Department of Commerce Professional Licensing Bureau

FILED

K.E. Commission

BEFORE THE REAL ESTATE COMMISSION OF THE STATE OF IOWA

Signature, Executive Officer

IN THE MATTER OF

CASE NO. 12-058

DIA NO. 13REC007

JANE PAGEL Broker (B41352)

A-1 Real Estate Services 1604 3rd Avenue South Denison, Iowa 51442 FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

Respondent

On July 5, 2013, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Jane Pagel (Respondent). The Statement of Charges alleged that Respondent engaged in professional incompetency and/or practices harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c)&(d), 543B.34(1)(h)&(k)(2011) and 193E IAC 18.2(1)&(8) and 18.14(5)(s).

The hearing was held on December 5, 2013 at 10:15 a.m. Respondent Jane Pagel appeared and was represented by attorney Thomas Gustafson. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Susan Sanders, Salesperson, Chairperson; Gail Flagel, Broker; John Goede, Broker; Terry Dugan, Broker; Dennis Stolk, Broker; Michael Telford and Carol Haines, public members. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2013).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013), to deliberate its decision. The Commission instructed the administrative law judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the state's Prehearing Conference Report; Orders Continuing and Resetting Hearing; the testimony of John W. Seuntjens; Jeff Evans; Lynn Steele; Respondent; Steve Pagel; Kenard Swift; and Daniel Comes; and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

- 1. Respondent's Iowa real estate broker license (B41352) was first issued on January 3, 2005 and is in full force and effect through December 31, 2013. At all times relevant to this matter, Respondent was a licensed real estate broker officer assigned to A-1 Real Estate Services, a licensed real estate firm (F04921) in Denison, Iowa. Respondent testified that in her work as a broker, she deals primarily with repossessions and broker price opinions (BPOs). Respondent reports that as a broker, she has worked with almost every major lender, including Freddie Mac and Fannie Mae. Respondent has one previous disciplinary action against her license (Case A09-036). (Testimony of Respondent; State Exhibit 2)
- 2. On January 27, 2012, licensed Real Estate Broker and Certified General Real Property Appraiser John W. (Jack) Seuntjens filed a complaint with the Commission. Seuntjens owns and operates Midwestern Land & Auction in Mapleton, Iowa. In his complaint, Seuntjens alleged that in January 2012, Respondent authorized the removal of personal property from 1554 Oneida Street in Woodbine, Iowa, with no authority to do so. Seuntjens stated in his complaint that he had the exclusive listing for this property, which was owned by Freddie Mac HomeSteps. Seuntjens further stated that the personal property belonged to one of his part-time contractors, Howard Knox, and was being used to maintain and clean up the property. Seuntjens stated that Respondent never contacted him regarding the status of the personal property, which had a value of approximately \$10,000. (State Exhibit 4; Testimony of John W. Seuntjens; Jeff Evans)

Howard Knox reported the theft of his property to the Harrison County Sheriff's Department. Seuntjens attached the Harrison County Sheriff's incident report and documentation from Freddie Mac HomeSteps to his complaint.

a. The sheriff's incident report, which was authored by Deputy Dallas Clemens, stated that Howard Knox had a contract to clean up the property at 1554 Oneida Street and had left his tractor and 18 foot flatbed trailer at the property. The

Case No. 12-058 Page 3

tractor was an orange Allis Chalmers with a blue 5' mowing deck (value \$6,000), and the flatbed trailer (value \$2500) was loaded up with junk items from the property. Knox last saw these items at the property on January 13, 2012. (State Exhibit 4-6)

When Deputy Clemens told him about the theft report filed by Knox, Harrison County Deputy Cohrs told Clemens that Kenard Swift had the tractor in Woodbine. Swift had told Cohrs that the realtor contacted him and asked him to remove the property because it had been there for about a year. Deputy Clemens then called Knox and asked if his tractor and trailer had been left on the property for a year. Knox reported that he dropped the items off at the property in late fall and planned to leave them there while he was working on another job south of Missouri Valley. No one advised Knox that he needed to move the items from the property. Deputy Clemens also spoke to Swift, who reported that Respondent contacted him in early January and told him that she was appraising a property and needed to have some items removed from it. Swift had known Respondent for years and he took her word for it, even though she had no paperwork.

