

Iowa Department of Inspections and Appeals
Division of Appeals and Fair Hearings
Lucas State Office Building
Des Moines, Iowa 50319

IOWA REAL ESTATE EXAMINING BOARD)	CASE NUMBER 88-014
Complainant)	
vs.)	
SARAH POWERS (S24062))	FINDINGS OF FACT,
Salesperson-Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On February 26, 1988 the Iowa Real Estate Examining Board (hereinafter the Board) filed a complaint against Sarah Powers, a licensed real estate salesperson (hereinafter Salesperson-Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Sections 117.29(1), 117.29(3), 117.34 and 117.34(11) of the 1987 Iowa Code.

On March 24, 1988 the Board conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny Netcott, Hearing Officer, Department of Inspections and Appeals. The Iowa Real Estate Examining Board was present during the hearing and was represented by Assistant Attorney General Kathy Skinner. Although Commissioner Joe Ann Lutz was present during the hearing and Board deliberation of this case, she disqualified herself from participating in the proceedings or discussion. The Respondent appeared at the hearing and was represented by Brett Anderson, Attorney at Law. A full presentation of facts was made by both parties.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Hearing Officer. The Hearing Officer was instructed by the Board to prepare the Findings of Fact, Conclusions of Law and Decision and Order.

DISCUSSION

The complaint filed by the Iowa Real Estate Examining Board alleged that the Respondent signed her employing broker's name to her license renewal application without the broker's knowledge and consent and submitted the application to renew her Iowa real estate sales license on an active status. The Respondent testified that she did, in fact, sign her employing broker's name to her renewal application. She was in a hurry to mail the application to the Office of the Board because there were only a few days remaining in order to renew her Iowa real estate sales

license on an active status. When she arrived at the post office she discovered that she had failed to obtain her broker's signature on the renewal application. She made a quick decision to sign his name on the form since she wanted to mail the application at that time. The broker was out-of-town. She stated she is authorized to sign her broker's name to listing contracts and it did not occur to her that it was improper to sign her broker's name on the renewal application. It also did not occur to her to contact the Office of the Board for guidance.

FINDINGS OF FACT

The Iowa Real Estate Examining Board finds as follows:

1. The Iowa Real Estate Examining Board has jurisdiction of this matter under Iowa Code Chapter 17A, 117, and 258A, as well as the administrative rules found in Chapter 700 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 salesperson.
3. The Respondent signed her employing broker's name on her "Application for renewal of Iowa real estate license".
4. The Office of the Board renewed the Respondent's Iowa real estate sales license on an inactive status.
5. On February 15, 1988 the Respondent submitted a letter from her employing broker to reactivate her license to an active status; the Office of the Board transacted this request on the same day.

CONCLUSIONS OF LAW

What The Law Says

Iowa Code Section 117.29 states:

"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:

- "1. Fraud in procuring a license.
- "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 states the Board "may suspend or revoke any license issued under the provisions of this chapter, at any

time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of:

"11. Any other conduct, whether of the same or different character from that hereinbefore specified, or demonstrates such bad faith, improper, fraudulent, or dishonest dealings as would have disqualified the licensee from securing a license under this chapter."

Application of Law

In the case at hand, the Respondent readily stipulated to the fact that she signed her broker's signature on a renewal application without his knowledge and consent. She then submitted the application to the Office of the Board for renewal of her Iowa real estate sales license.

The Board finds that the Respondent acted improperly and that she used poor judgment in this matter. There were other options available to her in executing the renewal of her Iowa real estate sales license. Although the Board recognizes that time was of the essence in renewing the license to an active status, had she contacted the Office of the Board she would have been informed of all available options and of the proper manner in which to proceed. The Respondent failed to contact the Office of the Board or the office of her employing broker for assistance.

Although the charges brought against the Respondent included fraud, the Board finds that insufficient evidence was presented at this hearing to substantiate such a charge. The Board chooses not to pursue the issue of fraud in this particular instance.

The Board finds that the Respondent's actions were improper but recognizes that her actions were in no way harmful or detrimental to the public. The Respondent is found to have not violated Iowa Code Section 117.29(3).

However, the Board does not condone the Respondent's actions and considers it to be improper and dishonest. The Board finds that the Respondent did violate Iowa Code Section 117.34(11).

DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds that the Respondent violated Iowa Code Section 117.34(11).

The Respondent is hereby REPRIMANDED for her actions by the Iowa Real Estate Examining Board and ORDERED to complete six (6) hours of real estate license law education within twelve (12) months of the date this Order is executed. The ordered real estate license law education cannot be a correspondence course and is in addition to all other real estate education required by law. The Respondent shall contact the office of the Board for approval

prior to enrolling in a course to fulfill the requirements of this order. The original certificate of attendance for the additional hours must be submitted to the Office of the Board within the required time frame.

Executed this *5th* day of May, 1988.


JAMES R. BERRY, CHAIR
IOWA REAL ESTATE
EXAMINING BOARD


JENNY NETCOTT
ADMINISTRATIVE HEARING OFFICER

Dated this 4th day of May, 1988

Dated this 3rd day of May, 1988

Issued this *5th* day of *may*, 1988.


KENNETH L. SMITH
EXECUTIVE SECRETARY
IOWA REAL ESTATE EXAMINING BOARD

JN/jmm