits A-I (See exhibit indexes for description; Exhibit H is 193E IAC 7.10; Exhibit I is Respondent's cell phone record for 9/5/04).

FINDINGS OF FACT

1. At all times relevant to this decision, Respondent was a licensed broker officer and broker in charge of SCP, Inc., a licensed real estate firm (F03471), d/b/a RE/MAX Associates Realtors (T05025) in Cedar Rapids, Iowa. Respondent's broker license, number B05949, was issued on December 14, 1978 and remains in full force and effect. As broker in charge, Respondent was responsible for the supervision of each salesperson associated with his firm.¹ (Testimony of Respondent; Bill Herman; State Exhibits 1, 4, 5)

2. John Beltramea has been a licensed real estate sales person since March 2002 and has worked under Respondent's supervision the entire time he has been licensed. At the time that he hired John Beltramea, Respondent had between 20 and 22 agents working under his supervision, and 4 were also brokers. Three brokers assisted Respondent in training the salespersons, but Respondent personally mentored John Beltramea. Respondent publishes a list of everyone in the office with his or her cell phone number. Respondent is usually always on call, and it is his policy to return all calls within 24 hours. Respondent also has a written operating manual for his firm, which includes sections on working with outside agents, vacations, and buddy systems. Every Tuesday at 9:00 a.m., Respondent has a sales meeting with his agents to discuss any problems or issues they are encountering and to hear guest speakers on special topics. (Testimony of John Beltramea; Respondent; Broker Exhibit A)

3. On August 22, 2004, a prospective out-of town buyer (hereinafter, buyer) called John Beltramea and asked for his assistance in obtaining floor plans and information about a newly constructed two-story home and a ranch home

¹ Iowa Code section 543B.62(2)(b); 193E IAC 7.11.

still under construction in a new development in Anamosa. The buyer told Beltramea that he had walked through the homes during a previous visit to the area, that he would be returning to the area Labor Day weekend, and that he was interested in writing an offer on one of the houses.

Dave Berry of Coldwell Banker Hedges Realty was the listing agent for the properties; Ronald Dean Wood (hereinafter, seller) was the developer and owner of the properties. The listing agreement had been extended through September 30, 2004 and required a total commission of 7%. John Beltramea has stated that during the week prior to the Labor Day weekend, he made repeated unsuccessful attempts to contact the listing agent and obtain the information requested by the buyer.² (Testimony of John Beltramea; State Exhibits 6-10; Broker Exhibit C)

4. Sometime prior to September 1, 2004, John Beltramea contacted the seller directly to tell him that he had a buyer interested in two of his properties and to request the floor plans and additional information. John Beltramea then met with the seller and arranged to show the properties to his buyer on Saturday, September 4, 2004. The seller agreed to be present to answer any questions.

During the September 4th showing, the seller told John Beltramea and the buyers that he had a verbal arrangement with the listing agent that if the listing agent was not involved with the sale of the property, then he would not be paid a commission. John Beltramea had concerns about whether the agreement described by the seller was valid and whether RE/MAX could be assured a commission if the sale went through. When the seller and the buyers started to negotiate a purchase on their own, John Beltramea tried to call Respondent for guidance and advice on how to proceed. John Beltramea called Respondent's cell phone and Respondent's wife's cell phone, and then left a message on Respondent's cell phone. Respondent also tried unsuccessfully to reach another experienced agent in

² John Beltramea was separately charged by the Commission for engaging in a practice harmful or detrimental to the public when he negotiated with a seller, knowing that the seller had an unexpired listing or brokerage agreement for service on an exclusive basis with another licensee. John Beltramea and the Commission resolved this Statement of Charges by entering into a Stipulation and Order imposing discipline. For the purposes of this decision, it is not necessary for the Commission to determine what contacts Beltramea in fact made with the listing agent prior to the Labor Day weekend. (State Exhibit 3)

Respondent's firm. (Testimony of John Beltramea; State Exhibit 10; Broker Exhibit B)

5. While John Beltramea waited for a return call from Respondent, the seller and the buyers continued to negotiate terms of purchase. After several hours had passed and Beltramea had not heard back from Respondent, Beltramea decided to prepare a consensual dual agency agreement, a purchase agreement, and a contract for settlement services providing for a 3.5% commission to be paid to RE/MAX. At the time, John Beltramea thought that the issue of the listing agent's commission, if any, would be an issue to be determined by the seller and the listing agent. (Testimony of John Beltramea; State Exhibit 10; Broker Exhibits C-F).