Deputy Clemens also contacted Respondent. Respondent told the deputy that the house had been repossessed and no one realtor had an exclusive right to show it. Respondent further stated that repossession people leave junk and things at the property and they are considered up for grabs. Respondent told the deputy that she wanted the junk items removed so she could show the property. Deputy Clemens advised Respondent that the tractor and trailer were not "junk," regardless of their condition, and had intrinsic value. He further advised Respondent that in the future she should pursue abandonment paperwork to avoid civil penalties or even criminal charges. The deputy also advised Respondent that Swift was calling Knox to tell him where to find his property. (State Exhibit 4-6)

b. The documentation from Freddie Mac HomeSteps included the Master Listing Agreement Addendum for the property at 1554 Oneida Street in Woodbine, Iowa. The listing broker was Jack Seuntjens of Midwestern Land & Auction Inc. The listing period in the Addendum was from November 4, 2011 through February 10, 2012 and the list price was \$59,900. The instructions were to market the property "As Is." The listing was later extended through March 20, 2012 and the price was reduced to \$49,900. (State Exhibit 4-9, 4-10)

The documentation from Freddie Mac HomeSteps also included instructions for "Trash Out" of items remaining on the property and for removal of personal property. If the broker determines that the property is abandoned and the value of personal property is

less than \$300 and does not have intrinsic value, then the Contractor may conduct a "Trash Out" and remove personal property. In the event the Contractor believes that the value of personal property exceeds \$300 or has intrinsic value, then the Contractor must contact the HomeSteps Property Coordinator, Sales Specialist, or Regional Area Manager prior to conducting a Trash Out and removing personal property. (State Exhibit 4-11, 4-12)

3. Seuntjens' complaint was referred for investigation by the Commission's investigator at the time, Jeff Evans.¹ Mr. Evans sent Respondent a letter and asked her to respond to the complaint within fourteen days. Respondent replied by email dated February 27, 2012. The following is a summary of the explanation provided by Respondent in her email to Evans:

Respondent was taking photos for a BPO (broker price opinion) and was taking photographs for the subject property and all of the comparable properties she had identified in Harrison County. The property at 1554 Oneida was one of the comparable properties selected by Respondent. Respondent knew that the property was listed with Midwest Land and Auction. As she drove by the property, Respondent could see something tucked in behind/beside the garage and drove on to the property to look. She found an "old orange Allis Chalmers tractor with a bush-hog (a type of mower attachment) and a 16 foot flatbed trailer. It was obvious to her that they had been there for a while based on the weeds grown up around them. The tractor had a flat front tire. The trailer had a license plate from 2008 and no functioning wire harness for brakes/brake lights.

Respondent went back to her car to call Jack, the broker at Midwest Land & Auction. A man answered, and Respondent asked for Jack. The man said he was "Jack." Respondent had spoken to Jack Seuntjens on many different occasions but not enough to recognize his voice on the phone. After asking some questions about the property, Respondent told the man about the tractor and trailer sitting among the weeds and told him that if they were hers she would not leave them sitting there very long. The man told Respondent that he assumed they belonged to the previous owner, that the seller had abandoned vehicle notices run, and that he didn't think there had been one inquiry. The man asked Respondent if she knew anyone who would give the tractor a nice home. Respondent asked if he

¹ Jeff Evans is now the Commission's Executive Officer.

was joking, and the man said he was very serious but if she did, she better tell them to make it fast.

