

DEPARTMENT OF COMMERCE
PROFESSIONAL LICENSING DIVISION
1918 S.E. HULSIZER AVENUE
ANKENY, IOWA

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| IOWA REAL ESTATE COMMISSION, |) | |
| |) | |
| Complainant |) | CASE NO. 89-009 |
| |) | DIA NO. 90DOCRE-3 |
| v. |) | |
| |) | |
| MERLE R. CONRADI |) | FINDINGS OF FACT, |
| (S10548) |) | CONCLUSIONS OF LAW, |
| |) | DECISION AND ORDER |
| Salesperson/Respondent |) | |

On February 28, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Merle R. Conradi, a licensed Iowa real estate salesperson (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of Iowa Code sections 117.34(1), (8), (5) and 193E Iowa Administrative Code 1.27 and 4.40(6)a, i.

On June 21, 1990 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The entire Commission was present for the hearing. The Commissioners are Joe Ann Lutz, Jerry Duggan, Marlys Nielsen, Robert Christensen, and James R. Berry. The State was represented by John Parmeter, Assistant Attorney General. The Respondent appeared in person, and was represented by Bart Schwieger. Kathy Skinner, Assistant Attorney General, was the Commission's legal advisor. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the administrative law judge. The hearing was open to the public. The Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f) to deliberate its decision and instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Iowa Real Estate Commission has jurisdiction of this matter under Iowa Code chapters 17A, 117, and 258A (1989) as well as the administrative rules found at chapter 193E of the Iowa Administrative Code.

2. The Respondent has been, at all times relevant to the matters contained herein, licensed as an Iowa real estate salesperson. (Testimony of Respondent).

3. In July 1988 Respondent agreed to find a suitable tenant for a three-bedroom home located at 427 S. Hackett Road, Waterloo, Iowa and owned by Donald and LaVonne Lyons. The Lyons' niece was a secretary in the office of Respondent's employer, Perpetual Partners. While Respondent's business is primarily sales, he does manage rentals for the United Methodist Church. According to Respondent, he told the Lyons that he would do a credit and reference check on the tenants and would stop at the home once a month to check for problems. The Lyons understood that Respondent would secure a credit bureau report on the tenants. (Testimony of Respondent, LaVonne Lyons).

4. In return for his services, Respondent was to receive a fee equivalent to one month's rent. Respondent found tenants for the home, a married couple with two children. They had owned their own business, a pizza restaurant, for four years. A 13-month lease, at a monthly rent of \$425.00, was signed by Respondent for the owners and by the tenants. The lease provided that the tenants would find a home for their dog. (Testimony of Respondent, LaVonne Lyons; State's Exhibit 1).

5. As a credit check, Respondent ascertained that the tenants owned their own business for four years, and he questioned who their suppliers were. The tenants were able to pay \$850.00 up front, the security deposit and first month's rent. Respondent felt that this was an adequate credit check for a monthly rent of \$425.00. Respondent did not get a credit bureau report on the tenants. (Testimony of Respondent, LaVonne Lyons; State's Exhibit 3; Respondent's Exhibits A, B).

6. The initial \$850.00 was paid by the tenants to Respondent. He retained \$425.00 as his fee and forwarded \$425.00 to the Lyons for the August rent. Respondent did not put his \$425.00 fee in his broker's trust account. He deposited it directly into his personal account. (Testimony of Respondent, LaVonne Lyons, Ron Siepker).

7. In September, the tenants sent a rent check for \$400.00 to the Lyons. The Lyons alerted the Respondent, and he went to the home and the tenants gave him the additional \$25.00. In October, the tenants' rent check for \$425.00 was returned due to insufficient funds. (Testimony of Respondent, LaVonne Lyons; State's Exhibit 2).

8. Respondent offered to go to the tenants to get a cashier's check for \$425.00. The Lyons declined, stating that they wanted to forego the rent and serve a three-day eviction notice. The Lyons had heard complaints from their previous neighbors about the tenants' dog and that there were many people coming and going

from the rental house. Respondent served the three-day notice. (Testimony of Respondent, LaVonne Lyons; State's Exhibit 6).

9. Respondent went to the house for an exit inspection when the tenants were ready to move. The wife had her mother with her as a witness. Respondent found the property to be in good condition with the exception of a burn hole in the kitchen carpet and an unmowed lawn. Respondent had previously told the Lyons that the dog had chewed a hole in the garage insulation. (Testimony of Respondent; State's Exhibit 2).