6. Although Respondent was out of town for the 2004 Labor Day weekend, he had informed all his agents that he was available by cell phone and should be called if there were any questions. Respondent made and received several business calls on his cell phone on Saturday, September 4, 2004. However, John Beltramea's voice mail message did not actually reach Respondent's voice mailbox until Sunday morning. On Sunday, September 5, 2004 at 9:30 a.m., Respondent returned John Beltramea's call and left a message for him. (Broker Exhibit I) While John Beltramea did not specifically recall receiving this return message from Respondent during the Labor Day weekend, he conceded that Respondent has always been good about getting back to him within 24 hours. Beltramea agreed that on occasion a voice mail has not dropped into his own mailbox until several hours later or even the next day. (Testimony of Respondent; John Beltramea; Broker Exhibit I)

7. On Tuesday, September 7, 2004, John Beltramea advised Respondent of the details of the September 4, 2004 transaction. Respondent advised Beltramea to immediately fax all of the documents to the listing agent. The listing agent later filed a complaint against John Beltramea (Complaint No. 04-156) with the Commission. On December 14, 2004, the Commission wrote to Respondent asking his opinion of his salesperson's actions. Respondent replied that in his opinion, the listing agent's complaint was without merit, John Beltramea's actions were in the best interest of his clients, and Beltramea was still owed a commission for the sale of the property.

At the hearing, Respondent testified that when he wrote the letter to the Commission he was trying to support his agent, not defend himself. Respondent testified that in his opinion, based on the information available to him at the time, John Beltramea should have backed away from the sales transaction when he could not reach Respondent for advice. (Testimony of Respondent; State Exhibit 11)

8. While Respondent has always advised his agents that if they have questions and are unable to obtain an answer, they should back away from a transaction, Respondent had never specifically addressed the unusual situation encountered by John Beltramea on September 4, 2004. John Beltramea now has a list of other brokers that he can call if he is unable to reach Respondent for any reason. (Testimony of John Beltramea; Respondent; Broker Exhibit A)

CONCLUSIONS OF LAW

I. 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... practice harmful or detrimental to the public. Proof of actual injury need not be established. Iowa Code section 543B.29(3)(2003).

Iowa Code section 543B.63(3)(b)(2003) provides that a broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate shall not relieve either the broker or the salesperson or broker associate of duties, obligations or responsibilities required by law. Each salesperson and broker associate shall keep the broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the broker fully informed does not relieve the broker of duties and responsibilities under this chapter.

Accord, 193E IAC 7.11.

193E IAC 7.10 provides, in relevant part:

193E-7.10 (543B) Agency-designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, shall be considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code section 543B.62, subsection (3), paragraph "b."

7.10(1) When making a determination, the commission may consider, but is not limited to consideration of, the following:

a. Availability of the designated broker/designee to assist and advise regarding brokerage related activities;

b. General knowledge of brokerage-related staff activities.

c. Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;

d. Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;

e. Frequency and content of staff meetings;

f. Written company policy manuals for licensed and unlicensed employees and independent contractors;

g. Ratio of supervisors to licensed employees and independent contractors; and

h. Assignment of an experienced licensee to work with new licensees.

II. Analysis

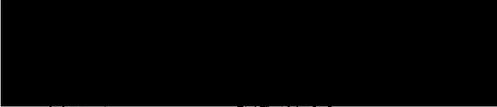
The preponderance of the evidence failed to establish that Respondent engaged in a practice harmful or detrimental to the public by failing to provide adequate supervision and guidance to a salesperson, in violation of 543B.29(3) and 193E IAC 7.11. Based on its review of the record and the factors provided in 193E IAC 7.10(1), the Commission believes that Respondent did take the required steps to guide and supervise salesperson John Beltramea and to make himself available for questions and assistance over Labor Day weekend in 2004. The Commission was satisfied that Respondent properly trained John Beltramea and that

Respondent promptly returned John Beltramea's call when he received the message the morning of September 5, 2004. When it decided to file the Statement of Charges against Respondent, the Commission was very concerned about the opinions expressed by Respondent in his letter to the Commission (Broker Exhibit 11). The letter gave the impression that Respondent approved of his salesperson's actions and would not have advised him to handle the transaction any differently. The Commission was also very concerned that Respondent did not return his salesperson's call requesting guidance on the transaction and did not designate another responsible broker to answer questions in his absence. Following the hearing, the Commission was satisfied that Respondent understood the problems with the real estate transaction and did not approve of the manner in which it was handled. Moreover, the Commission was satisfied that Respondent's voice mail had malfunctioned and that if he had received the message from his salesperson, Respondent would have promptly returned the call and properly advised his salesperson to back away from the transaction.

ORDER

IT IS THEREFORE ORDERED that the Statement of Charges filed against Steven C. Peterson, Broker License (B05949), on May 26, 2005, is hereby DISMISSED.

Dated this 28th day of June, 2007.


James E. Hughes, Chairperson
Iowa Real Estate Commission

cc: Michael McDonough
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P.O. Box 1943
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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.