Respondent then went to Woodbine and spoke to Kenard Smith, a local locksmith who owns a small engine business. Mr. Smith was a former part-time police officer, and Respondent had known him for close to 40 years. Respondent knew that Smith lived on an acreage and asked him if a tractor would come in handy and if he would take one for free. Respondent heard Smith call someone and that they planned to load it on a flatbed later that evening. Respondent also heard Smith comment that once abandoned, the stuff on a property is pretty much up for grabs. As Respondent was starting to "correct that assumption," a group of customers walked in and Respondent left.

Respondent then started thinking that abut the crew that does various jobs for her and how they always have to borrow a trailer for larger loads. Respondent decided that they would be thrilled with the trailer. The following evening, Kenard Smith agreed to meet Respondent at the property and help hitch the trailer for her.

Respondent reported that she spoke to Kenard Smith over the following two weeks and he told her that he had told numerous people about the tractor and she told him that she needed to be careful with that- they did not want people thinking that it was OK to go grab stuff. Respondent told Smith that he should remember they were "given permission, and after the legal notices...it was different."

Respondent was surprised to find out that the property had been reported stolen. She doubted that Jack would have told her to take the tractor and trailer if they belonged to someone working for him. After talking to the two deputies and the sheriff, Respondent had a "strange feeling" that she did not talk to Jack at all. Respondent also reported that she was unable to provide any cell phone record of her call to Midwest Land and Auction because she shared cell phone minutes with her daughter and they paid the bill online. Respondent denied that there was any printable record of calls made or received from her cell phone.

4. After receiving Respondent's email, Commission staff contacted Jack Seuntjens and asked him if any other males worked in his office. Seuntjens responded that just one other male, Daniel Comes, worked in his office. Mr. Comes denied that he spoke to Respondent or that he gave Respondent permission to remove the tractor and trailer. Seuntjens further stated that the tractor and trailer had been on the property for a short time and was left there to cut down on transportation costs. He further reported that the trailer had appliances on it, which were taken off the trailer and left behind, which was inconsistent with Respondent's claim that it was her intention to help Seuntjens clean up the property. (State Exhibit 3-2; Testimony of Jeff Evans)

Daniel Comes testified at hearing. Mr. Comes is a certified general real property appraiser and has worked for Midwestern Land & Auction for nine years. He confirmed that he and Jack Seuntjens were the only two males working in the office. He does not recall ever receiving a telephone call from Respondent concerning the property at 1554 Oneida Street. Mr. Comes further testified that he would not identify himself to anyone as "Jack" and absolutely would not authorize the removal of personal property from a listed property. (Testimony of Daniel Comes)

5. Jack Seuntjens also testified at hearing, and his testimony was consistent with his prior reports to the Commission and to the police. Seuntjens was the exclusive listing agent for the property at 1554 Oneida Street, which was owned by Freddie Mac. The property was posted for sale and there was a Midwestern Land & Auction sign in the yard.

Seuntjens estimated that he has more than a dozen Freddie Mac listings each year. Freddie Mac has established policies and procedures for foreclosure properties, including guidelines governing removal of personal property and "Trash Out." He provided copies of these policies with his complaint. Seuntjens had been taking steps to "Trash Out" or clean up the Oneida Street property using Howard Knox as the contractor. Knox was using his own tractor and trailer for the cleanup and had left these items at the property while he was working at a different site. Seuntjens estimated that the trailer and tractor had been on the property for less than 60 days.

