

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 03-147
)	DIA NOS. 06DOCRE003
DOUGLAS C. HATLEVIG)	
Broker (B11062))	
)	FINDINGS OF FACT,
Leonard-Wright Agency)	CONCLUSIONS OF LAW,
d/b/a Hatlevig Homes)	DECISION AND ORDER
703 S. Oak Street)	
Iowa Falls, IA 50126)	

On September 16, 2004, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Douglas C. Hatlevig (Respondent). The Statement of Charges alleged that Respondent engaged in practices harmful or detrimental to the public by:

- attempting to act as a dual agent and by writing an offer without regard for another broker's valid listing agreement;
- interfering with a valid listing agreement;
- negotiating directly with the owner knowing that the property was listed with another broker; and
- attempting to induce the seller to change another broker's commission;

in violation of Iowa Code sections 543B.29(3), 543B.34(1), (7), and (8)(2005), 543B.56(1)(b), 543B.57(1) and 193E IAC 7.15(1), (2), (4), 11.3(8) & (9), 13.2(5)(a) & (b), and 18.14(5)(s).

A notice of hearing was issued on February 2, 2006, and a telephone prehearing conference was held on May 19, 2006. The hearing was held on May 25, 2006 at 9:30 a.m. Respondent Douglas C. Hatlevig appeared and was represented by attorney Joel T.S. Greer. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; Dan Berry, Broker; Lori Diehl, Salesperson; Patty Daniels, Salesperson; Laurie Dawley and James O'Neill, public members. Administrative Law Judge Margaret LaMarche assisted 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)(2005).

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; and the following exhibits:

- State Exhibit 1: Statement of Charges, Notice of Hearing, Proof of Service and Hearing Acknowledgement
- State Exhibit 2: Answer
- State Exhibit 3: Respondent Licensing Information
- State Exhibit 4: Complaint
- State Exhibit 5: Respondent Statement, 4/6/04
- State Exhibit 6: Investigation Report w/addendum, 4/28/04
- State Exhibit 7: Residential Listing Agreement w/Hatlevig Homes
- State Exhibit 8: Residential Listing Agreement w/Homestead Realty
- State Exhibit 9: Estimate Worksheet
- State Exhibit 10: Offer for Real Estate, 12/10/03
- State Exhibit 11: Earnest Money Check, 12/10/03
- State Exhibit 12: Agency Disclosure Agreement
- State Exhibit 13: Seller Disclosure of Property Condition
- State Exhibit 14: 72 Hour Clause Agreement
- State Exhibit 15: Earnest Money Release
- State Exhibit 16: Relevant Iowa Code Sections
- State Exhibit 17: Relevant Iowa Administrative Code Sections

- Respondent Exhibit A: 72-Hour Clause
- Respondent Exhibit B: 72-Hour Contingency Clause, initialed Respondent
- Respondent Exhibit C: Letter dated 12/12/03 (Respondent to buyer)
- Respondent Exhibit D: FAX dated 12/22/03 (Respondent to Rural Development)

Respondent Exhibit E: Check, 4/2/04 (return of earnest money)
Respondent Exhibit F: Respondent polygraph results
Respondent Exhibit G: Mapquest Map- Iowa Falls

FINDINGS OF FACT

1. Respondent is a licensed Broker in charge of Leonard-Wright Agency, d/b/a Hatlevig Homes, 703 S. Oak Street, Iowa Falls, Iowa 50126. Respondent's real estate broker license (B11062) was issued January 28, 1998 and is in full force and effect through December 31, 2007. Respondent had held a broker's license since approximately 1976, and he worked part-time as a broker for several years in the late 1970's while he was employed as a teacher. When Respondent became a banker in approximately 1980, he placed his broker's license on inactive status because he was involved in real estate lending. Respondent was employed in banking for eighteen years prior to purchasing the Leonard-Wright Agency. (Testimony of Respondent; State Exhibits 1, 3)

