

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

IN RE:	:	CASE NUMBER: 90-038
	:	90-039
Wendell G. Harms (B04563)	:	90-040
Broker	:	
1907 Ingersoll Avenue	:	INFORMAL SETTLEMENT
Des Moines, Iowa 50312	:	
	:	

Pursuant to Iowa Code Section 17A.10 (1989) and 193E Iowa Administrative Code Section 4.12(117), this informal settlement is entered into between Wendell G. Harms and the Iowa Real Estate Commission (Commission). Parties agree as follows:

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. Wendell G. Harms is, and was at all times material hereto, a licensed real estate broker. His license number is B04563.
3. Wendell G. Harms does hereby voluntarily surrender his Broker's license to the Iowa Real Estate Commission and agrees that his surrender herein may be considered a revocation for all licensure purposes by said Commission.
4. This settlement is subject to the approval of the Commission, and if the Commission fails to approve this settlement, it will be of no force or effect on either the Commission or the licensee, and it will not be admissible for any purpose at any further proceedings in this matter. If approved by the Commission, the settlement will be deemed an agreed upon disposition of the contested cases initiated by the Commission and will

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dispose of all matters contained in the Complaint for case numbers 90-038, 90-039, and 90-040.

Dated this 14 day of Sept, 1990

[Redacted Signature]

WENDELL G. HARMS



Subscribed and sworn to before me on this 14th day of September, 1990.

[Redacted Signature]

NOTARY PUBLIC in and for the State of Iowa

Executed this 30th day of September, 1990

[Redacted Signature]

E. Joe Ann Lutz, Chairperson

Issued this 21st day of September, 1990

[Redacted Signature]

K. Marie Thayer, Administrator

Approved as to Form:

[Redacted Signature]

James C. Davis
Attorney for Broker Wendell G. Harms

[Redacted Signature]

John M. Parmeter
Assistant Attorney General

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90-040

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

IN RE:)	CASE NUMBER:	90-038
Wendell G. Harms (B04563))		90-039
Broker)		90-040
)	COMPLAINT	
2907 Ingersoll Avenue)		
Des Moines, Iowa 50312)		
)		
)		

The Iowa Real Estate Commission (Commission) alleges:

INTRODUCTION

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. Wendell G. Harms is, and was at all times during the following events, a licensed real estate broker. His license number is B04563.

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3. Bank statements of Harms Management Trust Account number 10-767-2 at First Interstate Bank of Urbandale, Urbandale, Iowa, disclose negative balances from August 15, 1988 to October 26, 1989.

4. The negative balances of Harms Management Trust Account number 10-767-2 violate the terms of the Informal Settlement/ Assurance of Voluntary Compliance for case number 85-101.

5. The negative balances of Harms Management Trust Account number 10-767-2 result in the commingling of clients' funds.

6. Broker Harms issued insufficient funds checks on Harms Management Trust Account number 10-767-2 as exemplified by the following, but not limited to:

<u>Date</u>	<u>Check</u>	<u>Paid To</u>	<u>Amount</u>
03/10/89	2663	Wendell Harms	\$250.00
06/05/89	2671	Byron Thompson	\$480.00
07/13/89	2674	Byron Thompson	\$480.00

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7. Broker Harms wrote the following checks on Harms Management Trust Account number 10-767-2, at First Interstate Bank of Urbandale, Urbandale, Iowa. The checks were returned stamped Account Closed.

<u>Date</u>	<u>Check</u>	<u>Paid To</u>	<u>Amount</u>
10/18/89	2678	Byron Thompson	\$505.00
10/18/89	2679	Byron Thompson	\$935.00

8. Broker Harms transferred trust account funds from Harms Management Trust Account number 10-767-2 at First Interstate Bank of Urbandale, Urbandale, Iowa, to Century 21 Trust Account number 16-361-8 at First Interstate Bank of Urbandale, Urbandale, Iowa, on June 14, 1989 in the amount of \$1,002.00.

9. Broker Harms failed to complete and file a Consent to Examine and Audit Trust Account form with the Iowa Real Estate Commission when opening Harms Management Trust Account number 10-767-2 at First Interstate Bank of Urbandale, Urbandale, Iowa.

CASE NUMBER: 90-039

10. Broker Harms failed to complete and file a Consent to Examine and Audit Trust Account form with the Iowa Real Estate Commission when opening the following trust accounts:

#141938	West Des Moines State Bank	West Des Moines, Iowa
#1510031830	First Interstate Bank	Des Moines, Iowa
#03078-7	First National Bank	West Des Moines, Iowa
#0012081639	Hawkeye Bank & Trust	Des Moines, Iowa
#11-80033572	Mid America Savings Bank	West Des Moines, Iowa
#03-53046189	American Federal	Des Moines, Iowa

11. The bank statement of Century 21 Tower Realty Trust Account number 141938 at West Des Moines State Bank, West Des Moines, Iowa, discloses a negative balance on November 8, 1989.

12. The negative balance of Century 21 Tower Realty Trust Account number 141938 results in the commingling of clients' funds.