The trailer had been filled with old appliances and other junk from the property. When Knox returned to the property, sometime in January, his tractor and trailer were gone. Knox contacted the sheriff, and the tractor was ultimately found at the home of Kenard Smith, and the trailer was found at the home of Respondent's son. Both items were returned to Knox. (Testimony of John W. Seuntjens)

6. Lynn Steele is a former Vice President of Direct Operations for Coldwell Banker and is a licensed real estate broker. She has been certified by the Commission as an instructor for a number of years and has served as a peer reviewer for the Commission. Steele served as the peer reviewer for this case. Steele reviewed the documentation in the investigative file and concluded that Respondent failed to conduct herself in a professionally competent manner when she participated in removing the tractor and trailer from the Oneida Street property. A licensed broker is required to follow the lawful instructions of the property owner with respect to the listed property. Respondent was not the listing agent, and she had no authority or responsibility or authority to clean up the property or to remove personal property. Respondent's actions caused harm to Howard Knox by temporarily depriving him of the possession and use of his tractor and trailer. In addition, Respondent's actions could have harmed Seuntjens by damaging his relationship with Freddie Mac and causing him to lose business. (Testimony of Lynn Steele; State Exhibit 6)

Seuntjens testified that he has had occasional contact with Respondent when she made inquiries about his listed properties, but he never spoke to her about the Oneida Street property and never authorized her to remove Knox's tractor and trailer. Respondent spoke to his staff, office manager Cynthia Johnson and real estate appraiser Daniel Comes, and neither of them spoke to Respondent about the property. (Testimony of John W. Seuntjens)

7. Much of Respondent's testimony at hearing lacked credibility because it was implausible, was inconsistent with her own prior statements to the deputy and her email to Evans, was inconsistent with other more credible testimony and evidence in the record, and was self-serving. The following is a summary of Respondent's testimony at hearing:

Respondent testified that her husband, who is disabled, was with her in the car when she went to the Oneida Street property to take photographs and gather information for a BPO. Respondent testified that she never mentioned her husband's involvement to anyone before because he is not a licensed real estate professional and because no one asked her. Respondent acknowledged that she saw the Midwestern Land & Auction for sale sign at the property and that she knew that Seuntjens was the listing broker. Respondent testified that she was "concerned" that the property did not look "trashed out." She discovered the tractor and trailer, which she described as surrounded by weeds and looking like they had been there for a while. According to Respondent, the tires on the

Case No. 12-058 Page 8

trailer were not all inflated and she did not think it was road worthy. Respondent estimated the value of the trailer and tractor at \$6000.

Respondent used her cell phone to call the number on the "For Sale" sign, and asked for Jack, and male who answered the phone identified himself to her as Jack. She asked "Jack" about the tractor and trailer, and expressed her concern that these personal property items had not been removed before the property was listed. "Jack" told her that the guy who was doing the work for him needed some help getting stuff off the property.

On her way back to Denison, Respondent decided to stop in and speak to Kenard Smith in Woodbine. Respondent asked Smith if he was interested in a tractor if she knew where he could get one, and he told her he was. Smith told her that he had spotted the tractor on the Oneida Street property in April or May and was interested in it, but he couldn't find its owner.

Respondent told Smith that they had permission to remove the property but that it would then have to sit for 3-4 months while they waited to see if the owner claimed it. They agreed to meet at the property later that same day. Respondent's husband, Steve Pagel, drove their pickup truck, and Swift helped them attach the trailer to the pickup. Smith did not feel comfortable driving the trailer down the road with the appliances on it so he asked to remove them and said he would clean them up later. Respondent admits that no one had gone back to clean up the appliances prior to the theft report being filed. She explained that they were going to go back but "it was cold."

Respondent and her husband drove the trailer to her son's home in Vail, where they left it in his back yard. Swift removed the tractor from the property after Respondent and her husband left. After removing the tractor and trailer, Respondent tried to find its owner "through the internet, phone books, anywhere she could think of" but came to a "dead end."

About three weeks later, Swift called Respondent and told her that she would be hearing from the sheriff's department. Respondent spoke to the sheriff, and he told her that no charges would be filed. Swift came a few

days later and picked up the trailer from her son's property and returned it to Knox.

