

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

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IOWA REAL ESTATE COMMISSION,	)	
	)	
Complainant	)	CASE NUMBER 88-012
	)	
vs.	)	
	)	
JAMES W. WOODSMALL (S23663),	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Salesperson-Respondent	)	DECISION AND ORDER

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On July 21, 1988 the Iowa Real Estate Commission (hereinafter Commission) filed a complaint against James W. Woodsmall, a licensed Iowa real estate salesperson (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Sections 117.29(3), 117.34(1), 117.34(2), 117.34(3), 117.34(4) and 117.34(8), 1987 Code of Iowa.

On September 14, 1988 the Commission conducted a hearing in closed session, under the authority of Iowa Code Section 258A.6(1), to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny J. Netcott, Administrative Law Judge, Department of Inspections and Appeals. The Iowa Real Estate Commission was present during the hearing and was represented by Assistant Attorney General Kathy Skinner. The Respondent appeared at the hearing pro se. 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 Administrative Law Judge. The Administrative Law Judge was instructed by the Commission to prepare the Findings of Fact, Conclusions of Law, and 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 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.

15. As a result of the foregoing transactions, the seller's property was repossessed and his credit rating was adversely affected.

16. A listing contract was not entered into by the seller.

17. The Respondent acted as the seller's real estate agent during the attempted sale of the property.

18. The Real Estate Commission's records reflect the Respondent's licensing history as follows:

May 1, 1986 license returned from Iowa Realty Company to the Commission office; placed on inactive status

May 2, 1986 transferred to Reel & Associates Realty, Inc. in an active status

October 23, 1986 transferred to Larry E. Rieks in an active status

June 18, 1987 transferred to Rieks Realty, Inc. in an active status

January 1, 1988 renewed license on an inactive status

CONCLUSIONS OF LAW

What The Law Says

Iowa Code Section 117.29(3) (1987) 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:

"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(1987) states the Commission "may suspend or revoke any license issued under the provisions of this chapter . . . if the licensee is found to be guilty of:

"1. Making any substantial misrepresentation.

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

3. On May 30, 1986 the Respondent entered into a purchase agreement to buy property. The agreement stated that the buyer (Respondent) offered to purchase the property through Reel & Associates Realty, Inc., real estate agent.

4. The purchase agreement signed by the Respondent included the following note on the bottom:

"Buyer is licensed real estate agent purchasing property for personal or investment use."

5. The Respondent's May 30, 1986 purchase agreement stated the closing date as November 30, 1986.

6. The Respondent was unable to assume the seller's mortgage as contained in the May 30, 1986 purchase agreement.

7. At the November 30, 1986 scheduled closing the Respondent stated that he would pay off the mortgage and file the warranty deed; this transaction failed to consummate.

8. On May 30, 1986 the Respondent, as purchaser, entered into a rental agreement with the seller which stated that the purchaser agreed to pay into the Reel and Associates Realty, Inc. trust account the amount of \$1,450.00.

9. A second purchase agreement signed by a prospective buyer was sent to the seller by the Respondent in January, 1987; the agreement stated that the buyer (Moon) offered to purchase the property through Rieks Realty; the agreement did not contain an acceptance date; after the seller returned the agreement to the Respondent, the Respondent wrote in May 30, 1986 as the acceptance date; the closing date per the agreement was February 15, 1987; this transaction failed to consummate.

10. After the Moon purchase agreement failed to consummate, the Respondent entered into an oral contract to pay cash for the seller's property.

11. The Respondent told the seller that it would not be necessary to draw up and sign a purchase agreement for a cash sale.

12. The Rieks Realty, Inc. settlement statement dated March 31, 1987 indicated a GMAC payoff figure of \$51,508.21.

13. On April 1, 1987 Home Equity's attorney, representing the relocation company utilized by the seller's employer, forwarded the Respondent a warranty deed to be recorded on the seller's property; the warranty deed was provided to the Respondent to be recorded by him as escrow agent for the closing of the transaction.

14. Approximately the middle of May, 1987 GMAC sent the seller a note that his mortgage payment was in arrears.

"3. Pursuing a continued and flagrant course of misrepresentation . . .

"4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

"8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interest of the public."

