

BEFORE THE STATE REAL ESTATE COMMISSION OF THE STATE OF NEBRASKA

STATE OF NEBRASKA,)
STATE REAL ESTATE COMMISSION)
OF THE STATE OF NEBRASKA, ex. rel.)
Joan Phillips)
Complainant,)
v.)
DENNIS JAMES MCGUIRE)
Respondent.)

Case No. 2015-015

STIPULATION AND CONSENT ORDER

Respondent, Dennis James McGuire (hereinafter "McGuire"), and the State of Nebraska, ex rel., State Real Estate Commission of the State of Nebraska, Complainant, (the "Commission") hereby agree and stipulate as follows:

- 1. On July 17, 2015, a complaint was filed against McGuire for alleged violations of the Nebraska Real Estate License Act. The complaint was issued in the above-captioned case and is incorporated as a part of this Stipulation and Consent Order.
2. McGuire recognizes his right to a hearing on this matter pursuant to law, acknowledges that he knowingly and voluntarily waives his right to said hearing, and acknowledges that he waives his right to any appeal from this Order of the Commission. McGuire agrees that he knowingly and willingly accepts the terms and conditions of this Stipulation and Consent Order.
3. McGuire warrants that the stipulated facts set forth in the Stipulation and Consent Order are accurate and complete and he acknowledges that he has provided all material information in his knowledge, possession, custody or control to the Commission as an affirmative assertion, knowing and intending that the Commission would rely upon the same. McGuire further acknowledges that: (A) He 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 completeness of his disclosures and warranties thereof; and (C) The representations contained in this Paragraph 3 are material to and substantially contributed to the Commission's decision to accept this Stipulation and Consent Order. McGuire further acknowledges that if he has made any material 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 his.

4. The Commission has jurisdiction over this matter.
5. McGuire was and is the holder of a real estate salesperson's license issued by the Commission on April 12, 2005.

BACKGROUND FACTS

6. At all times relevant, McGuire was employed as a real estate salesperson by employing broker Scott M. Vogt, d/b/a CBSHOME, located at 15950 W. Dodge Rd., Suite 300, Omaha, NE 68118.
7. On, May 09, 2015 Joan Phillips ("Seller"), and her husband Rick Phillips ("Seller #2"), signed McGuire's agency disclosure information form, in which McGuire did not have Seller initial the box indicating McGuire was acting as a limited seller's agent. Seller and Seller #2 signed McGuire's exclusive listing agreement with the following terms: list price \$165,000.00, cash to seller, listing to start May 11, 2015, and will terminate September 11, 2015. Seller and Seller #2 completed, and signed, the seller property condition disclosure statement.
8. On June 04, 2015, Seller signed McGuire's listing addendum/status change form, which changed the initial listing price from \$165,000.00 to \$164,000.00.
9. On June 22, 2015, Seller, and Seller #2, signed McGuire's listing addendum/status change form, which changed the listing price from \$164,000.00 to \$160,000.00.

10. On June 24, 2015, Seller, Seller #2, and McGuire's managing broker signed a listing cancellation agreement terminating the May 09, 2015, exclusive listing agreement.

11. On, June 26, 2015, Seller sent a text message to McGuire asking where McGuire put the property's key that was contained in McGuire's lock box. Seller's Agent responded, "In the bush next to the porch." Seller then texted McGuire, "You threw our key in the bush? Cancel our listing." McGuire responded, "Is that what you want?" Seller replied, "I told you that Monday."

12. On June 26, 2015, McGuire e-mailed Seller a copy of the signed listing cancellation agreement, along with the statement, "Here you go, you mentally unbalanced bitch. I feel sorry for Seller #2."

FINDINGS

13. The Commission incorporates the allegations as outlined in Paragraphs 1 through 12 above as if fully set forth herein.

14. The Commission finds that McGuire has violated unfair trade statute Neb. Rev. Stat. § 81-885.24(29) (demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson) for using profane language directed at Seller, and for losing custody of the key to the Sellers property requiring Sellers to have the property rekeyed.

15. The Commission finds that McGuire has violated unfair trade statute Neb. Rev. Stat. § 81-885.24(16) (violating any provision of sections 76-2401 to 76-2430), and agency statute Neb. Rev. Stat. § 76-2417(1) (Aa licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including)...: by losing custody of the key to the property causing Sellers to have to rekey the property.

16. McGuire admits that the allegations as stated in Paragraphs 1 through 15 above are true. McGuire agrees with the actions of the Commission and accepts the discipline which shall be made a part of his permanent record maintained by the Commission.

17. McGuire has no prior disciplinary actions against his Nebraska real estate salesperson's license.

18. The following disciplinary action is imposed upon McGuire in the public interest and for the protection of public health, safety, and welfare:

ACCORDINGLY, IT IS ORDERED, AS FOLLOWS:

A. The Nebraska salesperson's License of Dennis James McGuire is suspended for a period of one (1) year, with the first thirty (30) days served on suspension, and the remainder stayed and served on probation. The suspension period shall commence within thirty (30) days of the signing of this Order by the Chairperson of the Commission.

B. Within thirty (30) days of the signing of this Order by the Chairperson of the Commission, Respondent Dennis James McGuire shall pay a civil fine in the amount of \$500.00. Said civil fine shall be paid to the Commission under separate cover letter addressed to Commission Director Greg Lemon with specific reference made to Case No. 2015-015.

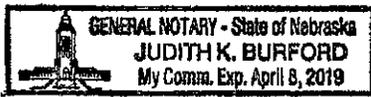
C. Within six (6) months of the signing of this Order by the Chairperson of the Commission, Respondent Dennis James McGuire shall complete one (1) three (3) hour continuing education course, above and beyond the mandatory hours required for renewal, in professionalism. The course shall be selected from the following: 1) Course 0748R- Professionalism Required: High Standards of Professional Conduct, 2) Course 0349- Risk Management for Real Estate Professionals, or 3) Course 0497R- Ethics & Professional Practice.

Dated this 12 day of August, 2016.

Dennis James McGuire
Dennis James McGuire

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

NOW on this 15 day of August, 2016, before me, a duly appointed and qualified Notary Public, personally appeared Dennis James McGuire, known to me to be the same and identical person who signed the above and foregoing Stipulation and Consent Order and acknowledge the execution of the same to be his voluntary act and deed.



Notary Seal

Judith K. Burford
Notary Public Signature

Case No. 2015-015

Accepted and approved this ____ day of _____, 2016.

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

By:

John A. Gale, Chairperson

Attest By:

Greg Lemon, Director