13. Bank statements of Century 21 Trust Account number 16-361-8 at First Interstate Bank of Urbandale, Urbandale, Iowa, discloses negative balances from March 21, 1989 to November 8, 1989.

14. The negative balances of Century 21 Trust Account number 16-361-8 result in the commingling of clients' funds.

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15. Broker Harms issued an insufficient funds check, number 2061, on Century 21 Trust Account number 16-361-8 at First Interstate Bank of Urbandale, Urbandale, Iowa, on November 22, 1988 for \$500.00.

16. Insufficient funds check number 2061 caused Century 21 Trust Account number 16-361-8 to have a negative balance.

17. Broker Harms wrote check number 1027 on Century 21 Tower Realty Trust Account number 141938 in December of 1989 for cash. The check was written in the amount of \$1,000.00.

18. Broker Harms deposited \$5,000.00 on October 23, 1989 in Century 21 Tower Realty Trust Account 141938 to replace funds on the Patrick Brick transaction.

19. Broker Harms deposited a \$954.37 check into the Century 21 Tower Realty Trust Account number 03-078-7 at First National Bank, West Des Moines, Iowa, and on December 22, 1989, the check was returned due to insufficient funds.

20. Broker Harms deposited \$800.00 of Personal Funds into Century 21 Tower Realty Trust Account number 11-80033572 at Mid America Savings Bank, West Des Moines, Iowa, on February 17, 1990.

21. The Steve White/Paul Hoerste transaction of Broker Harms contains conflicting information. Information on the Individual Ledger card does not correspond to information relating to the transaction in the checkbook and on the bank statement. The trust account involved is Century 21 Tower Trust Account number 11-80033572.

22. Broker Harms failed to provide information requested on April 12, 1990, to the Department of Inspections and Appeals within ten (10) working days regarding the Consent to Examine and Audit Trust Account form for Century 21 Tower Realty Trust Account number 11-80033572.

23. Broker Harms failed to document the specific transaction when disbursing funds to Century 21 Tower. Examples of disbursements, but not limited to, are:

<u>Date</u>	<u>Check</u>	<u>Paid To</u>	<u>Amount</u>	<u>TA Number</u>
05/25/88	1937	Century 21 Tower	\$1,000.00	16-361-8
06/13/88	1944	Century 21 Tower	\$2,000.00	16-361-8
04/02/90	1015	Century 21 Tower	\$1,580.00	11-80033572

24. Broker Harms closed Century 21 Tower Realty Trust Account number 1510031830 at First Interstate Bank, Des Moines, Iowa, with a debit memo for \$3,428.79 and failed to account where the money was placed.

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25. Broker Harms issued commission checks to his sales staff from the Century 21 Trust Account number 16-361-8 at First Interstate Bank of Urbandale, Urbandale, Iowa as exemplified by the following, but not limited to:

<u>Date</u>	<u>Check</u>	<u>Paid To</u>	<u>Amount</u>
06/15/89	2181	Greg Young	\$1,066.69
06/21/89	2183	Lori Ronald	\$ 920.50
06/21/89	2184	Lori Ronald	\$2,496.40

26. Broker Harms issued check number 1016 to employee Linda Reed on August 10, 1989 for \$220.00. The check was written on Century 21 Tower Realty Trust Account number 141938 at West Des Moines State Bank, West Des Moines, Iowa.

27. Broker Harms deposited \$6,135.00 into Century 21 Tower Realty Trust Account number 11-80033572 at Mid America Savings Bank in West Des Moines, Iowa on April 2, 1990 to make up for a shortage of trust account funds. The April 30, 1990 bank statement for trust account 11-80033572 shows that the check was returned on April 6, 1990 due to insufficient funds.

28. Broker Harms withdrew \$1,120.00 from Century 21 Tower Realty Trust Account number 03-53046189 at American Federal in Des Moines, Iowa, on April 16, 1990. A check was not issued to withdraw the funds.

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29. Broker Harms issued check number 1006 to June Lowry in the amount of \$72,719.25. The check was written on Century 21 Tower Realty Trust Account number 11-80033572 at Mid America Savings Bank, West Des Moines, Iowa. The check was returned due to insufficient funds.

LAWS AND RULES CITED

1. Iowa Code Section 117.29(2)(3) states:

"117.29 Revocation or suspension.

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.

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3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established."

2. Iowa Code Section 117.34(8)(10) state (in part):

"117.34 Investigations by commission.

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 this 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:

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.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter."

3. Iowa Code Section 117.46(2)(4) states:

"117.46 Trust Account.

2. Each broker shall notify the real estate commission 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 therefore.

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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."

4. 193E Iowa Administrative Code Section 1.27(117) states:

"193E--1.27(117) 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. 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 receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The notification to the commission of the name, depository, and address of the broker's trust account shall include the account number."

5. 193E Iowa Administrative Code Section 1.27 5 states:

"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 commission office for each account. Forms may be obtained from the commission office."

6. 193E Iowa Administrative Code Section 4.40(4)d,(9),(16) states:

"193E--4.40(117) Violations for which civil penalties may be imposed.

