

BEFORE THE IOWA REAL ESTATE EXAMINING BOARD  
1918 S.E. Hulsizer  
Ankeny, Iowa 50021

IOWA REAL ESTATE EXAMINING BOARD	)	
Complainant	)	CASE NUMBER 87-062
	)	
vs.	)	
	)	
PHYLLIS C. COOPER (S10573)	)	
Salesperson-Respondent	)	
	)	FINDINGS OF FACT,
C. J. COOPER (B00489)	)	CONCLUSIONS OF LAW,
Broker-Respondent	)	DECISION AND ORDER

On January 26, 1988 the Iowa Real Estate Examining Board (hereinafter the Board) filed a complaint against Phyllis C. Cooper, a licensed real estate salesperson (hereinafter Salesperson-Respondent) and C. J. Cooper, a licensed real estate broker (hereinafter Broker-Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Sections 117.34(7) and 117.34(8) of the Iowa Code and 700 Iowa Administrative Code Section 1.27(1)(117).

On February 25, 1988 the Board conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate licenses of the Respondents.

The proceedings were conducted by Jenny Netcott, Hearing Officer, Department of Inspections and Appeals. The Iowa Real Estate Examining Board was present during the hearing and was represented by Assistant Attorney General Kathy Skinner. The Respondents appeared at the hearing pro se. A full presentation of facts was made by both parties.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Hearing Officer. The Hearing Officer was instructed by the Board to prepare the Findings of Fact, Conclusions of Law and Decision and Order.

DISCUSSION

The complaint filed by the Iowa Real Estate Examining Board alleged specific instances of license law violations. The first alleged violation involved the paying of unauthorized expenses from a seller's proceeds. The Respondents stated that it was necessary to repair an air conditioning unit in order to sell the property and that they attempted to contact the seller prior to authorizing the repair. The second alleged violation involved the Respondents' customary practice of paying expenses for real estate transactions from the trust account prior to closing. The Respondents stated that they had been audited three years ago and the auditor did not bring this violation to their attention.

FINDINGS OF FACT

The Iowa Real Estate Examining Board finds as follows:

1. The Iowa Real Estate Examining Board has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A, as well as the administrative rules found in Chapter 700 of the Iowa Administrative Code.
2. Phyllis C. Cooper, a licensed real estate salesperson, and C. J. Cooper, a licensed real estate broker, have been at all times relevant to the matters contained herein actively licensed. The Salesperson-Respondent is licensed to the Broker-Respondent.

Paying Unauthorized Expenses From Seller's Proceeds

3. The salesperson, as agent for the broker, listed and sold a specific piece of property.
4. The broker and salesperson hired a plumbing and heating contractor to repair the central air conditioner at a total cost of \$584.14; the buyer and the broker each paid \$100 of this cost.
5. At closing \$384.14 was withheld from the seller's proceeds to pay the remaining cost of the repair.
6. At the time of the closing the seller resided out of state.
7. The salesperson and broker attempted to contact the seller by telephone but were unable to reach him to obtain permission for the repair; the repair was not authorized by the seller.

Disbursing Trust Funds Prior To Closing  
Without The Informed Written Consent Of The Parties

8. The Department of Inspections and Appeals conducted an audit of the Broker-Respondent's real estate trust account and discovered the following:

- The Broker-Respondent pays expenses for real estate transactions from the trust account prior to closing; the Broker-Respondent does not obtain the written permission of the buyer and seller to release funds before the closing.

CONCLUSIONS OF LAW

What The Law Says

Iowa Code Section 117.34 states the Board "may suspend or revoke any license issued under the provisions of this chapter . . . if the licensee is found to be guilty of:"

"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."

700 Iowa Administrative Code Section 1.27(117) states in relevant part:

"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."

#### Application Of Law

In the first instance, the Broker-Respondent and the Salesperson-Respondent authorized the repair of a central air conditioner without receiving approval from the seller to make the repair. The seller became aware of this repair for the first time when he received his proceeds check which reflected a deduction of \$384.14 to repair the air conditioner. The seller had no previous knowledge of the need for the repair and did not authorize the Respondents to make the repair. It is interesting to note that both the Broker-Respondent and the buyer contributed \$100 each to the cost of the repair. How the Broker-Respondent arrived at the amount of the contribution versus total payment for the repair is unclear.

It is evident that the Broker-Respondent contacted a plumbing and heating contractor who informed him that the air conditioner was in need of repair. The seller did not inform the Respondents that the central air conditioner was in need of repair because he claims he was unaware of that fact. The Respondents authorized repair without obtaining the permission of the seller to deduct the expense from his proceeds check. The Board finds the Respondents erred by not obtaining permission from the seller to make a repair prior to initiating the repair. The Board finds that authorizing a repair without obtaining the permission of the seller, which in fact reduces the proceeds check remitted to the seller, constitutes professional incompetence.

In the second instance, during an audit of the Broker-Respondent's trust account it was uncovered that he customarily pays expenses for real estate transactions from his trust account prior to closing without obtaining written permission from both

the buyer and seller to release trust funds before the closing date. The Broker-Respondent did not dispute this fact but stated that his trust account had been audited approximately three years ago and the auditor did not at that time bring this incorrect practice to his attention. The Board recognizes the auditor's error and has taken that fact into consideration in rendering this decision.

The Board finds that the Broker-Respondent and Salesperson-Respondent lack a clear understanding of Iowa real estate trust account laws and rules. Iowa Administrative Code Section 1.27(1)(117) specifically prohibits the disbursement of funds from the trust account prior to the closing without the informed written consent of all parties. The Broker-Respondent consistently violates this rule by the practice of paying expenses for real estate transactions from the trust account before the closing date.


The Board concludes that there was no deliberate intent on the part of the Respondents to violate Iowa real estate trust account laws and rules. The Respondents simply failed to conduct real estate transactions according to the laws and rules governing real estate transactions in the State of Iowa. This can be attributed, in part, to the Respondents' failure to attend the appropriate educational courses in order to keep abreast of the changes in Iowa real estate laws and rules, specifically those relating to trust accounts.

#### DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds that the Respondents violated Iowa Code Sections 117.34(7) and 117.34(8), as well as 700 Iowa Administrative Code Section 1.27(1)(117).


It is therefore ORDERED by the Iowa Real Estate Examining Board that the Iowa real estate licenses of the Respondents be suspended for six (6) months effective on the date this Order is executed, with the entire six (6) months served on probation. In addition, the Respondents are ORDERED to complete twelve (12) hours of broker pre-license real estate trust account education within twelve (12) months of the date this Order is executed. The ordered trust account education cannot be a correspondence course and is in addition to all other real estate education required by law. The Respondents shall contact the office of the Board for approval prior to enrolling in a course in order to fulfill the requirements of this Order. The original certificate of attendance for the additional hours must be submitted to the office of the Board within the required time frame.

Executed this 24th day of March, 1988.

  
JAMES R. BERRY, CHAIR  
IOWA REAL ESTATE  
EXAMINING BOARD

  
JENNY NETCOTT  
ADMINISTRATIVE HEARING OFFICER

Issued this 24th day of March, 1988.

  
KENNETH L. SMITH  
EXECUTIVE SECRETARY  
IOWA REAL ESTATE EXAMINING BOARD

JN/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 herein at their respective addresses disclosed on the pleadings, on March 25, 1988  
