

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

| | | |
|-----------------------------|---|----------------------|
| IN RE: |) | |
| |) | |
| DANNY RAY PEERS |) | CASE NUMBER:94-070 |
| Salesperson (S30513) |) | STATEMENT OF CHARGES |
| |) | |
| 408 51st Street |) | |
| West Des Moines, Iowa 50265 |) | |
| |) | |

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1993).

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

DANNY LEE PEERS was at all material times during the following events, a licensed real estate salesperson assigned to Iowa Realty, Des Moines, Iowa until April 28, 1994 when his license was placed on inactive status. His license number is S30513.

COUNT I

The Respondent is charged conviction of a felony related to the profession, or occupation, or that would affect the Respondent's ability to practice the profession, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and (11) (1993).

COUNT II

The Respondent is charged with engaging in practice that is harmful or detrimental to the public, by destroying a property he had sold, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and (11) (1993).

COUNT III

The Respondent is charged with engaging in a practice harmful or detrimental to the public, by writing a purchase agreement that provided for the earnest money deposit to be nonrefundable, in violation of Iowa Code sections 543 B .29(5) and 543B.34(8) (1993) and Iowa Administrative Code Chapter 193E sections 1.20 and 1.27(7).

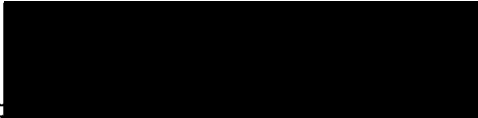
CIRCUMSTANCES OF THE COMPLAINT

1. On September 29, 1993, Respondent listed property located at 1943 S.E. Thornton Court, Des Moines, Iowa, James and Cheryl Horn, owners, for \$91,500 and personally guaranteed the \$91,500 sale price.
2. On October 2, 1993, Respondent wrote an offer to purchase the property located at 4738 Coachlight Drive, West Des Moines, Iowa, for \$121,900, with James and Cheryl Horn as buyers. The language "Earnest Money is Nonrefundable" was written into the purchase agreement under item #1 paragraph E.
3. On February 23, 1994, James and Cheryl Horn accepted an offer for the purchase of their property located at 1943 S.E. Thornton Court, Des Moines, Iowa for \$86,500.
4. The Respondent, at closing, would have had to personally pay the Horns the \$5,000 difference between the actual sale price and the \$91,500 sale price he had guaranteed.
5. The Respondent was to have been paid commissions of approximately \$1,828 on the sale of the Coachlight property and approximately \$1,514 on the sale of the S.E. Thornton Court property.
6. Faced with a net loss of approximately \$1,658 after commissions, if the transactions closed, the Respondent, on or about April 5, 1994, subsequently, destroyed the Coachlight property.
7. On May 20, 1994, in Polk County Iowa District Court, the Respondent was charged, Criminal No. 79354, with Arson In The Second Degree, a Class C Felony, by causing a fire on or about April 5, 1994, in a residence located at 4738 Coachlight Drive, West Des Moines, Iowa, in violation of Iowa Code sections 712.2 and 712.3 (1993).
8. On May 20, 1994, the Respondent entered a plea of guilty to the charge, Criminal No. 79354, and was sentenced to be imprisoned not to exceed ten (10) years, the sentence was suspended and he was granted a two (2) year probation.

FINDING OF PROBABLE CAUSE

On August 18, 1994, 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 8th day of FEBRUARY, 1995.


Roger L. Hansen
Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General
Respondent

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

| | | |
|---------------------------|---|------------------------|
| IN THE MATTER OF: |) | CASE NUMBER: 94-070 |
| |) | DIA NUMBER: 95DOCRE001 |
| DANNY RAY PEERS, (S30513) |) | |
| Salesperson, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| 408 51st Street |) | DECISION AND ORDER |
| West Des Moines, Iowa |) | OF THE COMMISSION |

On February 8, 1995, the Iowa Real Estate Commission (Commission) found probable cause to file a statement of charges against Danny Ray Peers (Respondent). The statement of charges alleged the following counts:

- (I) that the Respondent had been convicted of a felony that was related to the profession or occupation, or that would affect the Respondent's ability to practice the profession, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and (11);
- (II) that the Respondent had engaged in a practice that was harmful or detrimental to the public, by destroying a property he had sold, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and (11); and
- (III) that the Respondent had engaged in a practice that is harmful or detrimental to the public by writing a purchase agreement that provided for earnest money to be nonrefundable, in violation of Iowa Code sections 543B.29(5) and 543B.34(8) and (11) and Iowa Administrative Code Chapter 193E, sections 1.20 and 1.27(7).

