

CIRCUMSTANCES OF THE COMPLAINT

1. On or about August 18, 1989, Evangeline Seymour sold the property located at 1505 Oak Park Avenue, Des Moines, Iowa to Jerry Letze. Mr. Letze died and the contract obligations were transferred to Terry Fritz. Mr. Fritz sold the property to Darin Dare. The Respondent listed the property and represented Fritz in the transaction. As a part of this sale, Seymour was to be paid in full out of the closing proceeds.

2. Choice Realty Contract Payoff Agreement indicates a principal balance of \$17,041. Choice Realty Seller's Closing Statement dated May 11, 2001, provided net proceeds to the seller of \$16,833.89. On or about May 17, 2001, Respondent met with Seymour and obtained signatures a deed for the property conveying it to Terry Lee Fritz. Respondent filed the deed on May 29, 2001.

3. In early May 2001, Darin Dare, the end buyer, delivered a check for \$56,500 to Choice Realty. The Respondent closed the transaction but failed to pay Evangeline Seymour the \$16,833.69 proceeds from the closing.

5. Evangeline Seymour filed charges with the Polk County Attorney, Des Moines, Iowa. On November 19, 2001, Respondent entered a stipulated finding of guilt to the crime of Theft in the 1st Degree in violation of Iowa Code sections 714.1(1) and 714(1), Criminal Number FECR157844. On January 28, 2002, the court adjudged the Respondent guilty of Theft in the 1st Degree and she was sentenced to be imprisoned for a period not to exceed 10 years, suspended and placed on probation with conditions. A copy is attached and incorporated by reference.

FINDING OF PROBABLE CAUSE

On February 28, 2002 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 28TH day of FEBRUARY, 2002.


Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:) CASE NO. 01-060
) DIA NO. 02DOCRE004
BARBARA J. NEWQUIST)
Broker (B36069)) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
RESPONDENT) DECISION AND ORDER

On February 28, 2002, the Iowa Real Estate Commission (Commission) found probable cause to file a Complaint against Barbara Newquist (Respondent). The Complaint alleged that the Respondent pled and was adjudged guilty of Theft in the First Degree in Polk County District Court on November 19, 2001, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and 543B.34(11)(2001). A Notice of Hearing scheduled a prehearing conference for April 12, 2002 and a hearing for April 18, 2002. The Respondent was personally served with the Statement of Charges and Notice of Hearing on March 6, 2002.

The Respondent failed to provide a telephone number where she could be reached for the telephonic prehearing conference and did not participate in the prehearing conference. Her attorney of record was contacted at the time of the hearing but was out of the office. He later notified the Commission that he had not been retained to represent the Respondent in this matter.

The hearing was held on April 18, 2002 at 9:40 a.m. The Respondent did not appear for the hearing and was not represented by counsel. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Commission members were present for the hearing: Robert Miller, Salesperson, Chairperson; James Hughes, Broker; Evelyn Rank, Public Member; Dorothy F. Woline, Broker; and Barbara Leestamper, Public Member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2001) to deliberate its decision. A motion was approved revoking the Respondent's license. The members of the Commission instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, Proof of Service, State's Prehearing Conference Report, the testimony of the witness, and State Exhibits 1-7.

FINDINGS OF FACT

1. The Respondent is a licensed Broker who was, at all times relevant to the Statement of Charges, the licensed Broker Officer in charge of a licensed real estate firm in West Des Moines, Iowa. The Respondent's license, number B36069, has been on inactive status since February 11, 2002, and expires on December 31, 2003. (State Exhibit 1; Testimony of Roger Hansen)

2. On June 28, 2001, the Commission received a Complaint from an attorney alleging that the Respondent had misappropriated \$16,833.69 from ES, his 87 year-old client.

a. ES owned a house in Des Moines that she sold by installment real estate contract on August 18, 1989. The contract purchaser later died, and the contract obligations were transferred to his son, who inherited the house. The son listed the house for sale with the Respondent. A buyer was found, and the Respondent acted as the real estate agent for both the seller and the buyer. The purchase price was \$56,500. As part of the sales transaction, the contract with ES was to be paid in full out of the closing proceeds.

b. In early May 2001, the buyer delivered a check to the Respondent made out to the Respondent's realty company for the purchase price. The buyer understood that the Respondent would pay the balance of the real estate contract owed to ES, which was \$16,833.69. The Respondent met with ES on May 23, 2001 to get the deed in satisfaction of the contract. A friend of ES was also present for the meeting. ES was living in Oklahoma at the time, but was staying at her friend's home. The Respondent told ES that she could not get her final contract payment until she signed the deed in satisfaction of the contract. The Respondent gave ES the deed, a closing statement and a Real Estate Contract Payoff Agreement. The Respondent told ES that if she signed the documents she would file the deed, and ES would get her check the next day (May 24).

c. ES called the Respondent the next day to get her check. The Respondent replied that she was too busy and would put the check in the mail. ES returned to Oklahoma. After a couple of days passed and the check did not arrive, ES

called the Respondent again. Once again, the Respondent told her that the check was in the mail. ES was told the same thing in subsequent calls to the Respondent.

d. On June 21, 2001, ES consulted an attorney. The attorney left a message for the Respondent asking her to contact him so they could stop payment on the check to ES and have a new one issued. The Respondent did not return the attorney's call, and he made several more attempts to call her. When the attorney finally reached the Respondent by phone, the Respondent hung up on him after being told that ES wanted her check. She did not return the attorney's later phone calls.