2. On April 16, 2003, Respondent sold the property located at 1211 Ellis Avenue in Iowa Falls to JW. JW planned to renovate the property and then sell it. JW told Respondent that he wanted to continue to buy and sell properties in Iowa Falls. Over the next month, Respondent regularly stopped at 1211 Ellis Avenue when he was in the area and spoke to JW about his progress. After making a number of upgrades and improvements to the property at 1211 Ellis Avenue, JW approached Respondent about listing the property for sale. Respondent agreed to negotiate his commission at the time of the sale if JW continued to buy and sell properties. (Testimony of Respondent; State Exhibit 5)

3. On or about May 19, 2003, JW listed the property at 1211 Ellis Avenue with Respondent at a sale price of \$64,900. Respondent showed the home to a prospective buyer (GA) on several occasions. GA was pre-approved for financing through Rural Development. Approximately one month prior to the expiration of Respondent's listing, Rural Development conducted several inspections of the property.

Respondent asked JW to extend the listing before it expired on November 19, 2003, but JW told Respondent that he was considering listing the property with another broker. Respondent's listing expired on November 19, 2003. Respondent chose not to provide JW with a list of protected buyers who had

been shown the property prior to the listing's expiration. Respondent told JW that if he listed the property with someone else, he should keep that agency posted on what was going on with GA's offer. After the listing expired, JW picked up the keys to the property at Respondent's office. Respondent was not present when JW retrieved the keys and denies that his employees ever told him that JW had picked up his keys. (Testimony of Respondent; State Exhibit 5)

4. On or about November 20, 2003, Jerry Price, a Sole-Proprietor Broker, d/b/a Homestead Realty, Iowa Falls, Iowa, listed the property at 1211 Ellis Avenue for \$59,900. The exclusive listing with Homestead Realty had an expiration date of February 1, 2004. Respondent denies that he knew about the new listing with Homestead Realty. Iowa Falls did not have a multiple listing service until April or May 2005, and realtors learned about listings by seeing signs in the yard or receiving flyers sent by other realtors. Respondent submitted to a polygraph test that generally supports his claim that he did not know about the new listing with Homestead Realty. (Testimony of Bill Herman; State Exhibits 6, 8; Respondent Exhibit F)

5. On or about December 10, 2003, Respondent wrote an offer on the property at 1211 Ellis Avenue for prospective buyer GA. The offer was for \$51,000 with contingencies. The sale was subject to the sale of the buyer's property by March 1, 2004. GA wrote a \$100 earnest money check made out to Hatlevig Homes. Respondent signed the Agency Disclosure Agreement as both the listing agent and the selling agent. (Testimony of Bill Herman; Respondent; State Exhibits 10, 11, 12)

6. On Friday, December 12, 2003, Respondent presented the offer directly to JW, without the knowledge or consent of the listing broker, Jerry Price. Respondent did not ask JW if he had listed the property with another broker and merely assumed that JW would have told him if he had. Respondent prepared an estimate worksheet illustrating the gross proceeds to JW based on the \$51,000 purchase price and a negotiated 3% commission for Respondent. JW wanted the property sold by March 1, 2004 and asked Respondent to counter the buyer's offer by adding a 72-hour clause. The 72-hour clause allowed the seller to keep showing the property but gave the buyer 72 hours to remove her contingency if the seller received another offer. Respondent sent the 72-hour clause counter offer to GA through the mail. (Testimony of Bill Herman; Respondent; State Exhibits 10; Respondent Exhibits A, C)

7. Late on Friday, December 12, 2003, JW called the listing agent at Homestead Realty to tell him that he had accepted an offer on his property. On Saturday, December 13, 2003, JW called the listing agent again to ask if he would accept a 3% commission. The listing agent told JW that their commission was 6%, so if another agent sold the property, the listing agent would normally receive 3% of the total commission. (Testimony of Bill Herman; State Exhibit 4)

