

DEPARTMENT OF COMMERCE  
PROFESSIONAL LICENSING DIVISION  
1918 SE HULSIZER AVENUE  
ANKENY, IOWA

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IN RE:	)	Case Number: 89-042
	)	DIA Number: 91DOCRE-7
John G. Shelledy (S 15887)	)	
Salesperson	)	FINDINGS OF FACT
6750 School, Unit 1014	)	CONCLUSIONS OF LAW
Des Moines, IA 50311	)	DECISION AND ORDER

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On July 29, 1991 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against John G. Shelledy, a licensed Iowa salesperson (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of Iowa Code sections 117.29(2), (3) and 117.34(8).

On October 17, 1991 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa salesperson's license of the Respondent.

The following Commissioners were present for the hearing: Jerry Duggan, E. Joe Ann Lutz, Marlys Nielsen, and Russ Nading. The State was represented by Grant Dugdale, Assistant Attorney General. The Respondent appeared in person, and was represented by his counsel, William B. Serangeli. 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 closed to the public, pursuant to Iowa Code section 258A.6(1). 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 its 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 Chapter 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 salesperson. His license number is S 15887.
3. In November, 1983 Frank Perez and Sandra D. Vernli purchased a townhouse located at 226 6th Street, West Des Moines, Iowa.

Respondent, a salesperson employed by Valley Realty, represented the buyers on the purchase. Respondent and Frank Perez were also personal friends. The townhouse was financed by a Veterans Administration mortgage. Frank Perez is a veteran. (Testimony of Frank Perez; Exhibits 13 - 15)

4. In early 1986 Frank Perez asked Respondent to help him and his wife, Sandy, sell their townhouse and purchase a new home. The Perezes were interested in buying a home in a very specific area of West Des Moines. Respondent was still employed by Valley Realty. On March 13, 1986, the Perezes made an offer on a home located at 1514 19th, West Des Moines, Iowa. Their offer, which was subject to the sale of their townhouse, was accepted. The Perezes entered into an exclusive listing agreement for the sale of their townhouse with Valley Realty, Respondent's employer, on March 13, 1986. (Testimony of Frank Perez, Respondent; Exhibit 7, 25)

5. On March 20, 1986 Respondent received notice from the sellers of the property on 19th that they had received another offer on their property. The Perezes were given until 7:00 p.m. on March 21, 1986 to remove the contingencies on their offer. If the contingencies were not removed, the sellers of the property could accept the other offer. The Respondent promptly called the Perezes. The Perezes were unwilling to remove the contingencies because they felt they would be unable to make their down payment and make two house payments in the event their townhouse did not sell. Respondent reassured them that their townhouse would sell, since he had previously sold several townhouses in the same complex. The Perezes decided to sleep on it. The next day, the Perezes again told Respondent that they could not remove the contingency clause. Respondent told them that if the townhouse was not sold by the time of closing he would buy it and assume the payments and other expenses. Respondent reiterated that he felt the townhouse would sell. The Perezes decided to remove the contingency clause from their offer. (Testimony of Frank Perez; Respondent; Exhibits 25)

6. On March 21, 1986 Respondent prepared a Dwelling Unit Rental Agreement providing that Frank Perez would rent the townhouse at 226 6th, West Des Moines, to Judy L. Dhabolt from June 1, 1986 to May 31, 1987 for a monthly rent of \$555.00. Judy L. Dhabolt is Respondent's wife. The lease also provided that the lessee had an option to purchase the townhouse at any time during the term of the lease for a purchase price of \$50,500, which includes a 7% sales commission. (Testimony of Frank Perez; Respondent; Exhibit 26)

7. On March 25, 1986 Valley Realty notified Frank Perez in writing that the listing on his townhouse was being cancelled because Valley Realty was going out of business. Valley Realty stated that the Purchase Agreement for the purchase of the 19th St. home would be transferred to any broker agreeable to the buyers, sellers, and Respondent. Respondent had been informed

that Valley Realty was going out of business on March 24, 1986. Arrangements were made, with the consent of all parties, to transfer the Purchase Agreement on the 19th St. home to Michael Shepard, attorney at law. (Testimony of Frank Perez; Respondent; Exhibits 19, 21, 22, 23, 24, 27)

