

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

IN RE:)

CASE NUMBER: 90-067)

Michael R. Borschuk (B03479))
Broker)

INFORMAL SETTLEMENT)

621 16th Street)
Sioux City, IA 51105)

IN RE:)

Cyndi A. Unger (S19434))
Salesperson)

1019 27th Street)
Sioux City, IA 51103)

Pursuant to Iowa Code Section 17A.10(1991) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between 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(1991) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. Michael R. Borschuk is, and was at all times during the following events, a licensed real estate broker. His license number is B03479.

3. Cyndi A. Unger is, and was at all times during the following events, a licensed real estate salesperson. Her license number is S19434 and she is licensed with Michael R. Borschuk, Broker in Charge.

4. On December 14, 1989, Cyndi A. Unger of Century 21 Market Place listed property located at 2136 Isabella, Sioux City, Iowa. The property was owned by Robert and Conny Dahl.

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5. On January 2, 1990, Cyndi A. Unger of Century 21 Market Place presented an offer to purchase to Robert and Conny Dahl. The offer was accepted subject to FHA financing, with closing on or about March 15, 1990. The offer included \$200.00 earnest money from the Buyers. Scott and Annette Carlson, which was deposited into Century 21 Market Place trust account.

6. On March 2, 1990, Cyndi A. Unger of Century 21 Market Place presented an offer to purchase from Scott and Annette Carlson for property located at 2520 Mc Paul, Sioux City, IA and owned by Robert and Ardis Tobin. The offer transferred the \$200.00 earnest money from the trust account on Dahl-Carlson transaction to the Tobin-Carlson transaction without the knowledge of Robert and Conny Dahl.

7. Broker Borschuk or Salesperson Unger did not obtain an informed written consent from Robert and Conny Dahl (Sellers) and Scott and Annette Carlson (Buyers) to release the \$200.00 earnest money from the trust account.

8. 193E Iowa Administrative Code Section 1.27(1) states:

No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold the deposit in the trust account until a written release is received from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time payment may be made into court.

AGREED ORDER

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

1. Michael R. Borschuk and Cyndi A. Unger have the right to a hearing on this matter, but waive their right to a hearing and all attendant rights by freely entering into this Informal Settlement.

2. Michael R. Borschuk and Cyndi A. Unger are hereby REPRIMANDED.

3. Michael R. Borschuk and Cyndi A. Unger agree that no funds shall be disbursed from the trust account prior to closing without the informed written consent of all the parties.

4. Michael R. Borschuk and Cyndi A. Unger shall each take twelve hours of real estate continuing education in "Trust Account and Closing Procedures". This course must be approved as a "Broker Pre-license Course". [(See 3.2(3)(117))]. These hours shall be in addition to all other real estate continuing education hours required by law for license renewal. The original Certificate of Attendance for the course must be submitted to the Commission within thirteen (13) months of the signing of this Informal Settlement by the Commission as evidence that this requirement has been fulfilled. The Certificate of Attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 90-067.

5. This Informal Settlement shall be made part of the permanent record of Michael R. Borschuk, Broker and Cyndi A. Unger, Salesperson and shall 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 the Broker and the Salesperson.

6. 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)(1991). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35 (1991).

7. The within settlement is subject to the approval of the Commission and if the Commission fails to approve this settlement, it shall be of no force or effect on either the Commission or the licensee, and it shall not be admissible for any purposes at any further proceedings in this matter.

FOR THE BROKER:

Dated this 2nd day of OCTOBER, 1991.

[Redacted Signature]

Michael R. Borschuk

Signed and sworn to before me this 2nd day of October, 1991.



[Redacted Signature]

Notary Public, State of Iowa

FOR THE SALESPERSON:

Dated this 2nd day of OCTOBER, 1991.

[Redacted Signature]

Cyndi A. Unger

Signed and sworn to before me this 2nd day of October, 1991.



[Redacted Signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this 17 day of OCTOBER, 1991.

[Redacted Signature]

Jerry F. Duggan, Chairperson

Executed this 17 day of OCTOBER, 1991.

[Redacted Signature]

Roger L. Hansen
Executive Secretary