A hearing was scheduled for April 12, 1995. The Respondent filed no answer to the statement of charges. The Respondent did not appear for the hearing. Assistant Attorney General Pam Griebel represented the public interest. The hearing was opened by Theresa Loffredo, who acted as chair for the hearing. Other Commission members present were Jerry Duggan, Russ Nading, Jack Knapp, and Evelyn Rank. Administrative Law Judge William Stansbery assisted with the conduct of the hearing. Testimony was taken from Roger Hansen, the executive secretary of the Commission. Exhibits were received into evidence. The proceedings were recorded by a certified court reporter.

After deliberating in closed session, the Commission directed the administrative law judge to prepare its Findings of Fact, Conclusions of Law, and Decision and Order.

THE RECORD

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

- State Exhibit A: Document for acknowledgement of service
- State Exhibit B: Listing agreement dated 9/29/93
- State Exhibit C: Purchase agreement written on 10/2/93
- State Exhibit D: Broker's purchase agreement regarding guaranteed sale of residence, dated 11/29/93
- State Exhibit E: Respondent's guarantee of sale price
- State Exhibit F: Purchase agreement dated 2/23/94
- State Exhibit G: Trial information dated May 20, 1994
- State Exhibit H: Judgment of conviction of the Respondent for second degree arson
- State Exhibit I: Release and settlement agreement
- State Exhibit J: Affidavit of West Des Moines Police Detective Coppess
- State Exhibit K: Transcript of interview of the Respondent by West Des Moines police detectives
- State Exhibit L: Written communications between the Commission's staff and the Respondent

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has licensed the Respondent as a real estate salesperson with license number S30513.
2. On September 29, 1993, the Respondent, acting on behalf of his employing real estate broker, entered into a written contract with James and Cheryl Horn. The contract gave the real estate broker the exclusive right to sell residential real estate owned by James and Cheryl Horn. The property was located at 1943 S.E. Thornton Court in Des Moines (the Des Moines property). The contract stated a price of \$91,500.

3. On October 15, 1993, James and Cheryl Horn made an agreement to purchase residential real estate located at 4738 Coachlight Drive in West Des Moines (the West Des Moines property). A written contract stated that the buyers would take possession on or about February 1, 1994. The Respondent was involved as a salesperson in that transaction.

4. On November 10, 1993, the Respondent signed a statement in which he promised to pay to James and Cheryl Horn the difference between the actual sale price of the Des Moines property and the original asking price of \$91,500. The statement included the following sentence:

This written agreement will be executed before or at the time of closing of the new home being constructed at 4738 Coachlight Drive in West Des Moines, Iowa for James A & Cheryl A. Horn.

5. On February 23, 1994, James and Cheryl Horn sold the Des Moines property for \$86,500. The buyers were to take possession on or about May 23, 1994.

6. The closing date for the West Des Moines property which James and Cheryl Horn were purchasing was changed to April 8, 1994.

7. The Respondent would have earned a commission of \$1,514 on the sale by James and Cheryl Horn of the Des Moines property. The Respondent would have earned a commission of \$1,828 on the purchase by James and Cheryl Horn of the West Des Moines property.

8. Upon the closing of the sale of the West Des Moines property, the Respondent was liable to James and Cheryl Horn in the amount of \$5,000, which was the difference between the original asking price of the Des Moines property and the actual selling price of that property.

9. On April 5, 1994, three days before the scheduled closing, the Respondent set fire to the West Des Moines property.

10. The Respondent was charged with arson in the second degree. He pled guilty to that charge and judgment was entered against him. Arson in the second degree is a felony.

11. On October 2, 1993, in the purchase agreement for the West Des Moines property, the Respondent, as salesperson, added the condition, "ERNEST MONEY IS NONREFUNDABLE".

12. The statement of charges and a notice of hearing were sent to the Respondent by certified mail on February 8, 1995. The notice stated that the hearing would be held at 1:30 p.m. on April 12, 1995. On February 24, 1995, the Commission staff received a

handwritten statement on the back of a form that had been sent with the notice of hearing. The form was for an acknowledgement of receipt of the notice of hearing. The handwritten statement referred to a previous note that had been sent to the Commission staff and said that the person making the statement would not respond to further correspondence from the Commission. The statement was not signed.

CONCLUSIONS OF LAW

1. Iowa Code chapter 543B (1995) regulates real estate brokers and real estate salespeople. Section 543B.1 requires that a person be licensed before acting as a real estate broker or a real estate salesperson. Section 543B.8 provides for a five-person real estate commission. Section 543B.9 gives the real estate commission authority to adopt rules to administer chapter 543B. Sections 543B.29 and 543B.34 set out grounds for suspension or revocation of a license. Section 543B.35 provides for a hearing before discipline is imposed.

2. Iowa Code section 543B.35 and 193E Iowa Administrative Code (IAC) 4.16 require that the notice of hearing be personally served on the licensee or that notice be sent by certified mail, return receipt requested.

