

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

IOWA REAL ESTATE COMMISSION,)	
)	
Complainant)	CASE NO. 89-003
)	DIA NO. 90DOCRE-1
v.)	
)	
GEORGE M. KOPP)	FINDINGS OF FACT,
(B21312))	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Broker/Respondent)	

On February 28, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against George M. Kopp, a licensed Iowa real estate broker (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of Iowa Code sections 117.31, 117.32, 117.34(10), 117.46(2)(3)(4) (1989) and Iowa Administrative Code sections 193E-1.27(5), 2.15(3)(6), 4.40(2)(4)a, d and (9).

On May 17, 1990 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Margaret LaMarche, Administrative Law Judge, Department of Inspections and Appeals, and heard by Commissioners Joe Ann Lutz, Jerry Duggan, Marlys Nielsen, Robert Christensen, and James R. Berry. The State was represented by John Parmeter, Assistant Attorney General. The Respondent did not appear for the hearing, nor was he represented by counsel.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the administrative law judge. The administrative law judge was instructed by the Commission 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 Iowa Real Estate Commission has jurisdiction of this matter under Iowa Code chapters 17A, 117, and 258A (1989) as well as the administrative rules found at chapter 193E of the Iowa Administrative Code.

269

89-003

2. The Respondent has been, at all times relevant to the matters contained herein, licensed as an Iowa real estate broker.

3. On January 27, 1989 the real estate unit of the Department of Inspections and Appeals drafted a letter to the Respondent advising him that a Complaint concerning him was pending with the Iowa Real Estate Commission. A copy of the Complaint was attached to this letter. The letter requested Respondent's response in writing within 14 calendar days. It also requested Respondent to include any documents, data, views, or arguments he has regarding this matter. The Complaint also required Respondent to deliver all trust account records to the audits division of the Department of Inspections and Appeals within 14 days of the date of the letter. (State's Exhibit 9)

4. The records of the Commission indicate that the Respondent had notified the Commission of his business address, which was 5804 Hickman Road, Des Moines, Iowa 50322. The Commission's records also indicate that the Respondent had advised them of his residence as 3201 30th Street, No. 28, Des Moines, Iowa 50310. (State's Exhibit 1)

5. In January 1989 the Department of Inspections and Appeals made four separate attempts to mail its letter of January 27, 1989 to the Respondent. The letter was sent by certified mail to George Kopp at 5804 Hickman Road, his official business address on file with the Commission. That certified letter was returned to the Department of Inspections and Appeals on February 4, 1989 with the following notation: "Return to sender moved left no address". (State's Exhibit 3)

6. The Department of Inspections and Appeals also mailed the same letter to George Kopp, Home Finders, 3725 Beaver, Des Moines, Iowa 50310 by certified mail. The first notice was given on January 30, 1989, a second notice on February 3, 1989, and the certified letter was returned as unclaimed on February 14, 1989. (State's Exhibit 4)

7. The same letter was also sent by certified mail to George Kopp, Post Office Box 2146, Des Moines, Iowa 50310. The first notice was given January 28, 1989, the second notice was given February 2, 1989, and the letter was returned as unclaimed on February 12, 1989. (State's Exhibit 2)

8. The January 27, 1989 letter was also mailed by certified mail to George Kopp, c/o Janelle Baker, 7540 West 10th Street, Lakewood, Colorado 80215. This letter was also returned as unclaimed on February 14, 1989. (State's Exhibit 5)

9. On June 29, 1989 another certified letter was sent to George Kopp at Post Office Box 2146, Des Moines, Iowa 50310. In this letter the Department of Inspections and Appeals notified the Respondent of its previous letter of January 27, 1989 and stated that the letter had been sent to four different addresses and all

were returned unclaimed. The January 27, 1989 letter was included with the June 29, 1989 letter and Respondent was again told that a response was due in writing within 14 calendar days. The June 29, 1989 letter was not returned to the Department of Inspections and Appeals. (State's Exhibits 8, 7)

