

BEFORE THE IOWA REAL ESTATE COMMISSION  
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ANKENY, IOWA

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IN RE:	)	CASE NUMBER: 92-061
Mary E. Muller	)	
(B22893)	)	
Broker Associate	)	STATEMENT OF CHARGES
	)	
First Security Real Estate	)	
255 East San Marnan Drive	)	
Waterloo, Iowa 50702-5832	)	

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The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code Chapters 17A, 117, and 258A (1991).

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

Mary E. Muller is, and was at all times during the following events, a licensed real estate broker associate. Her license number is B22893. Mary E. Muller is a broker associate licensed with First Security Real Estate (F02327), Waterloo, Iowa, Delores K. Zevenbergen, (B09607), broker in charge.

COUNT I

The Respondent, Mary E. Muller, is charged with professional incompetency for failing to act consistently with the Agency Disclosure Acknowledgement made in a real estate transaction in violation of Iowa Code sections 117.29(2) and 1.34(8).

COUNT II

The Respondent, Mary E. Muller, is charged with engaging in unethical conduct or practice harmful or detrimental to the public by acting as both the sellers' agent and the buyer in a transaction in which she did not adequately disclose to both sellers the potential conflicts between her role as sellers' agent and buyer in violation of Iowa Code section 117.29(3) and 193E Iowa Administrative Code section 1.37.

92-061

## CIRCUMSTANCES OF THE COMPLAINT

On or about April 4, 1990 the Respondent, Mary E. Muller, contacted James T. Sullivan concerning the listing of property located at 10615 West Cedar Wapsi, Cedar Falls, Iowa. On April 4, 1990 the listing agreement was signed by Mary E. Muller and one of the owners, James T. Sullivan. Diane C. Sullivan, the co-owner, signed the listing agreement on April 17, 1990.

On or about April 4, 1990 Mary E. Muller and James T. Sullivan discussed the sale of the property which was listed by Mr. Sullivan on April 4, 1990. Ms. Muller was aware from this discussion that Mr. Sullivan and his wife, Diane C. Sullivan, had separated and that the Sullivans were anxious to sell the property.

The listing agreement indicated that the property was listed for \$64,900.

On April 17, 1990 Mary E. Muller presented the Sullivans with an offer to purchase the property for \$62,000.

The offer of April 17 indicated that Mary E. Muller and James E. Muller were the buyers.

The offer of April 17 indicated that the salesperson's company was "Mary E. Muller/1st".

The offer indicated that the buyer was a realtor purchasing the property for possible future profit from resale.

The offer indicated that a 7 percent sales fee would be paid to First Security Real Estate.

The offer was accompanied by a Real Estate Agency Disclosure Acknowledgement which was also dated April 17, 1990 and which contained the following statement:

The Buyer acknowledges that the Listing and Selling (cooperating) Brokers and all the licensees employed by or associated with these Brokers, are agents of the Seller. Their fiduciary duties of loyalty and faithfulness are owed to their client, the Seller. However, they must treat Buyer with honesty and fairness. They must disclose material defects of which they have knowledge. The Real Estate Broker is not required, however, to disclose hidden defects in the property of which he/she is not aware. Buyers further attest that this representation of Agency was made to them before signing a purchase agreement.

The Real Estate Disclosure Acknowledgement indicated that James and Diane Sullivan were the sellers and that Mary E. Muller was the buyer, listing agent and selling agent.

The Disclosure Acknowledgement was signed by Mary E. Muller, Buyer and Diane Sullivan and James T. Sullivan, Sellers.

The Disclosure Acknowledgement did not contain specific terms which indicated to the sellers the manner in which Ms. Muller's role as buyer would affect her fiduciary duties to the sellers. Accordingly, the Disclosure Acknowledgement included in the offer to purchase was incomplete and misleading to the sellers.

The offer of April 17, 1990 was accepted by the sellers.

#### FINDING OF PROBABLE CAUSE

On January 20, 1993 the Investigative Committee of 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 22<sup>ND</sup> day of APRIL, 1993.

  
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Roger L. Hansen, Executive Secretary  
Iowa Real Estate Commission

BEFORE THE IOWA REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	
	)	
Mary E. Muller	)	
Broker Associate	)	CASE NO. 92-061
	)	
	)	
License Number B22893	)	STIPULATION AND
	)	CONSENT ORDER
	)	
Respondent	)	

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On this 22<sup>ND</sup> day of APRIL, 1993, the Iowa Real Estate Commission and Mary E. Muller, 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 the 1st day of October, 1990 as evidenced by license number B22893 which is in full force and effect through December 31, 1995.

3. The Iowa Real Estate Commission has jurisdiction over the parties and the subject matter jurisdiction of each allegation in the Statement of Charges.

4. A Statement of Charges will be filed against Respondent together with this Stipulation and Consent Order.

5. Respondent admits each and every allegation in the Statement of Charges.

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 117.29(3), 117.34(2) (1991), and 258A.3(2)(a).

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.

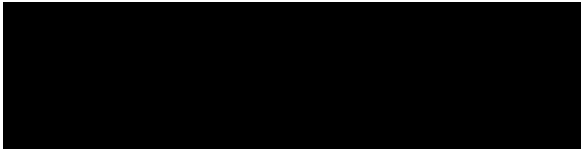
10. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

THEREFORE, IT IS HEREBY ORDERED that Respondent, Mary E. Muller, is hereby reprimanded.

IT IS FURTHER ORDERED THAT Respondent, Mary E. Muller, shall personally attend and not take by correspondence, six (6) hours of real estate continuing education in the Law of Agency in addition to all other real estate education hours required by law, within twelve (12) months and proof of compliance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of the Stipulation and Consent Order by the Commission. The original certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 92-061.

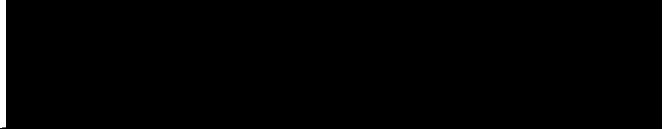
IT IS FURTHER ORDERED that at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

This Stipulation and Consent Order is voluntarily entered into by the Respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 1993.



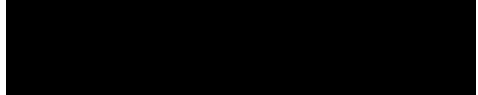
MARY E. MULLER, Respondent

Subscribed and Sworn to before me on this 23<sup>rd</sup> day of March, 1993.



Notary Public

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on the 22<sup>nd</sup> day of APRIL, 1993.



Chairperson of the Iowa Real Estate Commission

cc: Sherie Barnett  
Assistant Attorney General