(Testimony of Roger Hansen; State Exhibit 2)

3. On August 21, 2001, the Respondent was charged by trial information with two counts of theft in Polk County District Court. One of the counts charged the Respondent with First Degree Theft (a Class C Felony) for the funds taken from ES. (State Exhibit 3; Testimony of Roger Hansen)

4. On November 19, 2001, the Respondent stipulated that the minutes of testimony were sufficient to prove that she took possession and control of ES' money, with the intent to deprive her of it. The Court found her guilty of Theft in the First Degree, a Class C Felony. (State Exhibit 4; Testimony of Roger Hansen)

5. On January 25, 2002, the Respondent was sentenced to a 10 year suspended sentence and placed on probation for two years. (State Exhibit 5) She was ordered to have no contact with ES. (State Exhibit 6) The Respondent was ordered to pay restitution in the amount of \$21,558.26, which included principal, interest and attorney fees. (State Exhibit 7; Testimony of Roger Hansen)

CONCLUSIONS OF LAW

Failure To Appear

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of a party. 193E IAC 4.40(1).

The Respondent was personally served with the Statement of Charges and Notice of Hearing on March 6, 2002, more than twenty (20) days prior to the hearing, in accordance with 193E IAC 4.15. The Respondent was properly served but failed to appear for hearing. The Commission was authorized to proceed with the

hearing.

The Violations

Iowa Code section 543B.29(5) (2001) 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:

...
5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, ~~conviction~~ means a conviction for an indictable offense and includes a guilty plea, ...or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment or other finding of guilt is conclusive evidence.

Iowa Code section 543B.14, subsection 3 permits the Commission to deny an application for a real estate salesperson's or broker's license if the applicant has been convicted of theft.

Iowa Code section 543B.34(8) and (11) (2001) provide, in relevant part:

543B.34 Investigations by commission.

The real estate commission ...may suspend or revoke a license issued under this chapter at any time...if the licensee is found to be guilty of any of the following:

...
8. Being unworthy or incompetent to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public.

...
11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543B.29(5) and 543B.34(8) and (11) (2001), when she was convicted of Theft in the First Degree, a Class C Felony. The Respondent used her position as a licensed

real estate broker to steal \$16,833.69 in closing proceeds from an 87 year old property owner. She induced the property owner to sign the deed by promising to pay her the money she was owed on the real estate contract the following day. The Respondent never paid the owner the proceeds that were due her and was subsequently convicted of felony theft.

The certified copy of the conviction is conclusive evidence of the violation of Iowa Code section 543B.29(5). The record also includes a detailed written chronology from ES' attorney, a copy of the warranty deed, and the real estate contract payoff agreement showing the net proceeds that were due to ES. The record overwhelmingly supports the conclusion that the Respondent has violated Iowa Code section 543B.34(8) because she is unworthy to act as a broker in a manner that safeguards the interests of the public. In addition, her conduct in this transaction demonstrated bad faith and dishonest and fraudulent dealings, in violation of Iowa Code section 543B.34(11).

The dishonest and criminal behavior of the Respondent constitutes the most egregious type of violation that can be committed by a real estate broker. This type of violation deserves the most severe sanctions that can be imposed by the Commission because it directly harms clients and it undermines public confidence in the profession as a whole. See McClure v. Iowa Real Estate Commission, 356 N.W.2d 594 (Iowa App. 1984)

ORDER

IT IS THEREFORE ORDERED, that the Respondent, Barbara J. Newquist, shall immediately pay to ES the full amount of restitution ordered by the Polk County District Court.

IT IS FURTHER ORDERED, that the Respondent's real estate broker license, License No. B36069, is hereby REVOKED, effective immediately. The Respondent shall immediately surrender her broker license by sending it to the Commission office at 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

The current membership of the Commission unanimously agrees that the nature of the Respondent's felony theft conviction disqualifies her from ever holding a real estate license in the state of Iowa. However, if a future Commission considers reinstatement of her license, it is strongly recommended that the Respondent be required to repeat all of the education, experience, and examinations required for licensure prior to reinstatement.

IT IS FURTHER ORDERED, that the Respondent shall pay a civil penalty of one thousand dollars (\$1,000) within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193E IAC 4.56, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

Dated this ^{29th} day of April, 2002


Robert Miller, Chairperson
Iowa Real Estate Commission

cc: Barbara Newquist
4303 Cody Drive
West Des Moines, Iowa 50265
(CERTIFIED)

Pamela Griebel
Assistant Attorney General
Hoover State Office Building
(LOCAL)

193E IAC 4.40(3) provides that default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.46 (17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in a contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

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 4.52.