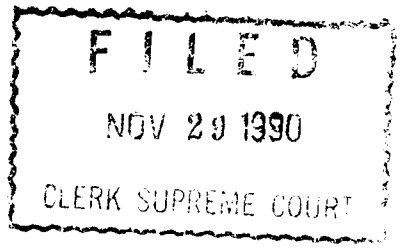
IN THE COURT OF APPEALS OF IOWA

No. 0-279 / 89-1503



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JOHN J. SWEENEY, Broker,

Appellant,

vs.

IOWA REAL ESTATE COMMISSION,

Appellee.

Appeal from the Iowa District Court for Allamakee County, Robert E. Mahan, Judge.

Appellant appeals the district court decision upholding the Iowa Real Estate Commission agency action. **AFFIRMED.**

Richard J. Howes and Ronald L. Anderson of Howes & Anderson, P.C., Des Moines, and Jeanne K. Johnson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Kathy Mace Skinner, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

The Iowa Real Estate Commission (Commission) filed a complaint against licensed real estate broker John J. Sweeney on July 21, 1988, accusing him of several violations of Iowa Code section 117.34. The complaint accused Sweeney of misrepresentation, false promises, acting for more than one party in a transaction without the knowledge of all parties, and failing to remit money to its rightful owner within a reasonable period of time. The allegations stem from a sales transaction involving two clients and two homes. The transactions occurred between August 23, 1986 and November, 1986.

After a hearing, the Commission imposed professional discipline on Sweeney. The discipline consisted of suspension of Sweeney's real estate broker's license for two years followed by one year of probation, a $1,000 civil penalty and a requirement he complete a twelve hour educational course.

Sweeney challenged the Commission's action by filing a petition for judicial review. Following remand, the Commission deleted two of its findings based on lack of substantial evidence, but did not alter the penalties imposed. The district court upheld the Commission's modifications and Sweeney appeals.

Our scope of review is limited to a determination of whether the district court made errors of law when

reviewing the agency decision. Iowa Code § 17A.19 (1989); McClure v. Real Estate Comm'n, 356 N.W.2d 594, 596 (Iowa App. 1984). We apply the standards of section 17A.19(8) to the agency action to determine whether we agree with the district court's decisions. Norland v. Iowa Dep't of Job Serv., 412 N.W.2d 904, 908 (Iowa 1987). Section 17A.19(8) limits the district court's review to a determination of whether the agency committed any errors of law.

Chapter 17A provides the district court shall reverse or modify agency action if affected by error in the application of an administrative rule or law, if unsupported by substantial evidence in the record when viewed as a whole, if the agency acted unreasonably, arbitrarily, or capriciously, or when making its decision the agency abused its discretion. McClure v. Iowa Real Estate Comm'n, 356 N.W.2d at 596. The appellate court owes an agency only limited deference on matters of law, including statutory interpretation, because the judiciary alone determines law issues. Norland v. Iowa Dep't of Job Serv., 412 N.W.2d at 908.

The legislature vested the real estate commission with broad authority to determine what practices are harmful or detrimental to the public and what constitutes unworthiness. Milholin v. Vorhies, 320 N.W.2d 552, 554 (Iowa 1982). Our factual review is limited because the Commission has at its disposal the facilities and expertise

to appropriately resolve detailed and complicated fact questions. McClure v. Iowa Real Estate Comm'n, 356 N.W.2d at 597. We can only intercede when the Commission clearly acts unconstitutionally, in violation of statutory mandate, or absent substantial support in the record. Id.

The Commission found Sweeney's conveyance of a house by quitclaim deed instead of by warranty deed as provided for in the contract for sale constituted substantial misrepresentation in violation of Iowa Code section 117.34(1)(1989) and a false promise to induce purchase, in violation of Iowa Code section 117.34(2)(1989).