10. On November 22, 1989 the Department of Inspections and Appeals sent another letter to Respondent at Post Office Box 150529, Lakewood, Colorado 80215. In this letter the department stated that it had sent the enclosed letter to Respondent by certified mail on June 29, 1989 and it was not returned. The letter further stated that the same letter had been sent to Respondent on June 12, 1989 at 2760-RS Havana Street, Post Office Box 14031, Aurora, Colorado 80014-4697. The letter again stated that a copy of the January 29, 1989 letter was enclosed and a response was due within 14 calendar days. (State's Exhibit 7)

11. On January 16, 1990 the audits division of the Department of Inspections and Appeals received a letter from Respondent dated January 11, 1990. In this letter Respondent said that he had written to the audits division on November 14, 1989 concerning the status of his Iowa real estate broker's license. Respondent further stated that he had not received a reply to this letter and was enclosing a copy of his November 14, 1989 letter. Enclosed with respondent's letter of January 11, 1990 was a letter dated November 14, 1989. It was addressed to William J. Woodhouse of the audits division and was signed George M. Kopp, Post Office Box 150529, Lakewood, Colorado 80215. In the November 14, 1989 letter Respondent states that he has recently applied for a Colorado broker's license and was informed that there is an open Complaint against his Iowa broker's license that requires resolution before Colorado would issue him a license. Respondent states that on May 24, 1989 he wrote a letter to the real estate commission asking for a copy of the Complaint and never received a copy. Respondent then offered an explanation for one of the matters alleged in the Complaint. The Department of Inspections and Appeals did not receive the letter dated November 14, 1989 until January 16, 1990. (State's Exhibit 10)

12. The Commission has on file one consent to examine and audit interest bearing trust accounts filed by George M. Kopp. It lists an account at Midland Financial Savings and Loan, Des Moines, Iowa, Trust Account No. 4058002565. Through the Complaint filed with the Commission, the Commission discovered a second trust account in Respondent's name. That account was at the First Interstate Bank of Urbandale, Account No. 170308, and entitled Property Management Trust Account. The address listed for Respondent was Post Office Box 2146, Des Moines, Iowa. (State's Exhibits 1, 11, 12)

13. The real estate commission subpoenaed the records of Respondent's trust account at First Interstate Bank of Urbandale. The records show that Respondent wrote a check on his property management trust account at First Interstate Bank of Urbandale in

the amount of \$1,056.44 on December 22, 1988. The check was made out to Pam Rankin and a notation was made that the check was for a computer. In his letter dated November 14, 1989, Respondent admitted that the computer was purchased for Home Finders, a company owned by his mother and himself. He also stated that his mother had a ledger account which was part of this trust account under which he managed several rental properties for her. Respondent also stated that he received his mother's permission to withdraw the needed funds for the computer from her account in the property management trust account. The use of trust account funds to purchase this computer was prohibited. It was a personal expenditure for Respondent. Commingling of a broker's personal funds with trust funds is prohibited. (State's Exhibits 10, 12, 13)

14. Respondent did not respond to the Commission's letter of January 29, 1989 within 14 days although he received it when it was mailed June 29 and November 22, 1989. These mailings were not returned to the Commission. Respondent never delivered his trust account records to the audits division of the Department of Inspections and Appeals as requested in the January 29, 1989 letter.

15. Respondent was personally served with a letter, proposed informal settlement, notice and complaint on March 5, 1990 at 9:30 p.m. Respondent failed to appear for the hearing. (State's Exhibit 15)

CONCLUSIONS OF LAW

Iowa Code section 117.31 (1989) states:

Every real estate broker, except as provided in section 117.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a co-partnership, association, or corporation, a duplicate shall be issued to the members of officers thereof, and a fee determined by the real estate commission in each case shall be paid for each duplicate license.

Iowa Code section 117.32 (1989) states:

Notice in writing shall be given to the real estate commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee established by rule to cover the cost of issuing the license.

Iowa Code section 117.34(10) (1989) states:

The real estate commission may upon its own motion and shall upon a 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: . . .

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.

Iowa Code section 117.46(2)(3)(4) (1989) states:

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 thereof.

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. . . .

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 \$100 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.

193E Iowa Administrative Code section 1.27(117) states:

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 monies 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 monies. The notification to the commission of the name, depository, and address of the broker's trust account shall include the account number.

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.

