

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

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IN RE:	)	CASE NUMBER: 88-030
Kenneth L. Black (B18528)	)	
Broker	)	
	)	
529 Church Street	)	INFORMAL SETTLEMENT
Ottumwa, IA 52501	)	
	)	
	)	

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Pursuant to Iowa Code Section 17A.10(1989) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between Kenneth L. Black and The Iowa Real Estate Commission (Commission). The parties agree as follows:

STIPULATED STATEMENT OF FACTS

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1989) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. Kenneth L. Black is and was at all times during the following events, a licensed real estate agent. His license number is B18528.

3. Kenneth L. Black is currently employed as a Broker-Associate with Roger A. Yeager of Ottumwa, Iowa.

4. On April 11th through April 13, 1988, Auditor Bernard Hall of the Department of Inspections and Appeals attempted to examine the trust account of Kenneth L. Black. Mr. Hall found the trust account in such disarray that neither Mr. Hall nor Mr. Black were able to reconcile the account. The trust account had not been balanced since April, 1984.

5. On April 26, 1988, Mr. Hall returned to complete the examination of Kenneth L. Black's trust account.

6. Broker Black failed to deposit \$1,000.00 earnest money received from Mary Kinney and Ada Fay Johnson in the Summer of 1986. The funds were paid out of the trust account on September 10, 1986, without having ever been deposited, thereby causing a trust account shortage. Broker Black had use of this \$1,000.00 until he made a deposit on March 19, 1988.

7. Broker Black held funds in the trust account after the closing without of the informed written consent of the parties as exemplified in the following transactions:

	<u>Name</u>	<u>Address</u>	<u>Last Entry</u>	<u>Amount</u>
A.	Cloke	503 Walnut, Eldon	10-08-86	\$ 50.00
B.	Droz	1202 Jay	09-21-87	112.50
C.	Fox	301 Wildwood	04-02-86	30.00
D.	Glotfelty	1324 E. 4th	06-15-86	105.00
E.	Hopkins	1211 W. Highland	09-11-87	35.00
F.	Livingston		10-14-86	78.72
G.	Reichen	R.R. 4, Ottumwa	03-24-87	137.14
H.	Thomas	Richland	02-16-88	20.00

8. Broker Black failed to remit the security deposits and the rents to the Veteran's Administration on the following properties:

	<u>Name</u>	<u>Last Entry</u>	<u>Amount</u>
	227 Marianne	08-02-85	\$ 500.00
	311 Carlisle	08-02-85	1,405.00
	115 S. Foster	08-02-85	1,409.72

9. Broker Black spent more money than was received into the trust account on the following properties:

	<u>Name</u>	<u>Address</u>	<u>Last Entry</u>	<u>Amount</u>
A.	Deutsch	201 E. Harrison, Richland	01-25-87	<\$169.80>
B.	Rafferty	1221 Brentwood	09-29-86	< .04>
C.	Selleck	1202 Jay	08-07-86	< 15.00>
D.	Sels	Ollie	12-09-87	< 5.00>

10. Broker Black failed to maintain sufficient funds in the trust account to cover bank charges. Broker Black carried a negative personal funds balance of <\$29.72> in the trust account.

11. Broker Black failed to reconcile the trust account on a regular basis.

12. Broker Black failed to properly account for the client's money in the trust account, thus demonstrating incompetence in handling the trust account.

13. Iowa Code Section 117.34(7)(8)(1989) states:

"The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima-facie case, request the Department of Inspections and Appeals to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

7. Failing, within a reasonable time to account for or to remit any moneys coming into the licensee's possession which belong to others.

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

14. 193E Iowa Administrative Code Section 1.27(117) states:

Trust Account. Earnest payments, rents collected, property management funds, and other trust funds received by the broker shall be deposited in an identified "trust" account in a bank, savings and loan association, savings bank, or credit union located in Iowa.

A broker shall maintain in the broker's office a general ledger for the trust account and an account ledger for each account or transaction which shall provide a complete record of all moneys received on real estate transactions, rents and management funds, including the sources of the money, the date of receipt, depository and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The notification to the commission of the name, depository, and address of the broker's trust account shall include the account number.

1. All money belonging to others and accepted by the broker or the broker's salesperson on the sale, purchase or exchange of real property located in the state of Iowa shall be no later than the next banking day after acceptance of the offer be deposited in one or more interest-bearing checking accounts separate from the money belonging to the broker, except for funds deposited to cover bank service charges as specified in Iowa Code Section 117.46. The name of the separate account(s) shall be identified by the word "trust."  
(Emphasis supplied.)

15. 193E Iowa Administrative Code Section 4.40 states:

"Violations for which civil penalties may be imposed"

5. Maintaining inadequate transaction records such as:

- a. Failing to maintain a general ledger.
- b. Failing to maintain individual account ledgers.

AGREED ORDER

By agreement it is therefore, ORDERED, ADJUDGED, AND DECREED by the Iowa Real Estate Commission as follows:

1. Broker Kenneth L. Black has the right to a hearing on this matter, but waives his right to a hearing and all attendant rights by freely entering into this Informal Settlement.
2. Broker Kenneth L. Black agrees to adopt proper bookkeeping procedures through use of the required ledgers and monthly trust account reconciliations as a preventive measure against trust account irregularities in the future if he again becomes a sole proprietor or broker in charge.
3. By authority of 193E Iowa Administrative Code Section 4.40(5)A and 4.40(5)B, Kenneth L. Black shall pay a civil penalty of \$300.00. Kenneth L. Black shall deliver a certified check payable to the "Iowa Real Estate Commission" no later than the last working day of November, 1989 to satisfy this requirement. The certified check must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 88-030.
4. Broker Kenneth L. Black shall take 12 hours of continuing Education within twelve (12) months of the signing of this Informal Settlement. These twelve (12) hours shall be taken in the area of Broker Pre-Licensing and shall be in addition to all other real estate education hours required by law. Proof of compliance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of signing this Informal Settlement by the commission. The certificates of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 88-030.
5. This Informal Settlement shall be made a part of the permanent record of Broker Kenneth L. Black 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 violations by Broker Kenneth L. Black.
6. Failure to comply with the provision of this Agreed Order shall be considered prima facie evidence of a violation of Iowa Code Section 117.29(3) and 117.34(2)(1989). However, no action may be taken against a licensee without a hearing as provided for in Iowa Code Section 117.35(1989).
7. 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.

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88-030

(5)

FOR THE BROKER:

Dated this 6 day of November, 1989.

[Redacted Signature]

Kenneth L. Black

Signed and sworn to before me this 6 day of Nov., 1989.

[Redacted Signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this 25 day of January, 1990.

[Redacted Signature]

Marlys Nielsen, Chairperson

Executed this 25<sup>th</sup> day of January, 1990.

[Redacted Signature]

Kenneth L. Smith  
Executive Secretary