

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

---

IN RE:	)	
	)	
BROOKS J HAESEMEYER (B10845)	)	CASE NUMBER: 99-051
Broker	)	
	)	STATEMENT OF
	)	CHARGES
P O Box 4A	)	
Mechanicsville, Iowa 523060004	)	
	)	

---

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.

BROOKS J HAESEMEYER is, and was at all material times during the following events, a licensed sole-proprietor broker in Mechanicsville, Iowa. His license number is B10845.

COUNT I

Respondent is charged with engaging in a practice harmful or detrimental to the public by conducting the closing on a property without the listing broker's permission, knowledge, or opportunity to attend, knowing the seller had a written unexpired exclusive right to sell listing agreement with another broker, in violation of Iowa Code sections 543B29(3) (practice harmful or detrimental to the public) and 543B.34(8)(1999) and IAC 193E--1.28(1) and 4.40(6).

COUNT II

Respondent is charged with engaging in a practice harmful or detrimental to the public by designating the earnest money deposit be initially held in his real estate trust account and by interfering with a listing agreement by including in the purchase agreement a commission fee of 3.5% payable to Respondent, in violation of Iowa Code sections 543B29(3) (practice harmful or detrimental to the public) and 543B.34(8)(1999) and IAC 193E-1.28(1) and 4.40(6)(a) and (19).


### CIRCUMSTANCES OF THE COMPLAINT

1. On or about April 13, 1999, Marilyn Palma, a real estate licensee assigned to Skogman Realty listed property located at 205 W. Broadway, Stanwood, Iowa owned by Thomas and Roger Nodurft. The listing price was \$59,950.
3. On or about May 6, 1999, Respondent wrote an offer for \$52,000 on the property on behalf of his clients, Steven G. and Mary B. Noeller. The offer was accepted May 8, 1999.
4. Respondent closed the transaction without the listing broker's knowledge, authorization, supervision, or opportunity to participate. He prepared closing documents and other documents and signed the seller's closing statement as listing agent. He contacted the sellers directly, and made arrangements for the closing he conducted on May 21, 1999.
5. Respondent disbursed funds for the commission to be paid without knowledge of the exact terms of the listing agreement between the seller's and Skogman Realty.

### FINDING OF PROBABLE CAUSE

On September 29, 1999 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 9<sup>th</sup> day of MARCH, 2000.

  
Roger L. Hansen, Executive Secretary  
Iowa Real Estate Commission

BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 S.E. HULSIZER  
ANKENY, IOWA

---

IN THE MATTER OF:	)	DIA NO. OODOCRE001
	)	CASE NO. 99-051
BROOKS J. HAESEMEYER	)	
BROKER (B10845)	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
PO BOX 4A	)	DECISION AND ORDER
MECHANICSVILLE, IOWA 52306	)	

---

On September 29, 1999, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Brooks J. Haesemeyer, a licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29 (3), 543B.34 (8), and 193E IAC 1.28 (1); 4.40 (6), (6)(a) and (19) of the Iowa Administrative Code. A Notice of Hearing set the hearing for May 25, 2000 at 9:30 a.m.

The hearing was scheduled and held on May 25, 2000 at 9:30 a.m. The following members of the Commission were present and participated in making the decision: Evelyn Rank, Public Member/Chairperson; Robert Miller, Salesperson; Terry Rodgers, Broker Associate; James Hughes, Broker; Barbara Leestamper, Public Member. The State was represented by Pamela Griebel, Assistant Attorney General. The State called as witnesses, Rick Skogman, Realtor/Broker, and also, David Darsee, Commission Consultant. The Respondent and his Attorney, Steven Joy, participated and called Thomas Nodurft as a witness. R. L. Stephenson, Administrative Law Judge from the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, presided.

The hearing was recorded by a certified court reporter. The hearing was closed to the public at the request of the Respondent, pursuant to Iowa Code section 272C.6(1) (1993). After hearing the testimony and examining the exhibits, the Commission convened in a closed session, pursuant to Iowa Code section 21.5(1)(f)(1995) to deliberate their decision. The administrative law judge was instructed to draft the Findings of Fact, Conclusions of Law, Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, testimony of the witnesses, and the following exhibits:

- State Exhibit 1: Hearing Acknowledgment (March 20, 2000)
- State Exhibit 2: Complaint filed by Rick Skogman, 6/7/99
- State Exhibit 3: Listing Agreement, 4/13/99

