

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

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IN RE:	)
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Albert DeYager (B00610)	)
Broker	)
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CASE NUMBER: 87-050  
INFORMAL SETTLEMENT

STIPULATED STATEMENT OF FACTS

INTRODUCTION

1. The Iowa Real Estate Examining Board has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1987) as well as the administrative rules found in Chapter 700 of the Iowa Administrative Code.

2. Albert DeYager is, and was at all times during the following events, a licensed real estate broker.

3. On February 6, 1986, the Iowa Real Estate Commission and on August 20, 1987 the Iowa Department of Inspections and Appeals conducted audits of Broker DeYager's trust account. Those audit findings provide the basis for this Informal Settlement.

LAWS AND RULES CITED

4. Iowa Code Section 117.29 states:

"A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:"

- "2. Professional incompetency."
- "8. Willful or repeated violations of the provisions of this Act."

5. Iowa Code Section 117.34 states the Board may suspend or revoke any license 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."

6. Iowa Code Section 117.46 states:

"1. 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.

"2. Each broker shall notify the real estate examining board of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

"3. Each broker shall authorize the department of inspections and appeals to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the department. The certification and consent shall be furnished on forms prescribed by the department. This does not apply to an individual farm account maintained in

the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager.

"4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 117.6 in said common trust account and shall not commingle the broker's personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in said account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

"5. A broker may maintain more than one trust account provided the department is advised of said account as specified in subsections 2 and 3 above."

7. 700 Iowa Administrative Code Section 1.27 states in relevant part:

"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 the receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The notification to the board of the name, depository, and address of the broker's trust account shall include the account number." (First unnumbered paragraph)

"2. Unless there is a written agreement between a buyer and 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 services 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)."

"5. A broker may have as many trust accounts as needed. A "Consent to Examine and Audit Trust Account" form shall be filed in the board office for each account. Forms may be obtained from the board office."

"1.27(4) A trust account may bear interest to be disbursed to the buyers or sellers with the written approval of all parties to the contract or to the owner if the trust account is for a management account and the contract so specifies. The account shall be a separate account from the account(s) which are to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed in the management contract and shall be properly accounted for on closing statements. Service charges for the account are a business expense of the broker, and shall not be deducted from the proceeds."

8. 700 Iowa Administrative Code Section 4.40 provides a list of violations for which civil penalties may be imposed. Within that list are the following:

- 4.40(4) Failing to inform commission and remit required fees if appropriate:
  - d. When opening a trust account by not filing a consent to examine for the account.
- 4.40(5) Maintaining inadequate transaction records such as:
  - a. Failing to maintain a general ledger.

b. Failing to maintain individual account ledgers.

4.40(6) Improper trust account and closing procedures:

j. Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code Section 117.46.

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

### ADMITTED VIOLATIONS

9. Broker DeYager did not maintain a general ledger for the trust account nor an individual account ledger for each transaction.

10. By failing to maintain the general ledger and individual ledgers for each transaction, Broker DeYager violated Iowa Code Sections 117.29(2), 117.29(8), 117.34(7) and 117.34(8) as well as 700 Iowa Administrative Code 1.27 and 4.40(5) a and b (117).

11. Broker DeYager did not maintain a record of the amount of personal funds he held in the trust account.

12. By failing to maintain records which would specifically identify the amount of personal funds in the trust account, Broker DeYager violated Iowa Code Sections 117.29(2), 117.29(8), 117.34(7), 117.34(8), and 117.46(4).

13. Broker DeYager's common trust account was not an interest-bearing account. Therefore, no interest earned on his clients' trust funds was remitted to the state.

14. By failing to maintain an interest-bearing trust account and by failing to remit interest earned on that trust account to the state, Broker DeYager violated Iowa Code Sections 117.29(2), 117.29(8), 117.34(7), 117.34(8) and 117.46(1) as well as 700 Iowa Administrative Code 1.27-2, 4.40(6)j, and 4.40(6)k (117).

15. Broker DeYager opened and maintained separate interest-bearing trust accounts for specific transactions. Such accounts are provided for in the rules to allow buyers or sellers in these transactions to earn the interest. The written approval of the parties is necessary for a separate interest-bearing account to be opened. Broker DeYager did not obtain the written approval of all parties to the contract prior to depositing these funds in a separate interest-bearing account.