8. Valley Realty returned Respondent's license to the Iowa Real Estate Commission on March 27, 1986. Respondent subsequently became employed by First Realty. On May 5, 1986, the Perezes signed an exclusive listing agreement with First Realty for the sale of their townhouse. However, Judy Dhabolt was reserved as a prospect for the term of the listing. (Testimony of Frank Perez; Respondent; Exhibit 31)

9. As the closing date for the purchase of the new home drew closer, the decision was made that Respondent would purchase the Perez townhouse. Respondent testified that his wife, who was unemployed, was listed as the purchaser, because Respondent's outstanding tax liability would have been placed as a lien on the property if it was in his name. (Testimony of Respondent; Frank Perez)

10. The VA mortgage on the Perez townhouse was assumable by the purchaser. On May 7, 1986 the VA sent Frank Perez an application for "release of liability", "A Statement of Purchaser or Owner Assuming Seller's Loan," and a handbook explaining all aspects of his VA mortgage. Frank Perez gave this mailing to the Respondent. As explained in the handbook, a veteran is not automatically released from liability on a VA loan when a purchaser assumes the VA loan. The veteran remains ultimately liable to the government on the mortgage unless he receives a "release of liability". The veteran must separately apply for "release of liability" and the purchaser must qualify as a good credit risk. Respondent testified that he explained to Mr. Perez that it would be fruitless to apply for release, since Judy Dhabolt was unemployed and would not qualify as a good credit risk. Mr. Perez denies that he was told he would not have a "release of liability" following the sale. Mr. Perez also testified that he was surprised to hear that Judy, and not Respondent, would be the actual purchaser. (Testimony of Frank Perez; Respondent; Exhibit 29).

11. Perez gave Respondent all of the documents necessary to close both the sale of his old home, including the warranty deed and loan transfer statement, assignment and disclaimer, and the purchase of the new home. Attorney Michael Shepard was retained to handle both closings. The closings took place on July 8, 1986. The closings had been delayed approximately one month due to a fenceline dispute with the new property. Respondent gave Shepard all documents necessary to close both transactions. The purchase of the new home involved a new mortgage. Respondent's wife received a \$3,500.00 credit towards equity on the purchase of the townhouse, which was an amount equivalent to Respondent's 7% sales commission. (Testimony of Frank Perez; Respondent; Exhibits 9, 10, 28)

12. In the fall, 1986 Perez received a phone call from the Townhouse Association inquiring about Perez's overdue association dues. Perez stated that he no longer owned the property, but was told Polk County records still listed the townhouse in Frank Perez's name. Perez called Respondent who said he would take care of it. On October 30, 1986 Perez received a letter from Hawkeye Bancorporation, the holder of the mortgage note on the townhouse. The letter stated that Perez owed \$1,103.00 for the September and October mortgage payments on the townhouse. Perez again called Respondent, and he said he would take care of it. (Testimony of Frank Perez; Respondent; Exhibit 11)

13. Michael Shepard did not record the warranty deed for the townhouse until December 23, 1986. Hawkeye Bancorporation contacted Perez again in January 1987 and told Perez that the assumption papers for the mortgage had never been filed. Respondent had expected Michael Shepard to file the necessary documents when he closed the sale. (Testimony from Frank Perez; Respondent; Exhibits 9, 28)

14. Respondent did not feel he represented either the buyer or the seller when the townhouse sale was closed. (Testimony of Respondent; Exhibit 6)

15. On November 23, 1988 Frank and Sandra Perez were notified of foreclosure on the townhouse, and, after foreclosure settlement, were notified that they remained liable for over \$10,000 on the VA loan. They were later released from liability on the VA loan after contacting their senators for assistance. (Testimony of Frank Perez)

16. Respondent and his wife experienced financial difficulty and lost both the townhouse and their own residence to foreclosure. (Testimony of Respondent)

17. In Spring of 1988 the Perezes sued Respondent in small claims court for the amount due them on the purchase of the townhouse. The Perezes received a judgment against Respondent and sought enforcement through garnishment of Respondent's wages. The judgment is not yet paid in full. (Testimony of Frank Perez; Exhibits 36 - 44).