- State Exhibit 4: Agency Disclosure (Seller/Skogman), 4/13/99
- State Exhibit 5: Purchase Agreement, 5/6/99
- State Exhibit 6: Agency Disclosure (Buyer/Respondent), 5/6/99
- State Exhibit 7: Agency Disclosure (Seller/Skogman), 5/8/99
- State Exhibit 8: \$500.00 Earnest Money Check
- State Exhibit 9: Closing Statements (Seller/Buyer), 5/21/99
- State Exhibit 10: Commission Check from Respondent to Listing Broker, 5/21/99
- State Exhibit 11: Letter from Commission to Respondent, 6/24/99
- State Exhibit 12: Letter from Respondent to Commission, 7/13/99
- State Exhibit 13: David Darsee Summary, Consulting Investigator
- State Exhibit 14: Letter from Steven Joy to Commission, 9/21/99
- Respondent Exhibit A: Steve Naeller Letter, 5/24/00
- Respondent Exhibit B: Pat Hasenbank Letter, 5/24/00
- Respondent Exhibit C: J. L. Kuehle Letter, 5/24/00

#### FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 272C, and 543B, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent is a licensed real estate broker, license number B10845. He is a sole-proprietor broker doing business as BROOKS HAESEMEYER REAL ESTATE in Mechanicsville, Iowa.
3. On April 13, 1999, Marilyn Palma, a licensed real estate agent of Skogman Realty, listed a property at 205 W. Broadway, Stanwood, Iowa, owned by Thomas and Roger Nodurft, as provided in State Exhibit 3 (Exclusive Listing Agreement). The listing price of the property was \$59,950.00, and the buyers agreed to pay Skogman Realty a 7% commission for the sale of the property at the time of closing.

4. Thomas Nodurft acknowledged and signed an Agency Disclosure recognizing Skogman Realty as the seller(s) sole representative in the event of a sale of the property by a different real estate company, as provided by State Exhibit 4.
5. The Respondent represented the buyer, Steven G. Noeller, in the drafting and presentation of a real estate purchase agreement to purchase the property of Thomas and Roger Nodurft at 205 West Broadway, Stanwood, Iowa, written May 6, 1999, as provided by State Exhibit 5.
6. The buyer offered \$52,500 with a \$500.00 earnest money payment made payable to Brooks Haesemeyer Real Estate Trust Account (emphasis added) to be held in escrow, and the balance of \$52,000.00 in cash on or before June 1, 1999 (possession date) . The Respondent accepted a \$500.00 earnest money check from the buyer on May 6, 1999, made payable to Haesemeyer Trust (emphasis added), and then endorsed said check to Skogman Realty on May 14, 1999, as provided by State Exhibit B.
7. Paragraph 9 of the purchase agreement states: "If offer is accepted by Sellers, 1/2 of the real estate commission will be paid to Brooks Haesemeyer Real Estate. Earnest money will be transferred to Skogman Realty."
8. The sellers, Thomas and Roger Nodurft, accepted the offer of purchase on May 8, 1999, and agreed to pay Brooks Haesemeyer, agent, a sales fee of 3 1/2% of the sales price.
9. On May 6, 1999, the buyer, Steven Noeller acknowledged and signed a Disclosure of Agency stating the Selling agency represents the buyer, and Brooks Haesemeyer signed as the selling agent, and listed Brooks Haesemeyer Real Estate, as the selling agency, as provided by State Exhibit 6.
10. The buyers, Thomas and Roger Nodurft, and Marilyn Palma, as an agent, signed an Agency Disclosure Agreement on May 8, 1999, recognizing Skogman Realty as the seller agency, as provided by State Exhibit 7.
11. The Respondent closed the real estate transaction for 205 West Broadway, Stanwood, Iowa without notice to, or the knowledge of, or authorization, supervision, or participation by Skogman Realty on May 21, 1999. The Respondent prepared the Closing Statement and issued the checks for the transaction, and signed it as the listing agent, as provided by State Exhibit 9. Respondent determined the amount of the commission to be paid to Skogman Realty, and gave the closing documents and commission check for Skogman Realty to buyer, Thomas Nodurft, to deliver to Skogman Realty.
12. The Respondent willingly communicated and dealt directly with the buyer, Thomas Nodurft,

without the knowledge and/or the consent of Skogman Realty during a period from the execution of the purchase agreement up to and including the closing on May 21, 1999.

13. During the hearing of May 25, 1999, the Respondent denied he was representing the seller(s) in the real estate transaction, and further denied any wrongdoing in his conduct. The Respondent completed a real estate broker course on Agency in November 1999.

