

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 SE HULSIZER
ANKENY, IOWA

IN RE:)	
)	
)	CASE NUMBER: 01-011
JAMES D. KELLER)	
Salesperson (S38543))	STIPULATION
)	AND
)	ORDER
COLDWELL BANKER MID-AMERICA)	
4800 WESTOWN PKWY, STE. 110)	
WEST DES MOINES, IA 50266)	

On this 9th day of AUGUST, 2001, the Iowa Real Estate Commission and JAMES D. KELLER, each hereby agree with the other and stipulate as follows:

1. The allegations specified in the Statement of Charges in this case shall be resolved without proceeding to hearing as the parties have agreed to the following Stipulation and Consent Order.
2. The Respondent has a right to a hearing on the charges, but waives the right to hearing and all attendant rights, including the right to appeal, by freely and voluntarily agreeing to this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
3. The Respondent was issued a real estate salesperson license on February 16, 1998 which is in full force and effect through December 31, 2003.
4. The Iowa Real Estate Commission has jurisdiction over the parties and subject matter jurisdiction over each allegation in the Statement of Charges.
5. A Statement of Charges will be filed against Respondent together with this voluntary Stipulation and Consent Order.
6. The Respondent admits each and every allegation in the Statement of Charges.
7. If this Stipulation and Consent Order is approved by the Commission it will be filed, along with the Statement of Charges, and upon filing both documents will become public records.

01-011

8. This Stipulation and Consent Order shall be made a part of the record of the Respondent and may be considered by the Commission in determining the nature and severity of any disciplinary action to be imposed on the Respondent for any future violations of the laws and rules governing the practice of real estate.

9. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (1999).

10. This Stipulation and Consent Order shall be presented to the Commission in closed session by the prosecuting attorney and/or Commission staff. Respondent waives any right of notice of this meeting or any right which the Respondent might have to participate in the discussion of this Stipulation and Consent Order among the Commission, the Commission staff and the prosecuting attorney.

11. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

THEREFORE IT IS ORDERED that the Respondent is **Reprimanded**.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty in the amount of \$ 1000.00 to the Commission within thirty (30) days of acceptance of this Stipulation and Consent Order by the Commission.

IT IS FURTHER ORDERED that the Respondent shall personally attend the twelve (12) hour Commission approved continuing education course "Listing Practices." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of this agreement by the Commission. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case 01-011.

IT IS FURTHER ORDERED AND AGREED that at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

FOR THE RESPONDENT:

James D Keller

This Stipulation and Consent Order is voluntarily entered into by [REDACTED] on
this 1 day of Aug, 2001.

[REDACTED]

J JAMES D. KELLER, Respondent

State of Iowa)

County of Polk)

Signed and sworn to before me on this 1st day of August, 2001, by

[REDACTED]

Notary Public, State of Iowa

Printed Name: Lois L Kominer

My Commission Expires: 6-14-02

6-14-02

FOR THE COMMISSION:

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission
on this 9th day of AUGUST, 2001.

[REDACTED]

Robert J. Miller, Chair
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General

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IN RE:)	
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JAMES D. KELLER)	CASE NUMBER: 01-011
Salesperson (S38543))	
)	STATEMENT OF
)	CHARGES
COLDWELL BANKER MID-AMERICA)	
4800 WESTOWN PKWY, STE. 110)	
WEST DES MOINES, IA 50266)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1999).

Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.

JAMES D. KELLER was at all material times, during the following events, a licensed salesperson with Coldwell Banker Mid-America Group, a licensed real estate firm (F02963) in West Des Moines, Iowa. His license, number S38543 is in full force and effect through 12-31-2003.

COUNT I

The Respondent is charged with soliciting a listing, listing property knowing that there was an unexpired exclusive right to sell listing in place with another broker, and engaging in a practice harmful or detrimental to the public by failing to exercise reasonable care to assure that he did not obligate his client to pay two real estate commissions, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public) and 543B.56(1)(a) and (b), and IAC 193E—1.23(1), 1.23(3), 1.23(4), 1.42(543B), 1.42(7), 1.42(1)(b), and 4.54(19) (1999).

01-011

CIRCUMSTANCES OF THE COMPLAINT

1. On or about November 17, 1999, while licensed with RE/MAX West Realty, Inc., Waukee, Iowa, Respondent listed the property owned by LaVaun Smeltzer, located at G Trail, Red Field, IA for \$112,500.00, with an expiration date of December 01, 2000.
2. On or about February 28, 2000, Respondent left RE/MAX and his licensee was transferred to Coldwell Banker Mid America Group, West Des Moines, Iowa, effective February 29, 2000.
3. After leaving RE/MAX Realty, Inc., the Respondent contacted RE/MAX Realty, Inc. clients without the knowledge or permission of Nancy Nevins, broker for RE/MAX West Realty, Inc..
4. On or about March 5, 2001, the Respondent prepared and mailed a RE/MAX West Realty, Inc. listing cancellation form and a Coldwell Banker Mid America Group Exclusive Right to Sell Listing Agreement for the property, with an effective date of March 5, 2000 and expiration date of January 01, 2001.
5. On or about March 09, 2000, Respondent obtained the signature of the owner, LaVaun Smeltzer, on a RE/MAX West Realty, Inc. listing cancellation form and on the Coldwell Banker Exclusive Right to Sell Listing Agreement.
6. The Respondent submitted the listing to the MLS on March 20, 2000. Nancy Nevins, broker for RE/MAX West Realty, Inc., did not receive the cancellation on the property until March 22, 2000 and elected not to cancel the listing.
7. By listing the property without assuring the current listing had been canceled by the broker, the Respondent placed his client, LaVaun Smeltzer, seller, in a potentially harmful and detrimental position by obligating her to pay two real estate commissions.
8. On or about March 23, 2000, after being notified of the existing RE/MAX West Realty, Inc. listing, Coldwell Banker Mid America Group canceled the listing the Respondent had obtained on the property.

Page 3

01-011
Keller

FINDING OF PROBABLE CAUSE

On June 20, 2001 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.

Executed this 9th day of AUGUST, 2001.


Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

Cc: Pamela Griebel, Assistant Attorney General
William Serangeli, Attorney for Respondent

01-011