

SECTION 76-2419 - FAILURE TO FULFILL DUTIES AND OBLIGATIONS OF DUAL AGENT

VIOLATION	COMPLAINT	DATE OF ORDER	PENALTY
<p>Section 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public inconsistent with the Nebraska Real Estate License Act, in each of the following particulars, Title 299, N.A.C. Ch. 5-003.07 in each of the following particulars, by failing to comply with the following: 76-2419(2) and 76-2418(c)(iii) by failing to disclose in writing to the client adverse material facts; 76-2419(2) by failing to disclose to the buyer information relevant to the transaction or client; Ch. 5-003.04 by failing to make known, in writing, to any purchaser, prior to the buyer becoming obligated to purchase the property, his interest in the property for sale; 81-885.24(29) by demonstrating negligence to act as a broker.</p>	<p>98-013, 98-022, 98-024 - Commission vs. Kenneth John Jansen</p>	<p>March 23, 1999</p>	<p>Stipulation and Consent Order. License suspended from May 1, 1999 through December 31, 2000, with the first 45 days of said suspension served and the remaining time stayed and served on probation; plus twelve (12) hours of continuing education to include three (3) hours in agency, three (3) hours in disclosures, three (3) hours in license law, and three (3) hours to be determined by Director.</p>
<p>Section 81-885.24(19) by failing to include a date of expiration on the listing contract; 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically: Title 299, N.A.C. Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintaining of trust accounts; Ch. 5-003.10 by failing to identify to the seller, in writing, at the time the offer was presented and accepted, those categories of cost the seller would be expected to pay at closing, failing to prepare a written estimate of the costs the seller would be expected to pay at closing, and failing to obtain the signature of the seller on said document; Ch. 5-003.11 failing to identify to the purchaser, in writing, at the time an offer was written by the purchaser or a counter-offer was accepted by the purchaser, those categories of costs the purchaser would be expected to pay at closing, failing to prepare a written estimate of the costs the purchaser would be expected to pay at closing and failing to obtain a signature of the purchaser on said written document; Ch. 5-003.14 by failing earnest money deposit within 48 hours or before the end of the next banking day after an offer is accepted, in</p>	<p>1999-035 - Commission vs. Charles E. Degaillez</p>	<p>December 14, 1999</p>	<p>Stipulation and Consent Order. License suspended for two years, with said suspension stayed and served on probation, from December 14, 1999 through December 13, 2001; plus twelve (12) hours of additional continuing education to include three (3) hours in trust accounts, three (3) hours agency, three (3) hours in license law, and three (3) hours in disclosures.</p>

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<p>writing, unless otherwise provided in the purchase agreement; Ch. 5-003.24 and 71-2120 by, when acting as an agent of the purchaser, the Respondent failed to obtain the signed receipt of the purchaser on the Seller Property Condition Disclosure Statement; Ch. 5-003.07 and Ch. 5-003308 by failing to comply with 76-2401 through 76-2430 in the following particulars: 76-2421 by failing to provide a written copy of , or properly complete, the current brokerage disclosure pamphlet to a seller or buyer who is not entered into a written agreement for brokerage services wit a designated broker at the earliest practicable opportunity during or following the first substantial contact, 76-2419 by failing to obtain the written consent of the buyer and seller to act as a dual agent, 76-2422 and 76-2417 by acting as a limited agent for the seller without entering into a written agency agreement; 81-8853.24(29) by demonstrating negligence, incompetency or unworthiness to act as a broker.</p>	<p>1999-035 - Commission vs. Charles E. Degaillez</p>		
<p>Section 76-2421 by failing, at the earliest practicable opportunity during or following the first substantial contact with the Buyers who had not entered into a written agreement for brokerage services with the designated broker, to provide the Buyers with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the Commission, by failing to disclose in writing the types of brokerage relationships the Respondent is offering to the Buyers and by failing to disclose in writing to the Buyers who Respondent is representing; 76-2422(4) by acting as a dual agent without obtaining the written agreement of the Buyer and Seller; 76-2419(1) by acting as a dual agent without the informed consent of all parties to the transaction; 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act; specifically, the stipulated facts demonstrate a violation of Title 299, NAC, Ch. 5-003.09 by acting for more than one party in a transaction without the informed written consent of all parties involved in the transaction; 81-884.24(29) by demonstrating negligence.</p>	<p>2001-007 - Terry & Pamela Weldin vs. H. James Merrigan</p>	<p>May 22, 2001</p>	<p>Stipulation and Consent Order. License suspended for thirty (30) days, with entire period stayed and served on probation from May 22, 2001, through June 20, 2001; plus an additional six (6) hours of continuing education including three (3) hours in the area of agency and three (3) hours in the area of disclosures to be completed by November 21, 2001.</p>