#### CONCLUSIONS OF LAW

I. Iowa Code section 543B.29(2) and (3), 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:

2. Professional incompetency.
3. ... engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

2. Iowa Code section 543B.34(8), provides in relevant part:

**543.34 Investigations by commission**

The real estate commission may upon its own motion and shall upon the 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 any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and 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.

3. 193E IAC 1.28(543B) **Closing transactions.** It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. . . . The listing broker shall be responsible for the closing even though the closing may be completed by another licensee.

**1.28 (1)** In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction. If the listing broker so elects, the selling broker shall have the purchaser make the earnest money check payable to the listing agent's trust account and shall immediately deliver the earnest money check along with the offer to purchase to the listing agent. The offer to purchase shall designate that the earnest money is to be held in trust by the listing agent.

4. **193E IAC 4.54 (543B)** rules are relevant to this proceeding, as the real estate transaction and conduct of the Respondent occurred during a period prior to the effective date (July 21, 1999) of certain rule changes relative to chapter 4.

**193E-4.54 Violations for which civil penalties may be imposed.**

**4.54(6)** Improper trust account and closing procedures:

a. Failing to deposit funds as required

**4.54(19)** Violating any provisions of 193E

COUNT I

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543B.29(3), 543.34(8) and 193E IAC 1.28(1) and 4.54(6) when he conducted the closing of a real estate transaction without notice to and/or the knowledge of the listing agent.

The Respondent knowingly cut the listing agent/broker out of the real estate transaction by first, dealing directly with the seller without its knowledge and in violation of the exclusive agency disclosure, and second, by assuming the role of the listing agent at the time of closing. While a lender was involved in the closing, it was the Respondent who prepared the closing statement, issued the disbursement checks, and determined the commission to be paid, all without the approval and knowledge of the listing agent/broker.

The Respondent's argument about a lack of time or opportunity to notify Skogman Realty is not credible. The choice of closing date was ten (10) days prior (May 21) to the deadline of June 1, 1999, as set out in the purchase agreement. In addition, the direct and continuing dealing by the Respondent with the seller in the absence of the listing agent/broker, and without its permission, are in direct violation of the commission rules.

The further argument of the Respondent is there was no harm done to any party in this transaction. First, Skogman Realty did not have the opportunity to confront the issue regarding the commission split. Second, the seller was left in the uncomfortable position of being dragged into a commission hearing to explain his actions where he had no personal, vested interest. The avowed purpose of the Commission is to protect the public and keep them removed from the very type of situation and circumstance which the Respondent created by his unprofessional conduct.

## COUNT II

The preponderance of the evidence further established that the Respondent violated Iowa Code sections 543B.29(3), 543B34(8), and 193E IAC 1.28(1), and 4.54(6)a, (19) when he accepted an earnest money check made payable to his trust account, and failed to timely transmit it to the listing agent, and interfered with the listing agreement by his attempt to negotiate the commission split in the purchase agreement.

The Commission does not find the earnest money payment to be a serious violation, as the Respondent did take corrective action by endorsing the check and delivering it to the listing agent/broker. The better practice is to follow the rule and have the purchaser make the check payable to the trust account of the listing agent. The Respondent did explain the violation, and made no attempt to conceal his conduct, but did not satisfy the Commission inquiry as to why he did not have the purchaser issue another earnest money check, and then reflect that action in the purchase offer.

The effort of the Respondent to make the commission split an issue in the purchase offer shows a deliberate disregard of the exclusive listing agreement and the agency disclosure, and an attempt to seek a commission from the seller. The latter conclusion is supported by the action of the Respondent in cutting the listing agent out of the closing procedure. Since it is the duty and obligation of the listing agent to protect the seller, the potential risk of harm is evident in this case where the Respondent knowingly blurred the line of agency between seller and buyer. This conclusion is supported by the Respondent signing his name as listing agent on the closing statement. By closing the transaction, the Respondent determined the amount of the commission to be paid by the seller and how it was to be paid without notice or review by the listing agent. The actions of the Respondent put the seller at risk in the event of a commission dispute which is clearly an unacceptable risk and a potential injury to that party.



DECISION AND ORDER

The licensed broker is expected to be knowledgeable of the statutes and rules which govern the practice of real estate. The Commission was disturbed by the Respondent's answer to its inquiry in the hearing by stating he had done nothing wrong, and that no harm had been done. This response was even more perplexing to the Commission since the Respondent had recently completed (11/99) the agency course for brokers which would have covered the very nature of violations committed in this matter. The actions of the Respondent in cutting the listing agent out of the real estate closing, and placing the seller at risk, cannot be tolerated. The discipline imposed in this decision is in part to reeducate and impress upon the Respondent the duties and obligations of a broker in this State.