193E Iowa Administrative Code section 2.15(3)(6) states:

3. Failure of a broker to inform the commission in writing within five working days of a change of address of a proprietorship, partnership, or corporation is prima-facie evidence of a violation of Iowa Code section 117.32.

6. Failure of a licensee to inform the commission in writing of a change of residence address or mailing address is prima-facie evidence of violation of Iowa Code sections 117.16 and 117.18.

193E Iowa Administrative Code section 4.40(2)(4)a, d(9) states:

Violation for which civil penalties may be imposed.

2. Failing to maintain a place of business. . . .

4. Failing to inform commission and remit required fees if appropriate:

a. When changing business address (five working days) . . .

d. When opening a trust account by not filing a consent to examine for the account. . . .

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

193E Iowa Administrative Code 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 as in the matter of original notices. The Respondent was properly served with the notice of hearing and statement of charges.

193E Iowa Administrative Code 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 or hearing officer may proceed to conduct the hearing and the respondent shall be bound by the results of the hearing to the same extent as if the licensee were present.

DECISION AND ORDER

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.46(4) (1989) by removing trust account funds in the amount of \$1,056.44 to pay for a computer, which was a personal expenditure.

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.46(2) (1989) and 193E Iowa Administrative Code section 1.27 by his failure to notify the Iowa Real Estate Commission of Trust Account No. 170308 at the First Interstate Bank of Urbandale.

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.46(3) (1989) and 193E Iowa Administrative Code sections 1.27(5) and 4.40(4)d by his failure to file a Consent to Examine and Audit form with the Iowa Real Estate Commission for his Trust Account No. 170308 at the First Interstate Bank of Urbandale.

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.31 (1989) and 193E Iowa Administrative Code section 4.40(2) by his failure to maintain a place of business in Iowa.

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.32 (1989) and 193E Iowa Administrative Code sections 2.15(3) and 4.40(4)a by his failure to notify the Iowa Real Estate Commission in writing of a change in his business location.

The preponderance of the evidence established that Respondent has violated 193E Iowa Administrative Code section 2.15(6) by his failure to notify the Iowa Real Estate Commission in writing of a change of residence or mailing address.

The preponderance of the evidence established that Respondent has violated Iowa Code section 117.34(10) (1989) and 193 Iowa Administrative Code section 4.40(9) by his failure to deliver all trust account records to the audits division of the Department of Inspections and Appeals. Although the Department of Inspections and Appeals attempted unsuccessfully on several occasions to send Respondent the certified letter dated January 27, 1989, the evidence indicates that the letters sent on June 29, 1989 and November 22, 1989 did reach the Respondent. The Board did not hear from the Respondent until January 1990, and he has never delivered his trust account records.

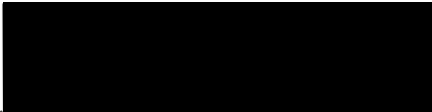
The preponderance of the evidence established that the Respondent violated Iowa Code section 117.34(10) (1989) and 193 Iowa Administrative Code section 4.40(9) by his failure to provide information to the Commission regarding a Complaint within fourteen (14) calendar days. The letter sent to Respondent on

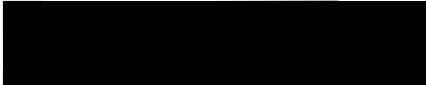
June 29, 1989 and November 22, 1989 were not returned to the Commission. The Respondent did not contact the Commission regarding the Complaint until January 16, 1990.

IT IS THEREFORE THE ORDER of the Iowa Real Estate Commission that the license of George M. Kopp, B21312, is REVOKED.

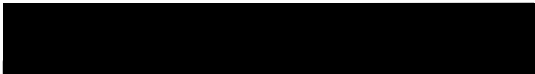
In addition, the Respondent is ordered to pay a civil penalty of Five Hundred Dollars (\$500.00), in accordance with the provisions of 193E Iowa Administrative Code 4.40 within thirty (30) days of the date of this decision.

Executed this 21 day of June, 1990.


E. Joe Ann Lutz, Chair
Iowa Real Estate Commission


Margaret LaMarche
Administrative Law Judge

Issued this 22 day of June, 1990.


K. Marie Thayer
Administrator
Professional Licensing Division

ML/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 June 22, 1990.