

COPY

**BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 SE HULSIZER  
ANKENY, IOWA**

IN RE:	)	
	)	
EUGENE A. SCHULTE	)	CASE NUMBER: 02-010
Broker (B32301)	)	
	)	STATEMENT
SCHULTE REAL ESTATE	)	OF
219 9 <sup>TH</sup> STREET	)	CHARGES
LAKE VIEW, IA 51450	)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapter's 17A, 543B, and 272C (2001).

Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.

EUGENE A. SCHULTE was at all material times during the following events, a licensed real estate broker in Lake View, Iowa. His license, number B32301 is in full force and effect through December 31, 2003.

COUNT I

The Respondent is charged with engaging in a practice harmful or detrimental to the public by disbursing trust funds prior to closing without the informed written consent of the parties, by withholding a portion of the earnest money deposit when the transaction failed to close, and by failing to provide in the purchase agreement for a time frame for the buyer to obtain financing, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), 543B.34(8) and 543B.56(1)(a) & (b) (2001) and Iowa Administrative Code Chapter 193E sections 1.27(1) & (8), 1.43(1)(b), 4.54(6)(b) & (c) and 4.54(19).

Page 2  
02-010  
Schulte

**CIRCUMSTANCES OF THE COMPLAINT**

1. On or about June 4, 2001, Respondent listed property located at 101 Market Street, Lake View, Iowa, owned by Robin Schade, for \$ 32,000. On or about October 10, 2001 Respondent as agent for the seller, prepared a \$27,000 offer for Annino Collison, a non-represented buyer, with \$3000 earnest money deposit, and contingent upon financing. Respondent alleges no time frame within which to obtain financing was filled in the spaces provided in item "A" of the offer because Collison had indicated she had verbal financing approval from the lender.

2. Subsequently, Respondent had contact with the lender and a closing date was set. Based upon the information provided by the lender, Respondent had the abstract of title continued to date; the abstract examined by an attorney approved by Collison, and a title opinion issued. Respondent then had the affidavit required by the title opinion prepared, as well as a warranty deed, declaration of value form, and groundwater hazard statement at a total cost of \$310. The lender canceled the first closing date and rescheduled. Prior to the rescheduled closing, the lender notified the Respondent of problems placing the loan. Unable to obtain financing, Collison requested the return of the earnest money deposit. The seller disputed the return. The Respondent alleges he negotiated a verbal agreement for the release of the money that included Collison agreeing to the \$ 310 expense deduction from the refund and on February 6, 2002, signed a settlement statement deducting the \$310 from the deposit.

3. The buyer failed to obtain financing and the transaction failed to close. On or about February 6, 2002, Respondent disbursed \$2690 of the \$3000 earnest money deposit to the buyer without the informed written consent of his client the seller.

4. Although a real estate broker is prohibited from withholding any portion of the earnest money deposit when a transaction fails to consummate, the Respondent withheld \$310 of the buyer's earnest money deposit.

**FINDING OF PROBABLE CAUSE**

On April 18, 2002 the Iowa Real Estate Commission found probable cause to file this Statement of Charges and to order that a hearing be set in this case.

Dated this 18<sup>th</sup> day of JULY, 2002.

  
Roger L. Hansen, Executive Secretary  
Iowa Real Estate Commission



Page 2  
02-010  
Schulte

8. This Stipulation and Consent Order shall be made a part of the record of the Respondent and may be considered by the Commission in determining the nature and severity of any disciplinary action to be imposed on the Respondent for any future violations of the laws and rules governing the practice of real estate.

9. Failure to comply with the terms of this Stipulation and Consent Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2002).

10. This Stipulation and Consent Order shall be presented to the Commission in closed session by the prosecuting attorney and/or Commission staff. Respondent waives any right of notice of this meeting or any right which the Respondent might have to participate in the discussion of this Stipulation and Consent Order among the Commission, the Commission staff and the prosecuting attorney.

11. This Stipulation and Consent Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members. In the event that this Stipulation and Consent Order is rejected by the Commission it shall be of no force or effect to either party.

**THEREFORE IT IS ORDERED that the Respondent is Reprimanded.**

**IT IS FURTHER ORDERED that the Respondent shall personally attend the eight (8) hour Commission approved continuing education course "Iowa Real Estate Trust Accounts." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of this agreement by the Commission. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case 02-010.**

**IT IS FURTHER UNDERSTOOD that in lieu of a civil penalty, the Respondent has reimbursed the buyer \$310.**

**IT IS FURTHER ORDERED AND AGREED that at all future times Respondent shall fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.**

Page 3  
02-010  
Schulte

**FOR THE RESPONDENT:**

This Stipulation and Consent Order is voluntarily entered into by EUGENE A. SCHULTE on this 16<sup>th</sup> day of July, 2002.

[Redacted Signature]

EUGENE A. SCHULTE, Respondent

State of IOWA )

County of SAC )

Signed and sworn to before me on this 16<sup>th</sup> day of July, 2002, by Eugene A Schulte. [Redacted Signature]



Notary Public, State of Iowa  
Printed Name: Warren L Bush  
My Commission Expires: 5-07-05

**FOR THE COMMISSION:**

This Stipulation and Consent Order is accepted by the Iowa Real Estate Commission on this 18<sup>th</sup> day of July, 2002.

[Redacted Signature]

James E. Hughes, Chair  
Iowa Real Estate Commission