

Department of Commerce
Professional Licensing Division
1918 S.E. Hulsizer Avenue
Ankeny, Iowa

IN RE:

Case Number: 91-025
DIA Number: 91DOCRE-10

Ronald L. Kelley (B04981)
Broker
2750 First Avenue NE
Cedar Rapids, Iowa

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On December 19, 1991 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Ronald L. Kelley, a licensed Iowa Broker (hereinafter Respondent). The Complaint alleged specific acts or omissions and alleged these acts or omissions constituted violations of Iowa Code sections 117.29(3), 117.34(2) and 258A.3(2)(a) (1991).

On February 20, 1992 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa broker's license of the Respondent.

The entire Commission was present for the hearing. The Commissioners are Jerry Duggan, E. Joe Ann Lutz, Marlys Nielsen, Russ Nading, and Jack Knapp. The State was represented by Grant Dugdale, Assistant Attorney General. The Respondent appeared in person, and was represented by his counsel, William Nicholson. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Administrative Law Judge. The hearing was open to the public. The Commission convened in closed session, pursuant to Iowa Code Section 21.5(1)(f) to deliberate its decision and instructed the Administrative Law Judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117 and 258A as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker. His license number is B04981. Respondent was a partner and Broker-in-Charge of Equity Associates, Inc. Realtors of Cedar Rapids, Iowa.

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His partner, Bob Miell, was also a broker. (Testimony of Respondent)

3. On May 23, 1990 the Commission filed a Complaint against Respondent alleging that Respondent had violated Iowa Code section 117.29(5) by his conviction of a felony in the United District Court, Northern District of Iowa on December 19, 1989. Respondent was sentenced to serve 30 months at the Federal Prison Camp in Yankton, South Dakota and began serving this sentence on February 7, 1990. (Testimony of Respondent; State's Exhibit 1)

4. On September 21, 1990 the Respondent and the Commission executed an Informal Settlement, in lieu of proceeding to hearing on the Complaint filed on May 23, 1990. Pursuant to the terms of the Informal Settlement, the license of Respondent was suspended for a period of two years, but the suspension would be stayed following Respondent's release from prison, and Respondent's license would be placed on probation for the remainder of the two year period. The Informal Settlement also stipulated that:

5. Ronald L. Kelley agrees that his brokers license may not be relied upon by Equity Associates, Inc., realtors in Cedar Rapids, Iowa, during the period of his suspension and that the realty corporation will redesignate the broker in charge within ten days of this decision.

6. Failure to comply with the provisions of this agreed order shall be considered prima facie evidence of the violation of Iowa Code sections 117.29(3) and 117.34(2) (1989). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code section 117.35 (1989).

(Testimony of Respondent; State's Exhibit 2)

5. In February, 1990, prior to entering prison, Respondent went to the office of the Cedar Rapids Board of Realtors and told them he was resigning his membership in the Cedar Rapids Board of Realtors and that Bob Miell would be the new Designated Realtor for the Equity Associates. Bob Miell assumed control of the office. (Testimony of Respondent; Respondent Exhibit A)

6. Respondent entered federal prison on February 7, 1990. While in prison he had very limited access to telephones. His attorney mailed him the proposed Informal Settlement, and Respondent read it, signed it, and returned it to his attorney. Respondent thought he understood the terms of the Informal Settlement. With respect to paragraph 5, Respondent thought that he had already satisfied this provision by notifying the Cedar Rapids Board of Realtors that Bob Miell was designated the Broker-In-Charge. Respondent never

notified the Commission that Bob Miell had been designated Broker-In-Charge. Respondent told the office staff at Equity Associates to comply fully with the Informal Settlement. (Testimony of Respondent; Pamela Hoover; Lori Hamel)

7. Respondent was very concerned with complying fully with the Informal Settlement and all requests from the Commission. He expressed this concern to his office staff on numerous occasions. Neither Respondent nor his staff realized that his notification to the Cedar Rapids Board of Realtors did not satisfy the requirements of paragraph 5 of the Informal Settlement. (Testimonies of Respondent; Pamela Hoover, Lori Hamel)

8. While in prison, Respondent negotiated the sale of his interest in Equity Associates, Inc., to his partner, Bob Miell. The sale was effective January 1, 1991. (Testimony of Respondent)

CONCLUSIONS OF LAW

1. Iowa Code section 117.29(3) states:

117.29 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:

117.29(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Iowa Code section 117.34(2) states in relevant part:

Investigations by Commission.