18. On November 23, 1988, the license of Michael Shepard to practice law was revoked by the Iowa Supreme Court for neglecting and abandoning client matters, misrepresenting status of client's cases, and other grounds. (Exhibit 45).

#### CONCLUSIONS OF LAW

1. Iowa Code section 117.29 (1991), Revocation or Suspension, 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: . . .

117.29(2) Professional incompetency.

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.

2. Iowa Code section 117.34, Investigations by Commission, states that the real estate commission may suspend or revoke a license issued under this chapter if the licensee is found to be guilty of:

117.34(8) Being unworthy or incompetent to act as a real estate salesperson in such manner as to safeguard the interests of the public.

3. The preponderance of the evidence did not establish that the Respondent violated Iowa Code section 117.29(2), (3) or 117.34 by his failure to record the deed or file notice of loan assumption at the time of the sale of the property located at 226 6th Street, West Des Moines, Iowa. Attorney Michael Shepard had been hired by the parties to handle the closing, and he was responsible for filing these documents as a part of the closing.

4. The preponderance of the evidence established that Respondent violated Iowa Code section 117.29(2), (3) and 117.34(8) by his failure to inform Frank and Sandra Perez of the consequences of not obtaining a release of liability on the VA mortgage and by his failure to act in the best interest of his principals, Frank and Sandra Perez.

As their salesperson, Respondent had an affirmative duty to act in the best interests of his principals, Frank and Sandra Perez. He failed to do so in several respects.

First, Respondent arranged a sale to a buyer, his wife, who had no income. As a result, the sellers were unable to obtain a release of liability and the buyer was unable to make all payments, resulting in foreclosure. It is clear that Respondent had an affirmative duty to explain to the Perezes that his wife would not qualify for the release and the possible consequences to the Perezes if she was unable to make all payments. Respondent claimed that he informed the Perezes that his wife would not qualify for the release due to her lack of employment. However, Frank Perez testified that he was surprised to discover that Respondent's wife, not Respondent, was purchasing the townhouse. At the very least, it is clear that the Perezes were not effectively informed of the possible consequences of

selling their townhouse to Respondent's wife. The testimony of Frank Perez that he did not realize that he remained liable on the VA mortgage was credible.

The Respondent also failed to put the purchase agreement between the Perezes and his wife in writing. Instead, the option to buy in the Rental Agreement was relied upon as the terms of the sale. Respondent claims he did not represent either party in this sale. However, the rental agreement and the Perezes' memorandum (Exhibit 30) both indicate that Respondent received a 7% sales commission totaling \$3,500. The fact that it was given as a credit to his wife on the purchase price, rather than paid directly to Respondent, is immaterial. Later, Respondent failed to maintain payments on the property, which clearly was not in the best interests of his principal.


#### DECISION AND ORDER

It is therefore the ORDER of the Iowa Real Estate Commission that the salesperson's license of John G. Shelledy, S15887, is suspended for a period of thirty (30) days, effective immediately upon receipt of this order. It is FURTHER ORDERED that, following the period of suspension, the salesperson's license of John G. Shelledy, shall be placed on probation for a period of one (1) year, subject to the following terms and conditions:

That during the term of probation Respondent shall successfully complete a twelve (12) hour broker pre-license course in Real Estate Law/Contract Law/Agency Law. This shall be an additional requirement to the continuing education required for relicensure.

Dated this 2 day of DECEMBER, 1991.

  
Jerry Duggan, Chairperson  
Iowa Real Estate Commission

  
Roger Hansen  
Executive Secretary  
Iowa Real Estate Commission

ML/jmm

**PROOF OF SERVICE**  
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on 12/3/91