Examples include the following transactions:

Driesen - Van Veldhuizen  
 Van Veldhuizen - Vande Stroef  
 Ruud - Zwiép/Shults  
 Mutual Benefit Life - Van Deberg

16. By failing to obtain the written approval of all parties to the contract before depositing these funds in a separate interest-bearing account, Broker DeYager violated Iowa Code Sections 117.29(2), 117.34(8) and 117.46(1) as well as Iowa Administrative Code Section 1.27-2 and 1.27(4)(117).

17. Broker DeYager did not notify the Board of each of these trust accounts opened, nor authorize the Board or the Department of Inspections and Appeals to examine these accounts, nor obtain the certification and consent of the bank to allow the state to conduct an audit of these accounts.

18. By failing to notify the Board of each trust account opened, failing to authorize the Board to examine these accounts, and failing to obtain the certification and consent of the bank to allow the State to audit these accounts, Broker DeYager violated Iowa Code Sections 117.29(2), 117.34(8), 117.46(2), 117.46(3), 117.46(4), and 117.46(5), as well as 700 Iowa Administrative Code Section 1.27-5 and 4.40(4)d (117).

19. Broker DeYager violated Iowa Code Section 117.29(8) because he was informed by representatives of the Board orally on January 6, 1986, and in writing on February 5, 1986 of the deficiencies mentioned in paragraphs 10, 12, and 14. Despite this information, Broker DeYager did not take remedial action by the date of the next audit which was August 20, 1987.

AGREED ORDER

1. A date and time for an administrative hearing has been established for this matter, and Broker DeYager has received proper notice of this hearing.

2. Broker DeYager enters into this agreement freely and in so doing waives his right to hearing, appeal, and all other attendant rights.

3. Broker DeYager shall be placed on probation for one year commencing on the date this document is signed by the Board's Chairperson. If the licensee violates or fails to comply with any real estate law or rule during this period of probation, he will be afforded the same administrative procedures as any licensee not on probation. However, if the Board after hearing finds him guilty of a violation of the real estate license law, the Board will consider his probationary status in assessing the penalty.

4. Pursuant to 700 Iowa Administrative Code Sections 4.40(4)d, 4.40(5)a&b, and 4.40(6)j&k(117), Broker DeYager shall pay a civil penalty of \$700.00. He shall deliver a check payable to the Board no later than July 29, 1988 to satisfy this requirement. The check should come under a cover letter addressed to the Board, care of the Executive Secretary, and the letter should state, "This is remittance for the civil penalty on case #87-050."

5. Broker DeYager must determine (subject to audit by the Department of Inspections and Appeals) the amount of interest which would have accrued in the trust account since July 1, 1985 until September 23, 1987 (the date Broker DeYager changed to an interest-bearing account). Broker DeYager shall remit a check for that amount payable to the Board no later than July 29, 1988. The check shall come under a cover letter addressed to the Board, care of the Executive Secretary, and the letter should state, "This is remittance for interest on my trust account from July 1, 1985 to September 23, 1987. See Case #87-050." Enclosed must be a completed remittance form. A blank form is attached to this document. The Board will forward this interest to the title guaranty fund.

6. Broker DeYager shall take twelve hours of real estate continuing education in "Trust Accounts and Closing Procedures." This course must be approved as a "broker prelicense course" (See Iowa Administrative Code Section 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 certificates of attendance for the course must be submitted to the Board no later than June 30, 1989 as evidence that the broker has completed this requirement. The certificates of attendance must come under a cover letter addressed to the Board's Executive Secretary and must refer to Case #87-050.

7. This Informal Settlement shall be made a part of the permanent record of Broker DeYager and shall be considered by the Board in determining the nature and severity of the disciplinary sanction to be imposed for any future license law violation by Broker DeYager.

8. The within settlement is subject to approval of the Board. If the Board 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. If approved by the Board, the settlement will be deemed an agreed-upon disposition of a contested case initiated by the Board and will dispose of all matters contained in the complaint for case number 87-050.

FOR THE BROKER:

Dated this 20th day of June, 1988.



Albert DeYager, Broker

Signed and sworn to before me this 20th day of June, 1988.



Notary Public, State of Iowa

FOR THE BOARD:

Dated this 30th day of June, 1988.



James R. Berry, Chairperson

Executed this 30th day of June, 1988.



Kenneth L. Smith  
Executive Secretary

**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 July 1, 1988

[Redacted Name]