The Real Estate Commission may . . .

suspend or revoke a license issued under this chapter at any time the licensee is found guilty of any of the following:

2. Making any false promise of a character likely to influence, persuade or induce.

The Informal Settlement signed by Respondent on August 21, 1990 and executed on September 21, 1990 provided that failure to comply with the provisions of this agreed order shall be considered prima facie evidence of the violation of Iowa Code sections 117.29(3) and 117.34(2) (1989).

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Paragraph 5 of the Informal Settlement provides that Respondent's broker's license may not be relied on by Equity Associates, Inc., during the period of suspension and the realty corporation will redesignate the broker-in-charge within ten days of the decision.

"Broker-In-Charge" means a broker or broker associate designated as the person responsible for supervision of a main office or a branch officer. 193E I.A.C. 2.2. The license is issued in the name of the principal broker and the broker-in-charge, if applicable. 193E I.A.C. 2.14(3). The broker has a duty to notify the Commission of any change in his partnership or a change in type of license within five working days. 193E I.A.C. 2.15(1) and (2).

In this case the Respondent failed to notify the Commission of the change of broker-in-charge. The Commission's rules required that it be notified.

The Informal Settlement required that a new broker-in-charge be designated. It did not specify "with the Commission." The Informal Settlement could have been more clearly drafted. The Commission found the testimony of Respondent and his former staff to be credible. The Commission believes that Respondent and his staff thought they had complied when they designated a new broker-in-charge to the local Board of Realtors.

The Commission concludes that the preponderance of the evidence did not establish that the Respondent knowingly made misleading or untrue representations, engaged in unethical conduct or practice harmful to the public, or made any false promise. The Respondent did not intend to mislead anyone. The public was not harmed because the office was in fact supervised by another broker-in-charge.

2. Iowa Code section 258A.3(2)(a) states in relevant part:

Authority of Licensing Boards:

2. Each licensing board may impose one or more of the following as license discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specific period.

. . .

. . . or upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The Respondent, like all licensees, is expected to be familiar with

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the statutes and rules regulating his profession. Given this knowledge, paragraph 5 of the Informal Settlement was sufficient to require the Respondent to designate a new broker-in-charge with the Commission. As a licensed broker, he should have realized that the local Board of Realtors is not the licensing agency. Designation of broker-in-charge with the local Board of Realtors would not satisfy the requirements of the Commission's notification rules, nor did it satisfy the terms of the Informal Settlement.

The preponderance of the evidence established that the Respondent violated Iowa Code section 258A.3(2)(a) by his failure to designate a new broker-in-charge with the Commission within ten days. However, the Commission expressly considered several mitigating factors in determining whether to discipline the Respondent. These included the possible ambiguity in the Informal Settlement, that a new broker-in-charge did assume responsibility for the office, Respondent's sincere attempt to comply, and communication difficulties due to Respondent's imprisonment.


3. In a post-hearing brief, Respondent cites Blakely v. Miller, 232 Iowa 780, 7 NW2d 11 (1943), and argues that failure to comply with an order of the Board is not the type of conduct which should result in the revocation or suspension of a real estate broker's or salesman's license under Iowa Code sections 117.29(3) or 117.34(2) (1991). The Commission disagrees, but in any event, the issue is moot, since the Commission did not find a violation under those sections of the Iowa Code.

DECISION AND ORDER

It is therefore the ORDER of the Iowa Real Estate Commission that Ronald L. Kelley (B04981) is hereby reprimanded for violating Iowa Code section 258A.3(2)(a).

Executed this 20th day of MARCH, 1992.


Jerry Duggan, Chairperson
Iowa Real Estate Commission


Roger Hansen
Executive Secretary
Iowa Real Estate Commission

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