8. On Monday, December 15, 2003, Jerry Price of Homestead Realty called Respondent, told him that he had the current listing for the property at 1211 Ellis Avenue, and told him that he needed to bring GA's offer and earnest money check over to Homestead Realty. Respondent then called JW and suggested that they have a meeting with Jerry Price to discuss the matter. At approximately 11:45 a.m., Respondent and JW went to Homestead Realty to speak to Jerry Price. JW told Price that he had accepted a \$51,000 offer, written by Respondent, with a 3% total commission, and that he wanted the deal to work. Respondent refused to turn over the offer and earnest money check to Jerry Price at that time. At the hearing, Respondent explained that he did not consider the offer to be accepted until GA signed the 72-hour clause, and he felt that he had an ongoing responsibility to the buyer at that time. (Testimony of Bill Herman; Respondent; State Exhibit 4)

9. GA signed the 72-hour clause on December 19, 2003 and returned it to Respondent. On December 23, 2003, Respondent gave the signed offer to Jerry Price and endorsed the \$100 earnest money check over to Homestead Homes. (Testimony of Respondent; Bill Herman; State Exhibits 4, 5, 14)

10. The purchase agreement for 1211 Ellis Street later fell through because GA was unable to sell her home. Homestead Realty released the earnest money check back to GA on April 2, 2004. (Testimony of Respondent; State Exhibit 15; Respondent Exhibit E)

CONCLUSIONS OF LAW

I. The Violations

A. Applicable Law

Iowa Code section 543B.29(3) (2005) 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:

...

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

Iowa Code section 543B.34(7)(2005) provides, 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 broker...and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee...is found guilty of any of the following:

1. Making any substantial misrepresentation.

...

7. Failing, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belongs to others.

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.

Iowa Code section 543B.56(1)(b) and 543B.57(1) provide, 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:

...

b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.

543B.57 Confirmation and disclosure of relationship

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes a disclosure to all parties to the transaction identifying which party that person represents in the transaction.

193E IAC 7.15 provides, in relevant part:

193E-7.15 (543B) Presenting purchase agreements. All written offers to purchase received by a listing broker or listing agent shall be promptly presented to the seller for formal acceptance or rejection...

7.15(1) A customer's agent seeking compensation from the listing broker shall not prepare an offer to purchase on the property without first obtaining authorization and agreement from the listing broker.

7.15(2) A real estate licensee shall not induce another to seek to alter, modify or change another licensee's fee or commission of real estate brokerage services without that licensee's prior written consent.

...

7.15(4) A customer's agent or representative shall not negotiate directly or indirectly with a seller or buyer, ..., if the agent knows, or acting in a reasonable manner should have known, that the seller or buyer, ...has a written unexpired listing or brokerage agreement for services on an exclusive basis.

193E IAC 11.3 provides, in relevant part:

193E-11.3 (543B) Brokerage agreements. All brokerage agreements shall be written...

...

11.3(8) Any commission or fee in any brokerage agreement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a commission or fee, no licensee other than a party to that brokerage agreement shall attempt to alter, modify, or change or induce another person to alter, modify, or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

11.3(9) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

193E IAC 13.2(5) provides, in relevant part:

193E-13.2(543B) Closing transactions.

...

13.2(5) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction or, by prior agreement, authorize the selling broker to close.

a. If the listing broker so elects, the selling broker shall have the buyer make the earnest money check or money order payable to the listing broker and shall immediately deliver the earnest money check or money order along with the offer to purchase to the listing broker or listing agent.

b. Unless by prior agreement the listing broker has authorized the selling broker to close, the offer to purchase shall designate that the earnest money is to be held in trust by the listing broker.

B. Discussion

The Commission is unable to conclude, by a preponderance of the evidence, that Respondent had actual knowledge of the listing agreement with Homestead when he acted as a dual agent and presented the offer to the seller. The seller's hearsay statements to the Commission's investigator (State Exhibit 6-3), the fact that the seller picked up his keys from Respondent's office when the listing expired, and the relatively small size of Iowa Falls all tend to support the conclusion that Respondent probably did know about the other listing. However, the contrary evidence, i.e. Respondent's direct sworn testimony denying knowledge and his polygraph results¹, was equally persuasive to the Commission.

