

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

IOWA REAL ESTATE COMMISSION,)	
)	
Complainant)	CASE NO. 89-018
)	DIA NO. 90DOCRE-5
v.)	
)	
VERN C. OLIPHANT)	FINDINGS OF FACT,
(B02076))	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Broker/Respondent)	

On May 2, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Vern C. Oliphant, a licensed Iowa real estate broker (hereinafter Respondent). The Complaint alleged specific acts and alleged these acts constituted violations of Iowa Code sections 117.46(4) and 193E Iowa Administrative Code 1.27 and 4.40(5)a, (5)b, and (6)h.

On June 21, 1990 the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The entire Commission was present for the hearing. The Commissioners are 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 appeared in person, and was represented by Kenneth Moon. Kathy Skinner, Assistant Attorney General, was the Commission's legal advisor. 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 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.

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

3. On January 25, 1989 the Department of Inspections and Appeals examined the trust account of Respondent. Ron Rasmussen, the field auditor, reported that the trust account records were incomplete. The checkbook stubs were being used as a general ledger. The individual ledgers were not complete and lacked information needed to know if there was a debit or credit balance. The report also noted that all funds were not disbursed from the trust account at time of closing. Respondent usually left his commission in the trust account and would disburse funds from the trust account for expenses such as payroll and phone bills. (Testimony of Barbara Teymer; State's Exhibit 2).

4. A previous audit of Respondent's trust records on February 21, 1985 also cited Respondent's failure to maintain a general ledger, individual ledgers, and a personal funds ledger. At that time the trust account examiner left Respondent a sample book-keeping system. (State's Exhibit 3).

5. In a letter to the Department of Inspections and Appeals, dated April 18, 1989, Respondent stated that he maintains a running record of each individual real estate transaction in the file of the different properties sold. Respondent admitted he did not keep a general ledger. Respondent checked the personal funds each month of the Trust Real Estate account from the bank. Respondent admitted that he did not remove his commission from the trust account immediately on every transaction, but ensured that the checks written never exceeded his commission due. Respondent stated that he and his staff attended continuing education classes on April 3 and 4, 1989 which included Trust Account Rules and Procedures. Respondent stated that he now maintains a general ledger, individual ledgers, and personal funds ledger, and removes his entire commission from the trust account at the close of the transaction. A copy of the Trust Funds Journal currently kept by the Respondent was introduced at the hearing and found to lack check numbers on some entries, to contain erroneous check numbers and mathematical errors. (Testimony of Respondent; State's Exhibits 1 and 5).

6. In 1987 and 1988 Respondent was out of the office at least seven months due to various hospitalizations and illnesses. During this time his secretary took care of the office. At the hearing, Respondent testified that he maintained ledgers while he was at the hospital, which were in the nature of individual ledgers and personal funds ledger. Respondent introduced these as exhibits at the hearing, and testified that the entries were made on the dates indicated. The entries on these exhibits are deficient in that they lack check numbers, and it is difficult to determine from whom many deposits were received and to whom checks were written on many of the entries. The Department of

Inspections and Appeals did not have an opportunity to examine these ledgers prior to the hearing and did not testify concerning them. (Testimony of Respondent; State's Exhibits 7, 8).

7. At the hearing, Respondent admitted that he did not disburse all funds at closing. Respondent failed to disburse all funds at closing. (Testimony of Respondent; State's Exhibits 1, 2).

8. At the hearing, Respondent admitted writing checks for office expenses from his trust account. Respondent admitted writing the checks as listed in the Complaint, paragraph 7. Respondent disbursed funds from his trust account to pay payroll, telephone bills, advertising, supplies, and Christmas gifts. Respondent did not write checks exceeding the commissions actually owed to him. (Testimony of Respondent; State's Exhibits 1, 2).

CONCLUSIONS OF LAW

1. Iowa Administrative Code section 117.46(4) provides:

4. Each broker shall only deposit funds received on real estate or business opportunity transactions as defined in section 117.6 in said common trust 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 services charges relating to said account.

2. 193E Iowa Administrative Code 1.27 provides:

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

3. The preponderance of the evidence established that Respondent failed to maintain a general ledger and therefore has violated 193E Iowa Administrative Code 1.27.

4. The Commission is not prepared to conclude that the preponderance of the evidence established that Respondent failed to maintain individual ledgers. The ledgers which were introduced at the hearing appeared deficient in several respects. Since the Commission does not have an evaluation from the Department of Inspections and Appeals on the sufficiency of these ledgers, they are uncertain as to whether they might be minimally acceptable. Since the burden of proof is on the State, the Commission will not find a violation on this allegation.

5. The preponderance of the evidence established that Respondent failed to disburse all funds at closing, in violation of Iowa Code section 117.46(4).

6. The preponderance of the evidence established that Respondent disbursed funds from his trust account to pay payroll, telephone bills, advertising, supplies and Christmas gifts, in violation of Iowa Code section 117.46(4).

ORDER

IT IS THEREFORE THE ORDER of the Iowa Real Estate Commission that the license of Vern C. Oliphant (B02076) is hereby suspended for a period of six (6) months, but that such suspension shall be stayed, and the license shall be placed on probation for a period of eighteen (18) months, subject to the following conditions:

1. Respondent shall cooperate with periodic, unannounced, special audits of his trust accounts by trust account auditors sent by the Commission;

2. In addition to the continuing education normally required for relicensure, Respondent shall complete a twelve (12) hour broker's prelicensing course in trust accounts and closing procedures. This course shall be completed within thirteen (13) months of the date of issuance of this Order.

Executed this 20th day of July, 1990.

[Redacted signature]

E. Joe Ann Lutz, Chair
Iowa Real Estate Commission

[Redacted signature]

Margaret LaMarche
Administrative Law Judge

[Redacted signature]

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 designated on the pleadings, on July 20, 1990.

[Redacted signature]