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(9) Failing to provide information to the commission when requested relative to a complaint (14 calendar days).

4.40(16) Issuing an insufficient fund check on the broker's trust account."

7. Iowa Code Section Chapter 258A.3 sub paragraph 2a states:

"Authority of Licensing Boards:

2. Each licensing board may impose one or more of the following as license discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 114.21, 116.21, 117.29, 118.13, 118A.15, 147.55, 148B.7, 153.34, 154A.24, 169.13, or 602.3203 or Chapter 135E, 151, 507B, or 522, as applicable, or upon any other ground specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

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ALLEGATIONS

CASE NUMBER: 90-038

By allowing the Harms Management Trust Account number 10-767-2 to have a negative balance, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 258A.3 (2)(a).

By issuing insufficient funds checks on Harms Management Trust Account number 10-767-2, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 193E Iowa Administrative Code Section 4.40(16).

By issuing checks on the closed Harms Management Trust Account number 10-767-2, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By transferring trust account funds from Harms Management Trust Account number 10-767-2 to Century 21 Trust Account number 16-361-8, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By failing to complete and file a Consent to Examine and Audit Trust Account form with the Iowa Real Estate Commission when opening Harms Management Trust Account number 10-767-2, Broker Harms violated Iowa Code Section 117.46 (2) and 193E Iowa Administrative Code Sections 1.27 (117), 1.27 5 and 4.40(4) d.

CASE NUMBER: 90-039

By failing to complete and file a Consent to Examine and Audit Trust Account form with the Iowa Real Estate Commission when opening the following trust accounts:

Century 21 Tower Realty Trust Account number 141938
Century 21 Tower Realty Trust Account number 1510031830
Century 21 Tower Realty Trust Account number 03078-7
Century 21 Tower Realty Trust Account number 0012081639
Century 21 Tower Realty Trust Account number 11-80033572
Century 21 Tower Realty Trust Account number 03-53046189

Broker Harms violated Iowa Code Section 117.46 (2) and 193E Iowa Administrative Code Sections 1.27(117), 1.27 5 and 4.40(4) d.

By allowing the Century 21 Tower Realty Trust Account number 141938 and Century 21 Trust Account number 16-361-8 to have negative balances, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 258A.3 (2)(a).

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By issuing insufficient funds check number 2061 on Century 21 Trust Account 16-361-8, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 193E Iowa Administrative Code Section 4.40(16).

By writing check number 1027 on Century 21 Tower Realty Trust Account number 141938 for cash, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8) and 117.46 (4).

By depositing \$5,000.00 in Century 21 Tower Realty Trust Account number 141938 to replace funds on the Patrick Brick transaction, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By depositing a \$954.37 check into Century 21 Tower Realty Trust Account number 03-078-7 and having the check returned because of insufficient funds, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4), and 193E Iowa Administrative Code Section 4.40(16).

By depositing \$800.00 of Personal Funds into Century 21 Tower Realty Trust Account number 11-80033572, Broker Harms violated Iowa Code Section 117.46 (4).

By allowing the trust account records of Century 21 Tower Realty Trust Account number 11-80033572 to contain conflicting information regarding the Steve White/Paul Hoerste transaction, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By failing to provide information regarding the Consent to Examine and Audit Trust Account form for Century 21 Tower Realty Trust Account number 11-80033572, Broker Harms violated Iowa Code Section 117.34 (10) and 193E Iowa Administrative Code Section 4.40(9).

By failing to document the specific transaction when disbursing funds to Century 21 Tower Realty, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By closing Century 21 Tower Realty Trust Account number 1510031830 with a debit memo and failing to account where the money was placed, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By issuing commission checks to his sales staff from Century 21 Trust Account number 16-361-8, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

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By issuing check number 1016 on Century 21 Tower Realty Trust Account number 141938 to employee Linda Reed, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

By depositing \$6,135.00 into Century 21 Tower Realty Trust Account number 11-80033572 and having the check returned because of insufficient funds, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 193E Iowa Administrative Code Section 4.40(16).

By withdrawing \$1,120.00 of trust account funds on April 16, 1990 from Century 21 Tower Realty Trust Account number 03-53046189 without issuing a check, Broker Harms violated Iowa Code Sections 117.29 (2),(3) and 117.34 (8).

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By issuing insufficient funds check number 1006 on Century 21 Tower Realty Trust Account number 11-80033572 to June Lowry, Broker Harms violated Iowa Code Sections 117.29 (2),(3), 117.34 (8), 117.46 (4) and 193E Iowa Administrative Code Section 4.40(16).

WHEREFORE, the Iowa Real Estate Commission by virtue of its authority under Iowa Code Section 117.35(1989) has set this matter down for hearing on July 19, 1990 at 1:30 p.m., at the office of the Iowa Real Estate Commission, whereupon it will be decided after a full presentation by all parties whether the evidence presented warrants that action should be taken against the real estate license of Wendell G. Harms.

Iowa Real Estate Commission

June 28, 1990
Date


K. Marie Thayer, Administrator