

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

IN RE:)	CASE NO. 90-062
MARGERY K. KAHLER (B10588))	DIA NO. 93DOCRE-4
Broker)	
259 BROADWAY)	FINDINGS OF FACT,
BOX 228)	CONCLUSIONS OF LAW,
SPRINGVILLE, IA 52336-0228)	DECISION AND ORDER

On March 19, 1993, the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Margery K. Kahler, a licensed Iowa Broker (hereinafter Respondent). The Complaint alleged specific acts or omissions and alleged these acts or omissions constituted violations of Iowa Code sections 117.34(3), (7), (8), and (11); 117.46, and 193E IAC 1.27.

On April 22, 1993, the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa broker's license of the Respondent.

The following members of the Commission were present for the hearing and participated in making the decision: E. Joe Ann Lutz, Jack Knapp, Jerry Duggan, and Marlys Nielsen. The State was represented by Grant Dugdale, Assistant Attorney General. The Respondent did not appear, nor was she represented by counsel. 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 Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117 and 258A as well as the administrative rules found in 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 broker. Her license number is B10588. The Respondent is Broker in Charge and Sole Proprietor of Lakeland Property Shop located at 1455 State Street, Ely, Iowa. (official file)

3. Respondent listed a property owned by Roger W. Bauer and located at 1635 Main Street, Ely, Iowa. (State's Exhibits 2, 5)

4. On October 31, 1989, an offer to purchase from David and Carol Mallory was accepted by Roger W. Bauer. The offer included \$500.00 earnest money payable to Lakeland Property Shop and an agreement to rent the property until the buyer sold their out of state property and obtained financing. (State's Exhibits 1, 2, 3)

5. The \$500.00 earnest money check from David and Carol Mallory was endorsed by Lakeland Property Shop by Respondent. In her Answer, the Respondent stated that the earnest money check should have been made out to Seipker-Helbig and deposited in their trust account. However, the terms of the Uniform Purchase Agreement clearly provide that the earnest money check was to be made payable to "Lakeland Property Shop." Respondent admits endorsing the earnest money check and giving it to Roger Bauer. The earnest money check should have been deposited in the Lakeland Property Shop Trust Account and a check should then have been issued to Roger Bauer. (State's Exhibits 1, 4, 10, 12; Respondent's Answer)

6. On November 10, 1989, David and Carol Mallory issued a check to Lakeland Property Shop for \$900.00 as a payment for damage deposit of \$500.00 and \$400.00 rental payment. (Exhibit 4)

7. The \$900.00 check from David and Carol Mallory was not deposited into the trust account of Lakeland Property Shop. The Respondent admits this in her Answer, but asserts that Lakeland Property Shop was not a collector of rent. This is contradicted by the Uniform Residence Lease which specifically provides that the \$400.00 monthly rental is payable at the office of Lakeland Property Shop. (Exhibits 1, 12, 13; Respondent's Answer)

8. David and Carol Mallory continued to make rental payments payable to Lakeland Property Shop through April of 1990. The Respondent could not account for the rental checks received from David and Carol Mallory payable to Lakeland Property Shop. If the checks had been properly deposited in the trust account and the appropriate records kept, the Respondent would be able to explain what happened to the checks. (Exhibits 4, 12)

9. On March 28, 1990, David and Carol Mallory signed an agreement to terminate the lease agreement dated November 13, 1989. (Exhibit 6)

10. On May 4, 1990, David and Carol Mallory notified Respondent that the \$500.00 earnest money and \$500.00 damage deposit should be returned to David and Carol Mallory as per the rental agreement dated November 13, 1989. (Exhibits 5, 7)

11. Respondent did not return the \$1,000.00 to David and Carol Mallory. On July 10, 1990, David and Carol Mallory were awarded in small claims court a judgment of \$1,115.00 against Respondent. Respondent did not pay the judgment as ordered by the small claims court. (Exhibits 8 - 12; Respondent's Answer)

12. The Notice of Hearing and Complaint was personally served on the Respondent on March 24, 1993, and she signed an acknowledgement of receipt. (Exhibit A)

CONCLUSIONS OF LAW

1. 193E IAC 4.16 provides that a written notice of hearing, together with a statement of charges, shall be mailed to the licensee at least 20 days before the hearing by certified mail return receipt requested to the last known business address of the licensee or may be served in the manner of original notice. Delivery of personal notice to the licensee . . . may constitute commencement of the contested case proceedings.

193E IAC 4.25 provides that if a Respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the Commission may proceed to conduct the hearing and the Respondent shall be bound by the results of such hearing to the same extent as if the licensee were present.

The Respondent was personally served with notice of hearing and the complaint, in accordance with 193E IAC 4.16, but failed to appear. She is bound by this decision of the Commission to the same extent as if she had appeared.

2. Iowa Code section 117.34(7) and (8) (1991) provides in relevant 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:

• • •

(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.

3. Iowa Code section 117.46(1991) provides in relevant part:

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 salespersons 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 . . .

4. 193E IAC 1.27 provides in relevant part:

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 . . .

5. The Respondent failed to deposit the \$500.00 earnest money into the trust account, in violation of Iowa Code sections 117.34(8), 117.46 and 193E IAC 1.27.

6. The Commission was not provided the cancelled rent checks, and therefore could not examine the endorsements. However, if the rent checks had been properly deposited in the trust account, the Respondent should have the records to establish this. The Respondent states she does not know how the checks were handled. The preponderance of the documentary evidence failed to establish that the rent checks were not deposited in the trust account.

7. The preponderance of the evidence established that the Respondent failed to return the \$1,000.00 to David and Carol Mallory and failed to abide by the judgment awarded to them by the Linn County District Court. The Respondent has violated Iowa Code sections 117.34(7) and (8)(1991).

DECISION AND ORDER

The Respondent's violations of the Commission's statutes and rules relating to real estate trust accounts demonstrate that she is unworthy and incompetent to act as a real estate broker in such manner as to safeguard the interests of the public. IT IS

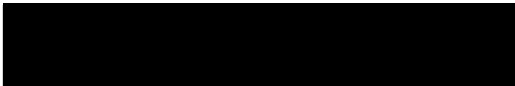
THEREFORE THE ORDER of the Iowa Real Estate Commission that the broker's license of Margery K. Kahler, No. B10588, is hereby REVOKED.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.41, that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty days of the date of this Order. In addition, the Executive Secretary shall bill the Respondent for any transcript costs associated with this hearing, and the Respondent shall remit payment within thirty (30) days of receipt of the bill.

Issued this 27th day of MAY, 1993.



Jack Knapp, Vice-Chairperson
Iowa Real Estate Commission



Roger Hansen
Executive Secretary
Iowa Real Estate Commission



Margaret LaMarche
Administrative Law Judge

ML/jmm