Nevertheless, if Respondent had been acting in a reasonable manner, he should have known that the seller had a written

¹ Polygraph results are admissible in administrative proceedings. Libe v. Board of Education of the Twin Cedars Community School District, 350 N.W.2d 748, 750 (Iowa App. 1984). The polygraph results were considered by the Commission as additional support for the credibility of Respondent's testimony but were not conclusive on this issue.

unexpired exclusive listing with another broker. See 193E IAC 7.15(4). At the time that he presented the offer, Respondent knew that his listing agreement had expired nearly three weeks earlier and knew that seller was considering listing the property with a different broker. After the listing expired, the seller picked up his keys from Respondent's office. Even if Respondent did not in fact know this, he should have known it. The new listing broker had posted a sign on the property. Under the circumstances, a reasonable broker would, at a minimum, have asked the seller whether he had listed the property with another broker before presenting an offer directly to him. It was unreasonable for Respondent to merely rely on the seller, who may not understand the legal and ethical obligations of brokers, to volunteer this information.

The preponderance of the evidence established that Respondent acted as a dual agent and prepared and presented an offer from a prospective buyer directly to a seller, when he should have known that the seller had an unexpired exclusive listing agreement with another broker. This violated 193E IAC 7.15(1) and (4). Although Respondent had shown the property to the buyer while he still had the exclusive listing for the property, Respondent did not provide a list of protected buyers to the seller prior to the expiration of the exclusive listing contract. 193E IAC 11.2. Respondent did not obtain prior permission from the listing agent to present the offer to the seller, in violation of 193E IAC 7.15(1).

In addition to presenting the offer to the seller, Respondent negotiated a 3% commission with the seller and presented him with a proceeds estimate based on the 3% commission, in violation of 193E IAC 11.3(8) and (9). In addition, Respondent had the buyer make the earnest money check payable to him, rather than to the listing broker and then communicated the seller's counter offer to the prospective buyer, in violation of 193E IAC 7.15(4) and 13.2(5)(a) and (b). When Respondent learned, on December 15, 2003, that the seller had an exclusive listing agreement with another broker, he should have immediately turned the offer and earnest money check over to the listing broker and ceased all direct communication with the seller. Instead, Respondent contacted the seller directly and arranged a meeting with the listing broker. Respondent and the seller continued to press the listing broker to agree to a 3% total commission, even though the listing agreement called for a 6% total commission. While Respondent claimed at hearing that he intended to forgo his share of the commission, it does not appear that this was ever effectively communicated to the

listing broker. Respondent did not turn the offer and earnest money check over to the listing broker until December 23, 2003.

These facts and circumstances constitute practices harmful or detrimental to the public, in violation of Iowa Code section 543B.29(3); making substantial misrepresentations, in violation of Iowa Code section 543B.34(1); failing to account within a reasonable amount of time for moneys coming into his possession which belong to others, in violation of Iowa Code section 543B.34(7) and 193E IAC 13.2(5)(a) and (b); and failing to diligently exercise reasonable skill and care in providing brokerage services, in violation of Iowa Code section 543B.56(1)(b).

II. Sanction

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the violations and the potential for harm to the public. Based on these considerations, the Commission felt that the violations could be adequately addressed by Respondent's completion of educational requirements and payment of a civil penalty.

ORDER

IT IS THEREFORE ORDERED that the Respondent Douglas C. Hatlevig, Broker License (B11062), shall personally attend and complete the eight-hour Commission approved broker pre-license education course "Agency and Real Estate Law" and the twelve-hour ethics course entitled "Developing Professionalism and Ethical Practices." The original certificates of attendance must be submitted to the Commission office with a cover letter to the Commission's Executive Officer, referring to Case No. 03-147. These hours shall be in addition to any real estate continuing education required by law for license renewal and must be completed within twelve (12) months of the date of this Order.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Commission in the amount of \$2,000 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. 03-147.


IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty

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(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.

Dated this day of June , 2006.


James Hughes, Chairperson
Iowa Real Estate Commission

cc: Joel T. S. Greer
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John Lundquist
Assistant Attorney General
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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.