

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

IN RE:)	
)	
)	CASE NUMBER: 96-083
DOUGLAS J. LEIST (B27994))	
Broker)	STATEMENT OF CHARGES
)	
3062 Elm Avenue)	
Chester, Iowa 52134-8562)	
)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1997).

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

DOUGLAS J. LEIST is, and was at all material times during the following events, a licensed sole-proprietor broker in Chester, Iowa. His license number is B27994.

COUNT I

Respondent is charged with engaging in a practice harmful or detrimental to the public by using a "One Time Showing Agreement" in 1992, which provided for the payment of a commission upon the sale of property, but which failed to specify the terms and condition of sale, a definite expiration date, or a protective clause establishing a definite protection period, in violation of Iowa Code sections 543B.29(3) (1991) and 193E IAC sections 1.19, 1.20, 1.23, and 4.40(19).

COUNT II

Respondent made substantial misrepresentation, knowingly made misleading or deceptive representations in the practice of real estate, and/or engaged in a practice harmful or detrimental to the public, by attempting to collect a commission in 1996 based on the 1992 "One Time Showing Agreement": when:

- (1) The 1992 Agreement failed to comply with Iowa law (as noted in Count I);

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- (3) Respondent entered into two listing agreements with sellers on the same property subsequent to the 1992 Agreement which provided that no commission would be due if sellers signed a listing agreement with another broker following the expiration of Respondent's listing agreements; and
- (4) Sellers paid a commission to another real estate broker who sold the property under a valid, unexpired listing agreement,

in violation of Iowa Code sections 543B.29(3) and 543B.34 (1) and (8) (1995) and 193E IAC 4.40(19).

COUNT III

Respondent is charged with engaging in a practice harmful or detrimental to the public by using listing agreements in 1991 and 1992 which allowed a protection list to be provided to sellers after the expiration of the agreements, in violation of Iowa Code sections 117.29(3) (1991) and 193E IAC 1.19 and 1.20.

CIRCUMSTANCES OF THE COMPLAINT

1. On March 26, 1991, Respondent listed a 255 acre farm in Chester, Iowa, for \$408,000, belonging to Milton and Patricia Truman. The listing expired March 26, 1992. The listing stated in part "I understand that I do not have to pay your commission if I sign another valid listing contract after the expiration of this contract, under which I am obligated to pay a commission to another licensed real estate broker." The contract contained a provision for a 365 day protection period with the written protection list to be provided to the seller within 72 hours after expiration of the listing. No protection list was provided to the sellers.

2. On or about April 6, 1992, Respondent entered into a "One Time Showing Agreement" with Milton and Patricia Truman for their farm. The agreement provided for a 6% commission to be paid to Leist Realty in the event the one prospective buyer, Edwin Koehn, Atwater, California, should the Truman's accept an offer to buy from Mr. Koehn. The agreement did not have an expiration date and contained no provision for a protection period.
3. On June 5, 1992, Respondent listed the Truman's farm again for \$416,500. The listing expired September 5, 1992. The listing stated in part "I understand that I do not have to pay your commission if I sign another valid listing contract after the expiration of this contract , under which I am obligated to pay a commission to another licensed real estate broker." The contract contained a provision for a 365 day protection period with the written protection list to be provided to the seller within 72 hours after expiration of the listing. No protection list was provided to the sellers.
4. On February 8, 1994, Respondent listed the Truman's farm again for \$265,000. The listing expired February 8, 1995. The listing stated in part "I understand that I do not have to pay your commission if I sign another valid listing contract after the expiration of this contract , under which I am obligated to pay a commission to another licensed real estate broker." The contract contained a provision for a 365 day protection period with the written protection list to be provided to the sellers prior to the expiration of the listing. No protection list was provided to the sellers.
5. On May 9, 1996, the Truman's signed an exclusive listing for their farm for \$265,000 with Alliance Land Company, Dennis Fishbaughen, listing agent, On August 8, 1996, the Truman's accepted an offer purchase from Edwin Koehn for \$241,000, Dennis Fishbaughen, selling agent. Alliance Land Company was paid a 6% commission.
6. Respondent attempted to collect \$15,900 from the Trumans based upon the April 6, 1992 "One Time Showing Agreement" referred to under item # 2.
7. On October 7, 1996, Respondent filed suit in Howard County District Court seeking judgment against the Trumans for \$15,900.

FINDING OF PROBABLE CAUSE

On March 6, 1997, 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 5th day of JUNE, 1997.



Roger V. Hansen, Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General
Brian McPhail, Attorney for Respondent

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

IN RE:)	
)	
)	CASE NUMBER: 96-083
DOUGLAS J. LEIST (B27994))	
Broker)	STIPULATION AND
)	CONSENT ORDER
3062 Elm Avenue)	
Chester, Iowa 52134-8562)	

On this 5th day of JUNE, 1997, the Iowa Real Estate Commission and DOUGLAS J. LEIST, 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 was issued a broker associate license to practice real estate on April 12, 1988, as evidenced by license number B27944, which is in full force and effect through December 31, 1999.
3. The Iowa Real Estate Commission has jurisdiction over the parties and subject matter jurisdiction over each allegation in the Statement of Charges.
4. A Statement of Charges will be filed against Respondent together with this voluntary Stipulation and Consent Order.
5. Respondent does not admit to all allegations in the Statement of Charges, but agrees upon hearing the Commission could find one or more violations of law or Commission regulations.
6. 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.

7. 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.

8. 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) (1997).

9. 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.

10. 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.

11. In order to induce a settlement, Respondent agrees to dismiss the civil suit he filed against Milton and Patricia Thruman regarding the subject of this complaint.

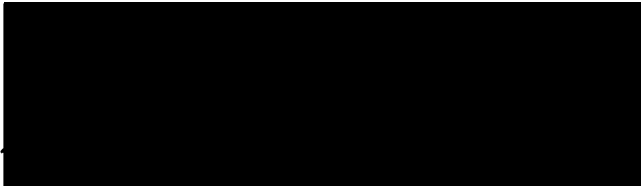
THEREFORE IT IS HEREBY ORDERED that the Respondent is Reprimanded.

IT IS FURTHER ORDERED that Respondent shall take eight (8) hours of real estate continuing education in "Contract Law and Contract Writing," the course must be approved as a "Broker Pre-License Course," and respondent shall additionally personally attend the twelve (12) hour Commission approved course in "Developing Professionalism and Ethical Practices." These hours shall be in addition to all other real estate continuing education required by law for license renewal. Original certificates 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 certificates of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case 96-083.

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:

This Stipulation and Consent Order is voluntarily entered into by the Respondent on this 23rd day of May, 1997.



DOUGLAS J. LEIST, Respondent

State of IOWA)

County of MITCHELL)

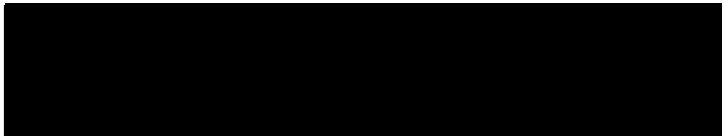
Signed and sworn to before me on this 23rd day of May, 1997, by Douglas J. Leist.



Notary Public, State of Iowa
Printed Name: Corissa A. Meek
My Commission Expires: 8/30/97

FOR THE COMMISSION:

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on the 5th day of JUNE, 1997.



RUSSELL D. YADING, Chair
Iowa Real Estate Commission
TERRY W. ROGERS, VICE CHAIR

cc: Pam Griebel, Assistant Attorney General
Brian McPhail, Attorney for Respondent