

Department of Commerce
Professional Licensing Division
1918 SE Hulsizer Avenue
Ankeny, Iowa

IN RE:)	
)	Case No. 89-022
Alan G. Stockdale (B25096))	DIA No. 91DOCRE-2
Broker)	
3826 Cedar Heights Drive)	FINDINGS OF FACT,
Cedar Falls, Iowa 50613)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

The Iowa Real Estate Commission (hereinafter Commission) filed a complaint against Alan G. Stockdale, a licensed Iowa Broker. (hereinafter Respondent) The complaint alleged specific acts and alleged these acts constituted a violation of 193E IAC 1.23(1).

On March 21, 1991 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 E. Joe Ann Lutz, Jerry Duggan, Marlys Nielsen, Robert Christensen, and James R. Berry. The state was represented by John Parmeter, Assistant Attorney General. The Respondent appeared and was represented by his attorney, Michael Manno. 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 closed to the public at the Respondent's request, pursuant to Iowa Code section 258A.6(1). The Commission convened in closed executive 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 Iowa Real Estate Commission has jurisdiction of this matter under Iowa Code chapters 17A, 117 and 258A (1989) as well as the administrative rules found at Chapter 193E of the Iowa Administrative Code.
2. The Respondent has been, at all times relevant to the matters herein, licensed as an Iowa real estate broker. His license number is B25096. (Testimony of Respondent; Commission file)

89-022

3. The Respondent was employed as a broker-associate by Coldwell Banker Granger Realtors, Waterloo, Iowa from March 1988 until December 28, 1988. (Testimony of Respondent; Charles W. Granger)
4. While employed by Coldwell Banker Granger Realtors, Respondent obtained an exclusive listing for two farms (hereinafter, the Burma Properties). Respondent had obtained the listing, in part, due to a childhood friendship with one of the owners. The exclusive listing for Coldwell Banker Granger Realtors was effective from April 5, 1988 through April 1, 1989. Nancy Gullick was the contact person for the Burma listings. (Testimony of Respondent; State's Exhibit 1; and Attachment 1)
5. Respondent worked the listing on the Burma properties, and presented several offers which were rejected by the owners. Respondent was growing dissatisfied with the working situation at Granger Realty. Respondent felt he had been promised that he would manage a farm department at Granger Realty, but the farm department had not materialized. Respondent was the only agent at Granger with any significant farm sales experience. Sometime around December 10, 1988, Respondent and two other agents approached Charles Granger and requested that they receive a higher percentage of commissions. Granger refused. (Testimony of Respondent; Jim Blackledge; Mike Cummings; Charles W. Granger; Exhibit 1, attachments 2, 3, 4, 5)
6. Charles Granger left Waterloo in mid December for a six week vacation in Hawaii. Respondent decided that he would leave Granger Realty and form Greater Metro Realty Co. of Waterloo. On or about December 23, 1988 Respondent contacted Nancy Gullick and told her he was planning to leave Granger Realty. Ms. Gullick asked Respondent what she could do. Respondent explained that her options were to leave the listing with Granger or to withdraw the listing. Ms. Gullick asked Respondent to get the withdrawal forms. (Testimony of Respondent)
7. On December 27, 1988 Nancy Gullick signed the withdrawal forms for the Burma children and Respondent signed the forms for Granger Realty. Respondent submitted the forms to the office secretary and may have sent them to the Waterloo Board of Realtors as well. On December 28, 1988, Respondent listed the Burma Properties with Greater Metro Realty Company. The new listing was never processed through the Board of Realtors. (Testimony of Respondent; Exhibit 1; and attachments 8, 9, 10, 11, 12)
8. After listing the properties with Greater Metro Realty, Respondent was told by the secretary at Granger Realty that Charles Granger refused to accept the listing withdrawal on the Burma properties. Respondent called Granger in Hawaii

about the withdrawal, and Granger told Respondent he wanted him out of the office immediately. (Testimony of Respondent; Charles Granger; State's Exhibit 1, attachments 6 and 7)

9. Granger Realty assigned the Burma properties listing to Mike Cummings, who had no prior farm sales experience. On January 6, 1989 a buyer came to Respondent with another offer on the Burma properties. Respondent contacted Cummings, who gave Respondent permission to present the offer to the owners. The offer was accepted, and Granger handled the closing. Greater Metro Realty took the normal multiple listing Commission. (Testimony of Respondent; Mike Cummings; Charles Granger; State Exhibit 1; attachment 13, 14, 15, 16)
10. Respondent testified that, while employed by Granger Realty, he had the authority to sign all forms associated with his listings, including withdrawal forms. Respondent testified that he had signed withdrawal forms on other occasions, and Granger had not objected. Respondent and Jim Blackledge, another former employee of Granger Realty, testified that they and other agents signed withdrawal forms in the past. Respondent did not have a written employment contract with Granger Realty. Granger did not have a written policy concerning who was authorized to sign withdrawal forms. Charles Granger maintained that only he could sign withdrawal forms, or, in his absence, the sales manager. The Board found the testimony of Respondent, as corroborated by Jim Blackledge, to be credible. It was the custom of the Granger Realty Office to allow the listing agent to sign the withdrawal form. Respondent's credibility was further bolstered by the fact that he did not file his new listing with the Board of Realtors after Granger told him he would not approve the withdrawal. Respondent fully cooperated with Granger Realty in the eventual sale of the property. (Testimony of Respondent, Jim Blackledge; Charles Granger; Mike Cummings)

CONCLUSIONS OF LAW

1. 193E. IAC 1.23(1) states:

A real estate salesperson or broker shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner if it is known that the owner has a written unexpired contract in connection with the property which grants an exclusive right to another broker, or which grants an exclusive agency to another broker.

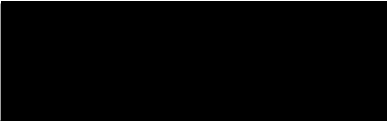
2. The preponderance of the evidence established that the Respondent believed the exclusive listing contract between the owners of the Burma properties and Granger Realty to be withdrawn before he negotiated a listing contract for Metro Realty. Respondent had reasonable grounds to believe the

listing had been withdrawn since it was the custom of the Granger Realty office to allow the listing agents to sign the withdrawal forms for their listings. The preponderance of the evidence did not establish that Respondent violated 193E IAC 1.23(1). When Respondent attempted to enter into a new listing agreement with the owners of the Burma properties, he did not know that there was still an existing listing contract with Granger Realty.

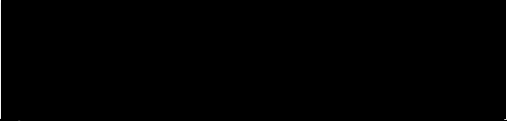
DECISION AND ORDER

IT IS THEREFORE THE ORDER of the Iowa Real Estate Commission that the Complaint filed against Alan G. Stockdale (B25096) is hereby DISMISSED.

Executed this 22 day of APRIL, 1991.


E. JoeAnn Lutz, Chairperson
Iowa Real Estate Commission


Margaret LaMarche
Administrative Law Judge


Roger L. Hansen
Executive Secretary
Iowa Real Estate Commission

ML/lrb