Respondent further testified that Freddie Mac contacted her, requested a "plan of action," and "kept on her unmercifully wanting a copy of all of her phone records." Respondent told them she could not provide her cell phone records because she was secondary line on her daughter's account, all bills are paid online, and there was no way to obtain a copy of the phone calls made. Respondent testified that she finally told the Freddie Mac representative that she did not talk to Jack in order to "shut him up" and because she "did not have time for this." Respondent had done business with Freddie Mac for seven years, but has lost her Freddie Mac business as a result of this incident. Respondent continued to maintain, however, that she spoke to Jack or someone claiming to be Jack.

Respondent testified that she still did not think that she did anything wrong but agreed that there would have been a better way to do it. She testified that in the future she would have permission in writing before removing personal property.

(Testimony of Respondent)

- 8. Respondent's husband, Steve Pagel, also testified at hearing. Pagel is disabled and depends on Respondent's income. He testified that if Respondent lost her license, it would "destroy us." Pagel testified that he was in the car with Respondent when she first visited the Oneida Street property on January 6, 2012. Pagel recalled seeing the tractor and trailer at the property, but he did not get out of the car. Pagel further testified that he was present in the car with Respondent when she called Seuntjens on her cell phone to ask about the tractor and trailer. Pagel reports that he heard Respondent ask for "Jack" and heard her side of the conversation, which lasted just a few minutes. Afterward, Respondent told Pagel that Jack asked her for her assistance and asked if she knew anyone that could help him get rid of the stuff at the property. Pagel further testified that they went back to Denison to get his pick up and spoke to the "other guy" who helped them hook the trailer to their pick up. Pagel testified that they took the trailer to his step-son's home in Vail. (Testimony of Steve Pagel)
- 9. Kenard Smith also testified at hearing. Smith has known Respondent for over 40 years and has done work for her. Smith believed that he could rely on Respondent when she told him something. Smith was familiar with the Oneida Street property, had

driven by it a couple of times prior to Respondent contacting him, and had seen the tractor and trailer, which were visible from the road. Swift believed he first saw the tractor and trailer about 2-3 months before Respondent spoke to him about them. He agreed that it might have been in November that he first saw the tractor and trailer on the property. Swift testified that he had gone to the courthouse to try to figure out who owned the tractor so he could try to buy it. Swift had previously told Respondent that he was interested in buying a tractor and to let him know if she ever came across one. According to Swift, Respondent told him that the stuff had to be cleaned off the property before it could be listed. Swift did not know that Respondent was not the listing agent for the property, and he thought it was Respondent who needed the property cleaned up.

Smith went to the property with Respondent and her husband and helped them hook up the trailer to their pickup truck. Items were removed from the trailer, and it was empty when Respondent took it away. The tractor had two flat tires, and Swift hauled it away on a trailer. Swift testified that he had to do some work on the tractor's carburetor to get it working again. Swift testified that Respondent told him that the tractor was his to keep unless they were contacted by the proper owner. After the sheriff's deputy called, Swift contacted Respondent about the trailer. Respondent told him that agents are required to clean up property before it is listed, and that she had spoken to Seuntjens and he gave her permission to remove the tractor and trailer from the property. This was the first time that Respondent mentioned Jack Seuntjens to Swift. Swift went to Vail to pick up the trailer from Respondent, and he then relinquished both the tractor and trailer to Howard Knox. (Testimony of Kenard Smith)

CONCLUSIONS OF LAW

Iowa Code section 543B.29 provides, in relevant part:

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

- c. Professional incompetency.
- d. ...engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Iowa Code section 543B.34 authorizes the commission to suspend or revoke a license issued under Iowa Code chapter 543B for the following reasons:

- *h.* Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.
- k. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

193 IAC 18.2 authorizes the commission to initiate disciplinary action against a licensee on any of the following grounds:

- 1. All grounds set forth in Iowa Code sections 543B.29, 542B.34, and 543B.61.
- 8. A violation of one or more of the acts or omissions upon which civil penalties may be imposed, as described in 18.14(5).

