

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 S.E. HULSIZER
ANKENY, IOWA

IN RE:) CASE NUMBER: 88-058
)
)
Associated Counselors, Inc.) INFORMAL SETTLEMENT
Firm)
License Number F02071)

Pursuant to Iowa Code Section 17A.10(1987) and 700 Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between Associated Counselors, Inc. (Associated) and the Iowa Real Estate Commission (Commission), who agree as follows:

STIPULATED STATEMENT OF FACTS

1. The Commission had jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1987) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. Associated is, and was at all times during the following events, a broker holding real estate license number F02071. Associated has a branch office (license number F02071001) in DeWitt, Iowa. The error referred to herein occurred at the DeWitt branch office.

3. Iowa Code Section 117.46(1)(1987) states:

Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salesperson on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 220.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession. (Emphasis supplied).

4. 193E Iowa Administrative Code Section 1.27(117) states in relevant part:

2. Unless there is a written agreement between a buyer and a seller to the contrary, the interest on the account shall be transferred quarterly to the state. The beginning of the

first quarter is July 1, 1985. The broker may have the depository remit the interest directly, or the broker may remit the interest, but in either case, it will be the responsibility of the broker to see that the interest is remitted. The amount to be remitted to the state will be the net of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. If the interest is remitted by the broker, the broker shall include with the remittance a copy of the applicable bank statement(s). (Emphasis supplied).

5. 193E Iowa Administrative Code Section 4.40(117) provides a list of violations for which civil penalties may be imposed. Within that list are the following:

4.40(6)k--Failing to account for and remit to the state accrued interest due in accordance with Iowa Code Section 117.46.

6. The interest earned on the trust account was nor remitted to the State from April, 1986 to May, 1988.

7. Accordingly, Associated violated Iowa Code Section 117.46(1987) as well as 193E Iowa Administrative Code Sections 1.27(117) and 4.40(6)k(117).

8. Associated has taken corrective action by remitting this interest.

AGREED ORDER

1. Associated has the right to an administrative hearing on this matter, but waives the right to hearing and all attendant rights by freely entering into this Informal Settlement.

2. Associated's DeWitt branch erred by failing to remit the interest or see that the interest was remitted to the State on a quarterly basis. In entering into this agreement, the company's brokers assure the Commission that the company will abide by the above-referenced provisions in the future.

3. This document will become a part of the record of Associated, and may be considered by the Commission in determining the nature and severity of the disciplinary action to be imposed for any future license law violation by the broker.

4. Failure to comply with the provisions of this Agreed Order shall be considered prima facie evidence of a violation of Iowa Code Sections 117.29(3) and 117.34(2)(1987). However, no action may be taken against a licensee without a hearing as provided for in Iowa Code Section 117.35(1987).

5. This settlement is subject to the approval of the Commission. If the Commission fails to approve this settlement, it shall be of no force or effect on either party and shall not be admissible for any purposes at any further proceedings in this matter.

6. No disciplinary action is taken against the company's broker-officers nor the branch office manager.

Dated this 3rd day of January,

[Redacted Signature]

[Redacted Signature]

Eugene R. Holst, Broker for Associated Counselors, Inc.

Dennis L. Stolk, Broker for Associated Counselors, Inc.

Signed and sworn to before me this third day of January, 1989.

[Redacted Signature]

Notary Public, State of Iowa

FOR THE IOWA REAL ESTATE COMMISSION:

Dated this 19th day of January, 1989.

[Redacted Signature]

James R. Berry, Chairperson

Executed this 19th day of January, 1989.

[Redacted Signature]

Kenneth L. Smith
Executive Secretary