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

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IN RE:) CASE NUMBER: 88-109
Kenneth W. Fjelland (B00796))
)
Fjelland Real Estate &) INFORMAL SETTLEMENT
Farm Management, Ltd.)
203 Isabella)
P. O. Box 250)
Radcliffe, IA 50230)
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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 W. Fjelland 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 W. Fjelland is, and was at all times during the following events, a licensed real estate broker. His license number is B00796.

3. Iowa Code Section 117.46(1)(1989) states:

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. (Emphasis supplies).

4. 193E Iowa Administrative Code Section 1.27--(117) states in relevant part:

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 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.)

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 service 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). (Emphasis supplied.)

5. 193E Iowa Administrative Code Section 4.40(117) provides a list of violations for which civil penalties may be imposed. Within that list are the following:

4.40(6)j--Failing to deposit trust funds in an interest-bearing account in accordance with Iowa Code Section 117.46.

4.40(6)k--Failing to account for and remit to the state accrued interest due in accordance with Iowa Code Section 117.46.

6. The trust account of Kenneth W. Fjelland was not interest-bearing from July 1, 1985 to October 25, 1988.

7. During this period of time, Kenneth W. Fjelland was engaged in the real estate business and handling client funds through his trust account. Had the account been interest-bearing, interest would have accrued to the State's benefit.

8. No interest was remitted to the State for this time period.

9. Accordingly, Kenneth W. Fjelland violated Iowa Code Section 117.46(1989) as well as 193E Iowa Administrative Code Sections 1.27(117) and 4.40(6)j&k (117).

10. Kenneth W. Fjelland has taken corrective action by paying \$4,709.44 to the State of Iowa. This is the amount which would have accrued in the trust account had it been interest-bearing.

AGREED ORDER

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

1. Kenneth W. Fjelland 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. Kenneth W. Fjelland erred by failing to maintain an interest-bearing account and by failing to remit the interest or see that the interest was remitted to the State on a quarterly basis. Kenneth W. Fjelland agrees to abide by these provisions in the future.

3. This document will become a part of the record of Kenneth W. Fjelland 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 the broker.

4. 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).

5. 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.

Dated this 10th day of May, 1989.



Kenneth W. Fjelland

Signed and sworn to before me this 10 day of MAY, 1989.


Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this 17th day of May, 1989.


James R. Berry, Chairperson

Executed this 17th day of May, 1989.



Kenneth L. Smith
Executive Secretary