193E IAC 18.14(5)(s) provides, in relevant part:

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations for which a civil penalty may be imposed:

s. Violating any of the remaining provisions in 193E-Chapters 1-20 inclusive, which have not heretofore been specified in this rule.

The preponderance of the evidence established that Respondent removed personal property valued at more than \$6000 from real property listed by another broker. Respondent did so without any authorization to do so from the owner of the personal property, from the owner of the real property, or from the listing broker. Respondent's claim that she called Jack Seuntjens and received permission from him or someone claiming to be him was not credible. Seuntjens and Daniel Comes both credibly testified that they never spoke to Respondent about the tractor and trailer and never gave her permission to remove the tractor and trailer from the property. It is implausible that anyone from Midwestern Land & Auction would have authorized Respondent to remove Howard Knox's tractor and trailer from the property.

Respondent's claim that she could not obtain copies of her cell phone records simply because the bill was paid online was not credible. Respondent provided no

documentation whatsoever of her efforts to obtain her cell phone records to corroborate her claim that she called Midwestern Land and Auction. Moreover, Respondent's inconsistent explanations for her actions also lacked credibility. Based on this record, it appears that Respondent led Kenard Smith to believe that she was or would be the listing agent for the property and that she had authorization to remove the tractor and trailer from the property. Respondent did not tell Smith about Jack Seuntjens' alleged authorization of the removal until after Smith was contacted by law enforcement. Respondent's claims that her actions were motivated by her interest in helping to clean up the property also lacked credibility, especially in light of the fact that she had Smith unload old appliances and junk from the trailer and then left these items on the property.

Respondent's unauthorized removal of the tractor and trailer was professionally incompetent and constituted a practice harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c) and (d); 543.34(1)(h) and (k)(2011) and 193E IAC 18.2(1), (8) and 18.14(5)(s). Respondent's actions caused Howard Knox to be temporarily deprived of the possession and use of his tractor trailer and could have damaged another broker's business relationship with Fannie Mac. Moreover, Respondent's lack of candor with the Board reflects poorly on her professionalism and trustworthiness.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Broker License (B41352) issued to Respondent Jane Pagel shall be suspended for a minimum period of six (6) months. Prior to reinstating her license, Respondent must provide written verification of her completion of the following continuing education: 12 hours of Developing Professionalism and 8 hours of Federal and State Laws Affecting Iowa Practice. These hours of continuing education shall be in addition to the continuing education hours required for license renewal.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Case No. 12-058

Page 13

Dated this day of January, 2014.

Susan Sanders, Chair

Iowa Real Estate Commission

cc: Thomas E. Gustafson

36 South 12th Street, P.O. Box 57

Denison, Iowa 51442 (CERTIFIED)

John Lundquist

Assistant Attorney General

Hoover State Office Building (LOCAL)

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. Any judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.

Department of Commerce Professional Licensing Bureau

FILED	March 9, 201	<u>s</u> (Da	ate)	
	Board / Commis	ssion		

200 EAST GRAND, SUITE 350 DES MOINES, IOWA 50309

IN RE:) CASE NUMBER: 12-058
Jane Pagel) CASE NOWIBER: 12-038
Broker (B41352000)	ORDER TO REINSTATE LICENSE
1604 3 rd Avenue South Denison, IA 51442)))
RESPONDENT)

Now on this 9th day of March 2015, upon the lowa Real Estate Commission's [Commission] receipt of the Commission approved twelve (12) hour course "Developing Professionalism and Ethical Practices" and eight (8) hour course "Federal and State Laws Affecting Iowa Practice", and the Respondent's fulfilment of the six (6) month license suspension, the Commission hereby immediately reinstates the Respondent's suspended real estate broker license.

IT IS THEREFORE ORDERED that Respondent's lowa real estate broker license is reinstated.

Dated this 9th day of March 2015.

Jethay M. Evans, Executive Officer Iowa Real Estate Commission