In this case, notice of hearing was sent by certified mail. The record does not show a certified mail return receipt, but it does show that the licensee responded to the notice. The response shows that the notice of hearing was delivered to the licensee. The notice of hearing satisfied the requirements of the statute and the rule.

3. Iowa Code section 543B.29 reads, in part, as follows:

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

• • •

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

• • •

5. Conviction of a felony related to the profession or occupation of the licensee or conviction of a felony that would affect the licensee's ability to practice the profession of real estate broker and salesperson. A copy of the record of conviction or plea of guilty is conclusive evidence. . . .

The Respondent has been convicted of arson in the second degree, a felony. Because of his apparent motivation for the crime and his relationship to the victims, that crime was related to his profession or occupation as a real estate sales person. The crime is also one that would affect his ability to practice the profession of real estate salesperson. The conviction of arson in the second degree is grounds for revoking or suspending the license under the authority of section 543B.29(5).

Even if the Respondent had not been convicted, his conduct was "engaging in a practice that is harmful or detrimental to the public", as set out in Count II of the statement of charges. The conduct is grounds for revoking or suspending the license under the authority of section 543B.29(3).

4. Iowa Code section 543B.34 provides in relevant part:

543.34 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 manner as to safeguard the interests of the public. . . .

The Respondent's conduct in setting fire to the property shows that he is unworthy to act as a real estate salesperson in such a manner as to safeguard the interests of the public. The conduct is grounds for suspension or revocation of the license under section 543B.34(8).

5. 193E IAC 1.20 reads, in part, as follows:

A licensee shall not write, prepare, or otherwise use a contract containing terms or conditions that would violate the real estate laws in Iowa Code chapter 543B or administrative rules in IAC 193E.

- 193E IAC 1.27(7) reads, in part, as follows:

When an offer is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code 558A, any earnest money deposited shall be promptly returned to the buyer without delay.

When the Respondent added, "ERNEST MONEY IS NONREFUNDABLE", to the purchase agreement for the West Des Moines property, he used a condition that violated 193 IAC 1.27(7). In doing so, he was in violation of 193 IAC 1.20.

6. The Commission concludes that allegations in Count I of the Statement of Charges have been substantiated, in that the Respondent has been convicted of a felony related to his profession as a real estate salesperson, in violation of Iowa Code sections 543B.29(5).

7. The Commission concludes that allegations in Count II of the Statement of Charges have been substantiated, in that the Respondent engaged in practice that was harmful or detrimental to the public, and in so doing he was being unworthy to act as a real estate salesperson, in violation of Iowa Code section 543B.34(8).

8. The Commission concludes that allegations in Count III of the Statement of Charges have been substantiated, in that the Respondent wrote a purchase agreement that provided that an earnest money deposit was nonrefundable, and in so doing he violated Iowa Code section 543B.34(8) and 192E IAC 1.20 and 1.27(7).

9. 193E IAC 4.2 reads as follows:

Method of Discipline. The Iowa Real Estate Commission has authority to impose, after proper procedures have been initiated and followed, the following disciplinary penalties:

1. Revocation of license.
2. Suspension of license until further order of the commission or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of the commission or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require or order a physical or mental examination.
8. Issue citation, warning or reprimand.
9. Impose civil penalties not to exceed \$1,000.
10. Such other sanctions allowed by law as may be appropriate, or any combination of the above penalties as the commission may choose.

193E IAC 4.3 reads as follows:

Discretion of Commission. The following factors are among those which may be considered by the commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.

2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.
7. The impact of a particular activity upon the public.

193E IAC 2.13(1) allows the Commission to set a reinstatement fee of not less than \$25 nor more than \$1,000.

193 IAC 4.41 allows the assessment of hearing costs of up to \$75. It also allows the assessment of other costs, including the costs of preparation of any transcript.

DECISION AND ORDER

The action of the Respondent in setting fire to property that was the subject of an ongoing real estate transaction is an extremely serious offense. Application of the factors at 193E IAC 4.3 lead to the conclusion that a severe disciplinary sanction should be imposed, based on the relative seriousness of the violation, the facts of the particular violation, and the impact of the violation on the public.

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the real estate salesperson license of Danny Ray Peers, No. S30513, is hereby REVOKED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$1000.00 within thirty (30) days of service of this decision and order.


IT IS FURTHER ORDERED, pursuant to 193E IAC 2.13(1)"c"(5), that if the Respondent applies for reinstatement of his license and reinstatement is granted by the Commission, then he shall be required to pay a reinstatement fee of \$1000.00.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.41, that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty (30) days of the date of this Decision and 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.

04-07-97

DIA No. 95DOCRE-1
Page 8

Issued this 1st day of June, 1995.


Theresa Loffredo
Vice-Chairperson
Iowa Real Estate Commission

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 4.35.

99-070