Application of Law

On May 30, 1986 the Respondent entered into a purchase agreement, as a buyer, using a Reel & Associates Realty, Inc. contract form. The closing date was scheduled for November 30, 1986. The terms of the agreement called for assumption of the seller's mortgage by the Respondent. The Respondent was unable to successfully effect the mortgage assumption and the transaction failed to close as scheduled.

In January, 1987 the Respondent forwarded a second purchase agreement to the seller signed by a prospective buyer (Moon) using a Rieks Realty, Inc. contract form. The agreement did not include an acceptance date. The seller signed the agreement and returned it to the Respondent who then wrote in an acceptance date of May 30, 1986. The second transaction was to close on February 15, 1987. This transaction failed to consummate and the Respondent represented to the seller that he would purchase the property by paying cash but would not be able to close the transaction until the end of March, 1987.

Although the seller inquired whether a new written purchase agreement setting forth the terms of the oral agreement should be drawn up, the Respondent assured the seller that it would not be necessary to do so. A settlement statement dated March 31, 1987 was drawn up setting forth the terms of the oral contract and showing a GMAC payoff figure of \$51,508.21. The Respondent also agreed to file the warranty deed, acting in his capacity as escrow agent, after payment of all charges set forth in the settlement statement. The transaction to pay cash for the property failed to consummate.

After careful review of the testimony and evidence presented at hearing, the Real Estate Commission concludes that the seller employed the Respondent as real estate agent to sell his property. The Respondent violated his fiduciary responsibility to his client by failing to ensure that the best interest of the seller was maintained at all times. The "best interest" of the seller means to the seller's satisfaction or effecting the most desirable results. The seller was certainly not satisfied, in this instance, with the results of the real estate licensee's efforts, and the outcome of the incompleting transactions were most assuredly not desirable.

Through the Respondent's own admission he concurred that he did not intend to purchase the property but only placed his name as the buyer on the first purchase agreement until such time as a real buyer could be located. However, the seller was under the impression that the Respondent was indeed purchasing the property while also acting as his real estate agent.

The Commission finds that the foregoing transactions were fraught with misrepresentation and deception by the Respondent. In addition, the Respondent's actions resulted in irreparable harm to the seller both in the form of a substantial monetary loss and shattered credit rating. Since the seller was unable to find a buyer for his property, relying upon the Respondent as his real estate agent, the seller's mortgage company repossessed the seller's property.

The Respondent drew up two purchase agreements showing the same acceptance date using two different real estate company contract forms. Although one form was actually back dated, it appears that the Respondent was representing two real estate companies at the same time without either one's knowledge or consent. In so doing, the Respondent violated Iowa Code Section 117.34(4), 1987 Code of Iowa.

Throughout the entire period of May 30, 1986 through March 31, 1987 the Real Estate Commission finds that the Respondent continually misrepresented the status of the sale of the property to the seller, made false promises intended to influence the seller's actions, and demonstrated incompetency as a real estate licensee. The Respondent violated Iowa Code Sections 117.34(1), 117.34(2), 117.34(3) and 117.34(8), 1987 Code of Iowa.

By misinforming the seller that he was going to pay cash for the property, that he would record the warranty deed and that a new agreement setting forth the terms of the oral contract to purchase the property was not necessary, the Respondent violated Iowa Code Section 117.29(3), 1987 Code of Iowa.

DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Sections 117.29(3), 117.34(1), 117.34(2), 117.34(3), 117.34(4), and 117.34(8), 1987 Code of Iowa.

It is therefore ORDERED by the Iowa Real Estate Commission that the Iowa real estate sales license of the Respondent be REVOKED, effective on the date of this decision.

Executed this 20<sup>th</sup> day of October, 1988.



JAMES R. BERRY, CHAIR  
IOWA REAL ESTATE COMMISSION



JENNY NETTCOTT  
ADMINISTRATIVE LAW JUDGE

Date: October 20, 1988.

Date: September 23, 1988

Issued this 21<sup>st</sup> day of October, 1988.