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<p>Section 81-885.24(22) by making a substantial misrepresentation; 81-885.24(26) by violating any rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically, Title 299, N.A.C., Ch. 5-003.07 by failing to comply with the requirements set forth in 76-2401 through 76-2430, particularly, 76-2418(1)(b) by representing a buyer but failing to exercise reasonable skill and care for the client; 76-2419 by failing to perform the terms of the written agreement and exercise reasonable skill and care for the client and promote the interest of the client with the utmost good faith, loyalty and fidelity; 76-2421(1) by failing, at the earliest practicable opportunity during or following the first substantial contact with the seller or buyer who has not entered into a written agreement for brokerage services to provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the Commission and disclose in writing which party the licensee is representing; 81-885.24(29) by demonstrating negligence to act as a salesperson.</p>	<p>2001-038 - William J. & Cindy C. Sarraillon vs. Vincent Muniz, Jr.</p>	<p>April 3, 2002</p>	<p>Stipulation & Consent Order. License suspended for thirty (30) days with entire period served on probation from April 3, 2002, through May 2, 2002; plus an additional six (6) hours of continuing education, including three (3) hours in the area of agency and three (3) hours in the area of license law to be completed by October 2, 2002.</p>
<p>Section 76-2418(1) by failing to exercise reasonable skill and care for the buyers and by failing to promote the interests of the client with the utmost good faith, loyalty and fidelity in that Respondent did not allow the buyers to have a furnace and air-conditioning inspection, selected the closing date for Respondent's convenience, failed to discuss home inspections and home warranty plans and failed to allow the buyers to have a final walk-through inspection; 76-2419(2) in that Respondent failed to exercise reasonable skill and care for the buyers and to promote the interests of the buyers with the utmost good faith, loyalty, and fidelity, as follows: Respondent discouraged the buyers from having a furnace and air-conditioning inspection rather than encourage same, Respondent selected the closing date for Respondent's convenience rather than the convenience of the buyers, Respondent failed to discuss and recommend to the buyers</p>	<p>2003-021 - Commission vs. Gary William Smith</p>	<p>August 20, 2003</p>	<p>Stipulation & Consent Order. License suspended for 6 months, from September 1, 2003, through February 29, 2004, with the first 15 days served on suspension and the remainder of the period stayed and served on probation; plus an additional 6 hours of continuing education, including 3 hours in the area of agency and 3 hours in the area of license law, to be completed by February 29, 2004.</p>

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<p>home inspections and home warranty plans, and Respondent failed to recommend the buyers have a final walk-through prior to closing; 76-2421(1) by failing at the earliest practical opportunity during or following the first substantial contact with a buyer who has not entered into a written agreement for brokerage services with a designated broker to provide that person with a written copy of the current Brokerage Disclosure pamphlet, and by failing to 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; 81-885.24(22) by making a substantial misrepresentation in that Respondent represented to the buyers the furnace and air-conditioning system worked fine and an inspection would be a waste of money; § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson in that he failed at the earliest practicable opportunity during or following the first substantial contact with the buyers: to provide them with a written copy of the current Brokerage Disclosure Pamphlet, to disclose in writing to the buyers the types of brokerage relationships Respondent was offering to the buyers, and to disclose in writing to the buyers which party Respondent was representing and further, Respondent advised the buyers: the furnace and air-conditioning system worked fine and an inspection of same would be a waste of money.</p>	<p>2003-021 - Commission vs. Gary William Smith</p>		
<p>Section 81-885.24(2) by intentionally using advertising which is misleading or inaccurate in any material particular when Respondent sends correspondence regarding a listing to a client or customer on his own company letterhead rather than on letterhead under the direct supervision of the broker and not in the name the broker is conducting business as recorded with the Commission; 81-885.24(3) by failing to account for and remit any money or funds coming into his or her possession belonging to others; 81-885.24(24) by failing to place as soon after receipt as practicable, in the custody of his broker, any funds entrusted to him by any person dealing</p>	<p>2003-017 - Commission vs. Vincent Muniz, Sr.</p>	<p>September 24, 2003</p>	<p>Stipulation & Consent Order. License suspended for 5 years, from October 1, 2003, through September 30, 2008.</p>

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<p>with him as the representative of his licensed broker; 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, to wit: Title 299, Ch. 2-003 by failing to advertise in the name his designated broker is conducting business as recorded with the Commission; and Ch. 3-003 by failing to account for money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction and advancing money by his principal for expenditures on behalf of said principal; 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson; and 76-2419(2) by failing to exercise reasonable skill and care on behalf of a client and to promote the interest of the client with the utmost good faith, loyalty and fidelity as identified in 76-2417 and 76-2418.</p>	<p>2003-017 - Commission vs. Vincent Muniz, Sr.</p>		
<p><u>Maloney</u>: Section 81-885.24 (29) demonstrating negligence to act as a broker. Maloney prepared advertising and disseminated the advertising to the public, i.e., a flyer and a Multiple Listing Service Detail Report, that incorrectly identified the number of acres. <u>Curtis</u>: Section 76-2419 (2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 76-2417 and 76-2418 unless otherwise provided for in this section; Neb. Rev. Stat. § 76-2418 (1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the client and (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence to act as a salesperson. Curtis failed to exercise reasonable skill and care for the buyer and failed to promote the interests of the buyer with the utmost good faith, loyalty, and fidelity by failing to write the buyer's Offer to include two (2) tractors and the required implements needed to mow the lawn, and by signing transaction documents "Margaret T. Maloney by Tracy Curtis", instead of signing the transaction documents as Tracy Curtis.</p>	<p>2006-050 Emilio Zuniga vs. Margaret Theresa Maloney and Tracy Gayle Curtis</p>	<p>May 24, 2007</p>	<p>Stipulation and Consent Order. <u>Maloney</u>: License censured; plus three (3) hour of additional continuing education in the area of license law to be completed by November 20, 2007. <u>Curtis</u>: License censured; plus six (6) hours of additional continuing education with three (3) hours in the area of agency and three (3) hours in the area of contracts to be completed by November 20, 2007.</p>

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Section 76-2419 (1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to Neb. Rev. Stat § 76-2422. Newburn failed to obtain the informed written consent of all parties to the transaction to act as a limited Dual Agent.	2007-023 Kevin Delong vs. Debbie A. Newburn	October 11, 2007	Stipulation and Consent Order. License censured; plus six (6) hours of additional continuing education with three (3) hours in the area of agency and three (3) hours in the area of license law to be completed by April 8, 2008.