Sweeney argues no damage occurred by substituting a quitclaim deed for a warranty deed because a quitclaim deed is an effective mode of conveyance and transfers the grantor's title to the grantee. Swab v. Appanoose County Club, 203 N.W.2d 318, 319 (Iowa 1972). This argument fails to account for the differences in what each type of deed conveys in addition to conveying title.

"A warranty deed is a deed containing a covenant of warranty." 26 C.J.S. Deeds § 1. 26 C.J.S Deeds § 8 states:

> A quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, if any, at the time, rather than the property itself. A quitclaim deed is a substantive mode of conveyance. The grantor, by use of a quitclaim deed, does not thereby affirm the possession of any title.

"A quitclaim deed does not import that the grantor possesses any interest at all, and, indeed, excludes any implication that he [or she] has any title or interest." 26 C.J.S. Deeds § 118.

In situations where a grantor possesses a clear title, a quitclaim and warranty deed are equally effective modes of conveyance. The difference arises from the guarantees made about the interest the grantor is prepared to convey.

Even though the quitclaim deed did serve to convey title in this case, that fact does not affect the significant differences existing between the two types of conveyancing instruments and that the contract for sale contained a condition the sellers convey by warranty deed. The Commission further found Sweeney's actions incompetent by permitting the sale to close on a quitclaim deed when the abstract had not been brought up to date. The Commission certainly could find Sweeney's failure to apprise buyers of a change from a warranty deed to a quitclaim deed constituted substantial misrepresentation and a false promise to induce purchase.

The Commission also found Sweeney failed to fully inform his clients of his role throughout the whole transaction. The parties all appeared to place a great deal of trust in Sweeney and felt he was acting as their agent. The Commission specifically stated Sweeney "placed himself on both sides thus 'acting for more than one party

in a transaction,' in violation of Iowa Code § 117.34(4)(1987)." We find substantial evidence in the record to support the Commission's findings.

One party claims confusion about whether a $5,000 home equity loan was a second mortgage and the actual sale price of his home. We find the record supports the Commission's assertion Sweeney "further failed the parties by permitting sales to close without written statements which put those already disadvantaged by lack of experience at a further disadvantage."

The Commission also found multiple irregularities in Sweeney's actions with respect to his purchase and immediate resale of property in which he had previously entered a listing agreement with the sellers. The Commission found Sweeney should have put his purchase agreement with respect to the property in writing and further, he placed his own interests over his clients' interests as shown by the fact he collected a commission on the sale as well as realizing a profit on the resale. Sweeney claims he only purchased the property in order to enable the sellers of the house he purchased to purchase the house they wanted. We find substantial evidence in the record to support the Commission's finding that Sweeney failed to act as a fiduciary with respect to the transaction by becoming involved as a buyer and seller.

The Commission points to several requirements in the purchase contract for the second house which were not met such as: (1) real estate taxes to be prorated as of possession; (2) the sellers would bring the abstract up to date at their own expense; and (3) the sellers would convey by warranty deed. The Commission appears to place significance on the number of irregularities finding "the foregoing transactions . . . were fraught with misrepresentation and deception by the Respondent and . . . he intentionally failed to prepare and distribute necessary documents to all parties involved." We also find the amount of irregularities occurring throughout the transaction significant. Additionally, the Commission finds the fact Sweeney failed to record the deed for the house he purchased until after he had resold it went beyond a technical oversight or the characterization of inattention to detail when viewed in light of Sweeney's overall conduct with respect to his clients.

The penalties instituted by the Commission appear to be relatively harsh, but neither the trial court nor ourselves are empowered to substitute our own judgment for that of the Commission in matters of this kind. McClure v. Iowa Real Estate Comm'n, 356 N.W.2d at 597. Only upon a showing the Commission exercised its power for reasons clearly untenable or to an extent clearly unreasonable could we intercede. Id. Although we find the penalties harsh we do

not find the Commission clearly abused its discretion when implementing them. Accordingly, we affirm the Commission's actions with respect to its findings of fact and imposition of penalties upon broker Sweeney.

AFFIRMED.