

511

provided all material information in her knowledge, possession, custody, or control to the Commission as an affirmative assertion, knowing and intending that the Commission would rely upon the same. Allen further acknowledges that: (A) she has no knowledge of any information which is material to the pending complaint proceeding which has not already been fully disclosed to the Commission; (B) in deciding to accept this Stipulation and Consent Order, the Commission has reasonably relied upon the accuracy and the completeness of Allen's disclosures and warranties thereof; and (C) the representations contained in this Paragraph 4 are material to and substantially contributed to the Commission's decision to accept this Stipulation and Consent Order. Allen further acknowledges that, if she has made any misrepresentations to the Commission regarding the subject matter of this complaint preceding, either by omission or commission, the Commission may vacate this Stipulation and Consent Order and re-institute the prosecution of this case against Allen.

5. On June 2, 1997, the Commission Issued a Real Estate Salesperson's License to Allen, and on April 1, 2003, the Commission Issued a Real Estate Broker's License to Allen.

6. Respondent Jane Hartman Heimbouch worked as a real estate salesperson under Respondent Allen from on or about February 23, 2011, until on or about February, 2014.

7. While under Respondent Allen's supervision, from about March, 2011, until September, 2013, Respondent Heimbouch engaged in behavior that was in direct violation of several statutes, and/or rules, under the Nebraska Real Estate License Act. These violations were evidenced by her actions in several transactions as outlined in Heimbouch's Stipulation and Consent Order for Case No. 2014-013 and include, but may not be limited to, violations of:

- (a). NEB. REV. STAT. § 81-885.24(16) (it is an unfair trade practice to violate any provision of NEB. REV. STAT. §§ 76-2401 to 76-2430.), NEB. REV. STAT. § 76-2421(1) (At the earliest practicable opportunity during or following the first substantial

contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall, in one or more of the following particulars: (a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and (b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing....), and NEB. REV. STAT. § 76-2422(4) (Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419...).

- (b). NEB. REV. STAT. § 81-885.24(3) (it is an unfair trade practice for a licensee to fail to account for and remit any money coming into his or her possession belonging to others.), NEB. REV. STAT. § 81-885.24(4) (it is an unfair trade practice for a licensee to commingle the money or other property of his or her principals with his or her own.), NEB. REV. STAT. § 81-885.24(24) (it is an unfair trade practice for an associate broker or salesperson to fail to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker.), NEB. REV. STAT. § 81-885.24(26) (it is an unfair trade practice for a licensee to violate any rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Act.), 299 NAC 3-005 (provides that, "[e]arnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account."), NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.), 299 NAC 5-003.14 (failure to deposit any funds received as an earnest money deposit within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. In the event an offer is not accepted, said earnest money deposit shall be returned forthwith.), and 299 NAC 5-003.15 (withholding earnest money when the purchaser or seller is rightfully entitled to the money; provided, a broker may retain

funds to cover expenses he or she has prepaid for a purchaser or seller from the broker's funds.)

- (c). NEB. REV. STAT. § 81-885.24(20) (it is an unfair trade practice for a licensee to fail to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.), NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.), 299 NAC 5-003.18(failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited seller's agent for the property; the prospective purchaser's limited buyer's agent; or the dual agent of the seller and the prospective purchaser.)

Findings

8. The State Real Estate Commission of the State of Nebraska, after due consideration, finds as follows:

- (a). Geraldine B. Allen by her actions set forth in Paragraphs 1 through 7 above, has violated Nebraska Administrative Code, Title 299, Chapter 5, Section 003.022 (Failure by a designated or employing broker to supervise his or her associate brokers and salespersons.) by failing to supervise respondent Heimboach as set forth by all the paragraphs inclusive of this Stipulation and Consent Order.
- (b). Geraldine B. Allen by her actions set forth in Paragraphs 1 through 7 above, has violated NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section), by failing to supervise Respondent Heimboach as set forth by all the paragraphs inclusive of this Stipulation and Consent Order.

9. Respondent Geraldine B. Allen admits that the allegations as stated in Paragraphs 1 through 8 above are true. Allen agrees with the actions of the Commission and accepts the penalty which shall be made part of her permanent record maintained in the office of the State Real Estate Commission of the State of Nebraska, and which shall be received into evidence in any subsequent proceeding against her, should one arise.

10. Respondent Geraldine B. Allen has had no prior disciplinary action taken against her Nebraska real estate broker's license.

11. The following disciplinary action is imposed upon the respondent Geraldine B. Allen in the public interest and for the protection of public health, safety, and welfare:

ACCORDINGLY, IT IS ORDERED, AS FOLLOWS:

A. The Nebraska real estate broker's license of Respondent Geraldine B. Allen is hereby suspended for a period of three (3) years, with the entire balance of such three (3) year suspension stayed and served on probation. Should Allen violate any law administered by the State Real Estate Commission of the State of Nebraska during the entirety of her probationary suspension period, it may result in a Show Cause proceeding being brought against her by the Commission, in which case, her Nebraska real estate broker's license may be suspended for the remainder of the probationary suspension period. Also, should Allen violate any law administered by the State Real Estate Commission of the State of Nebraska during the entirety of her probationary suspension period, it may result in a new disciplinary complaint proceeding being brought against her by the State Real Estate Commission of the State of Nebraska.

B. Within thirty (30) days of the signing of this Order by the Chairperson of the Commission, Respondent Geraldine B. Allen shall pay a civil fine in the amount of \$1,500.00. Said civil fine payment shall be submitted to the Commission under separate cover letter, addressed to Commission Director Greg Lemon, with reference to Case No. 2014-013.

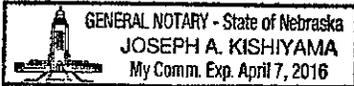
C. Respondent Geraldine B. Allen shall within the next ninety (90) days be required to complete nine (9) hours of continuing education, in addition to the mandatory eighteen (18) hours required by the Nebraska Real Estate License Act, in the areas of License Law, Contracts, and Ethics.

Dated this 13th day of May, 2014.

Geraldine B Allen
Geraldine B. Allen

STATE OF NEBRASKA)
)
COUNTY OF SCOTTS BLUFF)

Now on this 13 day of MAY, 2014, before me, a duly appointed and qualified Notary Public, personally appeared Geraldine B. Allen, known to me to be the same and identical person who signed the above and foregoing Stipulation and Consent Order and acknowledges the execution thereof to be his voluntary act and deed.



Notary Seal

JK

Notary Public Signature

Complaint No. 2014-013

Accepted and approved this _____ day of _____, 2014.

STATE OF NEBRASKA, *ex rel.*, STATE
REAL ESTATE COMMISSION OF THE
STATE OF NEBRASKA

By: _____
John A Gale, Chairperson

Attest By:

Greg Lemon, Director