KENNETH L. SMITH  
EXECUTIVE SECRETARY  
IOWA REAL ESTATE COMMISSION

JJN/jmm

**METHOD OF SERVICE**  
The undersigned certifies that the foregoing instrument was served upon all persons in the above named 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 (not/over) on the preceding day 10-21 1988



RECEIVED

JUN 11 1990

IOWA JUSTICE DEPARTMENT  
ADMINISTRATIVE LAW

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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JAMES W. WOODSMALL,	)	CASE NO. AA 1451
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
IOWA REAL ESTATE COMMISSION,	)	RULING ON PETITION FOR
	)	JUDICIAL REVIEW
Respondent.	)	

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Hearing on the Petition for Judicial Review was held before this Court. The Petitioner was represented by attorney George Cosson, and the Respondent was represented by its attorney, Kathy Skinner. The Court having heard the arguments from counsel and having read the record and briefs of the attorneys finds as follows:

FINDINGS OF FACT

1. On July 21, 1988 a statement of charges was filed by the Respondent against the Petitioner, a licensed real estate salesman. On September 14, 1988, a hearing was held before the Respondent. The proceedings were conducted by Jenny J. Nelcott, Administrative Law Judge, Department of Inspections and Appeals.

2. The Administrative Law Judge issued Findings of Fact, Conclusions of Law, Decision and order on October 21, 1988. The findings of fact in that order are found to be correct and incorporated herein as is set out in full.

3. In the order of October 21, 1988 the Administrative Law Judge found in the fourth paragraph in the application of law the following:

*District Court  
Judicial Case (Case 88-012)  
AA 1451*

After careful review of testimony and evidence presented at hearing, the Real Estate Commission concludes that the seller employed the respondent (Petitioner herein) as real estate agent to sell his property.

In the Decision and Order of October 21, 1988 the Administrative Law Judge stated:

Based on the foregoing findings of fact and conclusions of law, the commission finds that the Respondent (Petitioner herein) violated Iowa Code Sections 117.34(1), 117.3(2), 117.34(3) and 117.34(8), 1987 Code of Iowa.

The real estate license of the Petitioner herein was revoked by the Commission.

3. The Petitioner herein ask the District Court to file presentation of additional evidence. The District Court did not allow the presentation of additional evidence, but found that the Iowa Real Estate Commission misinterpreted Iowa Code Section 117.34(4) of the 1987 Code of Iowa and remanded the case to the Commission to review its findings and conclusions. After reviewing the entire case again the commission in its Decision on Remand and Order stated:

Here Respondent back dated documents. He misrepresented the law. He misrepresented the facts. He kept the seller's house off the market for six months and then continued to assert he would be able to buy the house, lulling the seller into a false sense of security. As a result of respondent's action the seller lost the house through mortgage foreclosure. When such disastrous consequences

*District Court (Case 88-012)*  
*HH 1451*

are faced by the public the commission must act in light of the seriousness of the offenses of which the Respondent (Petitioner herein) has been found guilty and in the light of the consequences visited by the seller's revocation of Defendants license is the only appropriate penalty.

CONCLUSIONS OF LAW

"The agency is the finder of fact, it being left to us to determine (1) questions of law (2) whether the agency acted reasonably, arbitrarily, capriciously, in violation of applicable constitutional standards, or in excess of statutory authority and (3) whether its findings are supported by substantial evidence in the record. . . .The trial court is not in power to substitute its own judgment for that of the agency in matters of this kind. . . . The extent of the authority of the District Court in review of agency decisions goes only to the correction of errors occurring with regards to subsections a - g of Code of Iowa Section 17A.19(8)." McClure v. Iowa Real Estate Com'n, 356 N.W.2d 594, 597 (Iowa App. 1984).

This Court finds that the Respondent, Iowa Real Estate Commission did not act unreasonably, arbitrarily, capriciously, in violation of applicable constitutional standards or in excess of statutory authority. This Court further finds that the Iowa Real Estate Commission's decision in this matter is supported by substantial evidence. Therefore, this court should affirm the decision of the Respondent.

*District Court (Case 88-012)*  
*FF 1451*

RULING

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Decision of the Iowa Real Estate Commission revoking the license of James W. Woodsmall the Petitioner herein is AFFIRMED.

Dated this 4<sup>th</sup> day of June, 1990.



JACK D. LEVIN, JUDGE  
FIFTH JUDICIAL DISTRICT

Copies mailed by the Court to:

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ATTORNEY FOR RESPONDENT

*District Court (Case 88-012)*  
*FF 1451*