10. One week later the Lyons inspected the house. Mrs. Lyons testified that she found the stove and broiler dirty, the bathroom grout black with mold, the living room carpet filthy, plaster chipped from the walls from nails and moving furniture, lawn unmowed, and gutters bent and broken. She submitted estimates and receipts of the costs of cleaning the house and repairing the damage. The receipts and estimates totaled \$444.41, but the Lyons did not have the carpet replaced which was \$176.64 of that total. (Testimony of LaVonne Lyons; State's Exhibit 4).

11. Respondent agreed to return his \$425.00 fee to the Lyons and to pay them \$176.64 for damages. He intended to collect the \$176.64 from the tenants. Respondent paid the Lyons a total of \$643.50, \$42.50 of which was interest. (Testimony of Respondent, LaVonne Lyons; State's Exhibit 8).

CONCLUSIONS OF LAW

1. Iowa Code section 117.34(5) provides:

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 the 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:

. . .

5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker.

2. 193E Iowa Administrative Code 1.27 provides:

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.

3. The clear language of Iowa Code section 117.34(5) and 193E Iowa Administrative Code 1.27 establishes that a salesperson is required to deposit all property management funds in an identified "trust" account and may not accept a commission from any person except his employer, who must be a licensed real estate broker.

The preponderance of the evidence established that Respondent accepted a commission of \$425.00 directly from the Lyons and deposited it in his personal account.

The Respondent points to the provisions of Iowa Code section 117.7(6) (1989) and argues that this transaction was excluded from the requirements of chapter 117. The Commission disagrees. Iowa Code section 117.7(6) provides:

117.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, or advertising of any real estate in any of the following cases:

. . .

6. An isolated real estate rental transaction by an owner's representative on behalf of said owner; such transaction not being made in the course of repeated and successive transactions of like character.

This provision cannot be read in isolation. The rest of Iowa Code section 117.7 excludes owners or lessors and their regular employees, attorneys in fact, attorneys, receivers or trustees in bankruptcy, administrators, executors, guardians or those acting under court order or under the authority of a deed of trust, trust agreement, or will, and auctioneers in public sales. The purpose of Iowa Code section 117 is to regulate the practice of real estate brokers and salespersons. It is incongruous that the statute would then exempt the broker or salesperson from coverage because they had only one transaction with a particular owner. If this were true, a large percentage of real estate transactions would be exempt as "isolated occurrences."

The logical reading of Iowa Code section 117.7(6) is that it applies to non licensees who represent an owner in an isolated transaction. It is isolated not because it is one owner per

transaction, but because it is a single transaction. Otherwise, persons could essentially engage in the business of real estate and avoid obtaining a license.

The only case that interprets the statute is consistent with the Commission's interpretation. In Blakely v. Miller, 232 Iowa 988, 7 N.W.2d 11 (1943), the Iowa Supreme Court held that a real estate broker was not subject to revocation for acts performed while acting as a referee under court order. In that case the court noted that the acts of the licensee were not connected in any way with the performance of his duties as a salesman or real estate broker. The legislature saw fit to specifically except one acting under order of court and this licensee was acting under order of court.

In this case, the Respondent was not acting under court order, he was conducting business as a licensed real estate salesperson in the state of Iowa. He was not exempt from the provisions of Iowa Code chapter 117.

Respondent has violated Iowa Code section 117.34(5) (1989) and 193E Iowa Administrative Code 1.27.


4. The preponderance of the evidence did not establish a violation of the licensing law by Respondent's failure to run a credit bureau report on the tenants. The evidence suggested that the parties to this transaction each misunderstood what the other meant by a "credit check."


5. The preponderance of the evidence did not establish a violation of Iowa Code section 117.34(1)(8). The evidence concerning the condition of the property was conflicting. Evaluating the conditions of property is a subjective judgment and a preponderance of the evidence failed to establish that Respondent substantially misrepresented the condition of the property at the time he inspected it. The owners inspected it one week later. The State also failed to establish that Respondent is unworthy or incompetent to act as a real estate salesperson in such a manner as to safeguard the interest of the public. There were misunderstandings between Respondent and the Lyons, but Respondent refunded his fee to them and reimbursed their expenses in cleaning and repairing the home.

DECISION AND ORDER


IT IS THEREFORE THE ORDER of the Iowa Real Estate Commission that the licensee, Merle R. Conradi (S10548) must attend a twelve (12) hour broker, pre-licensing course in trust accounts and closing procedures within thirteen (13) months of this Order. This requirement is in addition to the continuing education normally required for relicensure.

Executed this 19th day of July, 1990.


E. Joe Ann Lutz, Chair
Iowa Real Estate Commission


Margaret LaMarche
Administrative Law Judge

Issued this 20th day of July, 1990.


K. Marie Thayer, Administrator
Professional Licensing Division

ML/jmm

PROOF OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record hereinafter at their respective addresses disclosed on the pleadings, on July 20, 1990