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the RESPONDENT shall be required to retake the broker license examination, and shall pass said examination on or before six months from the date of the entry of this decision; that should the Respondent fail to timely pass the examination, then his license shall be suspended for an indefinite period until such time as he successfully passes the examination and submits the required proof to the Commission.

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the RESPONDENT shall pay a civil penalty of \$1,000.00 within thirty (30) days of service of this decision and order.

IT IS FURTHER ORDERED that should the Respondent fail to timely pay the civil penalty of \$1000.00 within thirty (30) days of service of this decision and order, and the costs associated with this disciplinary hearing, then his license shall be suspended for an indefinite period until such time as the required payment is received by the Commission.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.56(1), that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty (30) days of the date of this Order. In addition, the Executive Secretary shall bill the Respondent for any transcript costs associated with this hearing, and the Respondent shall remit payment within thirty (30) days of receipt of the bill.

000-207

Issued this 12<sup>th</sup> day of June 2000.

  
Evelyn M. Rank/  
Chairperson  
Iowa Real Estate Commission

copies to: Brooks J. Haesemeyer  
PO Box 4A  
Mechanicsville, IA 52306

Steven B. Joy  
Attorney at Law  
PO Box 367  
Mechanicsville, IA 52306

Pamela Griebel  
Assistant Attorney General  
Hoover Bldg. 2 nd Floor  
Des Moines, IA 50319

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure Act, Chapter 17A of the Code of Iowa, from and after the date of the commission's order. 193E IAC 4.52(543B).

BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 S.E. HULSIZER  
ANKENY, IOWA

---

IN THE MATTER OF:	)	
	)	DIA NO. OODOCRE001
	)	CASE NO. 99-051
BROOKS J. HAESEMEYER BROKER (B10845)	)	
	)	AMENDED FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
PO BOX 4A MECHANICSVILLE, IOWA 52306	)	DECISION AND ORDER

---

AND NOW, on this 29<sup>th</sup> day of June, 2000, the State's Petition for Rehearing filed June 15, 2000 came on before the Iowa Real Estate Commission (hereinafter Commission). The Petition requested that certain findings of fact be corrected in accordance with the record. Attorney Steven B. Joy was contacted by a Commission representative, and stated that he had no objection to said Petition, and that this matter could proceed without his participation. A telephone hearing was held on June 29, 2000 at 9:30 a.m. before the Commission with the undersigned administrative law judge, participating. A motion was made to amend the Decision in accordance with the State's Petition, and approved by the Commission.

IT IS THEREFORE ORDERED that the FINDINGS OF FACT in the Decision of the Commission is amended, as follows, to wit:

Paragraph 3. "Sellers" agreed to pay a commission, striking the word "buyers."

Paragraph 6. Paragraph 6 of the original order is stricken and in its place the following is substituted:

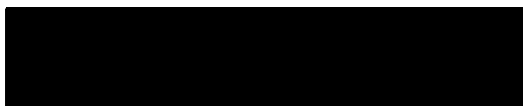
The buyer offered \$52,500 with a \$500.00 earnest money payment made payable to Brooks Haesemever Real Estate Trust Account (emphasis added) to be held in escrow, and the balance of \$52,000.00 in cash on or before June 1, 1999 (possession date). The Respondent accepted a \$500.00 earnest money check from the buyer on May 6, 1999, made payable to Haesemever Trust (emphasis added), and then endorsed said check to Skogman Realty. The check was not deposited into the Skogman Realty Trust Account until May 14, 1999, as provided by State Exhibit 8.

Paragraph 10. Thomas and Roger Nodurfts as "sellers," striking the word "buyers."

Paragraph 11. Thomas Nodurfts as "seller," striking the word "buyer."

Paragraph 12. Thomas Nodurfts as "seller," striking the word "buyer."

Issued this 14 day of July 2000



Evelyn M. Rank Chairperson  
Iowa Real Estate Commission

cc: Brooks J. Haesemeyer  
PO Box 4A  
Mechanicsville, IA 52306

Steven B. Joy  
Attorney at Law PO Box 367  
Mechanicsville, IA 52306

Pamela Griebel  
Assistant Attorney General  
Hoover Bldg. 2 nd Floor  
Des Moines, IA 50319