

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

| | | |
|-----------------------------|---|---------------------|
| IN RE: |) | |
| |) | |
| KENNETH D. HAMILTON |) | CASE NUMBER: 97-041 |
| Broker (B35491) |) | |
| |) | STATEMENT OF |
| 157 RR 1 |) | CHARGES |
| Davis City, Iowa 50065-9767 |) | |

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1997).

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

KENNETH D. HAMILTON was at all material times during the following events, a licensed real estate broker associate, assigned to Margaret A. Dougherty, a sole-proprietor broker in Gilman City, Missouri. His broker license, number B35491, expired December 31, 1997.

COUNT I

Respondent is charged with failing to provide information requested by the commission as the result of a formal complaint to the commission in violation of Iowa Code chapter 543B, in violation of Iowa Code section 543B.34(10) and 193E - IAC section 4.40(9) (1997).

COUNT II

Respondent is charged with failing to inform the commission in writing of a change of residence or mailing address, in violation of Iowa Code sections 543B.16 and 543B.18 and 193E-- IAC sections 2.15(6) and 4.40(4)(e) (1997)

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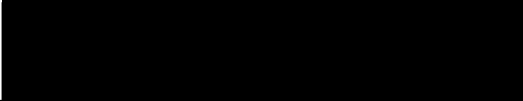
CIRCUMSTANCES OF THE COMPLAINT

1. The Respondent was at all material times a licensed real estate broker associate assigned to Margaret A. Dougherty a licensed sole-proprietor broker.
2. On April 23, 1997 Rick Wright, Woodburn, Iowa, filed a complaint with the commission concerning Kenneth Hamilton and Margaret Dougherty, aka Marti Thomas, concerning an alleged failure to account for or remit an earnest money deposit.
3. A Request for information was sent to Respondent's broker May 6, 1997 and a second request was sent certified on June 23, 1997. No response received.
4. Requests for information were sent certified mail to Respondent and Margaret Dougherty on October 9, 1997(refused), November 13, 1997(refused, additionally sent to Respondent by regular mail), December 9, 1997 and January 27, 1998.
5. Respondent failed to inform the commission of a change of residence or mailing address.
6. On December 3, 1997, Respondent was contacted by telephone to request the information. No response received.
7. Respondent's license was placed on inactive status effective July 15, 1997 and it expired December 31, 1997.

FINDING OF PROBABLE CAUSE

On September 3, 1998, 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 8th day of OCTOBER, 1998.


Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General

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ANKENY, IOWA

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| IN RE: |) | |
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| |) | |
| KENNETH D. HAMILTON |) | DIA NO. 99DOCRE - 2 |
| Broker (B35491) |) | CASE NO. 97-041 |
| |) | |
| 157 RR 1 |) | |
| Davis City, Iowa 50065-9767 |) | |

On September 15, 1998, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Kenneth D. Hamilton, a licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.16, 543B.18, 543B.34(10), and 193E Iowa Administrative Code (IAC) 2.15(6); 193E IAC 4.40(4)"e"; 193E IAC 40(9). A Notice of Hearing set the hearing for January 28, 1999 at 2:30 p.m.

The hearing was held on January 28, 1999 at 2:30 p.m. The following members of the Commission were present and participated in making the decision: Theresa Loffredo, Mark Odden (by telephone), and Terry Rogers. The State was represented by Ms. Pam Griebel, Assistant Attorney General. The Respondent participated pro se. Daniel R. Render, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

Witnesses for the Commission included Ms. Janice K. Van Winikle, a real estate agent for Ace Realty & Insurance and Mr. Roger Hansen, Executive Secretary for the Iowa Real Estate Commission.

The hearing was recorded by a certified court reporter. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(1997) at the Respondent's request. The Commission offered as witnesses Mr. After hearing the testimony and examining the exhibits, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(1997) to deliberate their decision. The administrative law judge was instructed to draft the Findings of Fact, Conclusions of Law, Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, testimony of the witnesses, and the following exhibits:

- State Exhibit A: Proof of Service (Kenneth Hamilton) October 17, 1998
- State Exhibit B: Proof of Service (Margaret A. Dougherty) October 17, 1998

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State Exhibit C: Proof of Service (Margaret A. Dougherty)
State Exhibit D: Complaint by Rick Wright, April 22, 1997
State Exhibit E: Letter from Commission to Ace Realty, May 6, 1997
State Exhibit F: Letter to Commission from Ace Realty, May 9, 1997
State Exhibit G: Exclusive Right to Sell Farm, March 11, 1997
State Exhibit H: Deposit Receipt and Agreement of Sale, March 25, 1997
State Exhibit I: Counter-Offer, March 25, 1997
State Exhibit J: Agreement of Sale, signed by Buyer 3/31/1997
State Exhibit K: Commission attempts to contact Margaret Dougherty:

K-1 May 6, 1997, Davis City, IA (regular)
K-2 June 23, 1997, Davis City, IA (certified)
K-3 Return receipt, delivery, July 7, 1997
K-4 October 9, 1997, Davis City, IA (certified)

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 272C, and 543B, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent is a licensed real estate associate broker, license number B35491, assigned to Margaret A. Dougherty, a license sole-proprietor broker.
3. On April 23, 1997 Rick Wright, Woodburn, Iowa, filed a complaint with the commission concerning the Respondent and Margaret Dougherty, a.k.a. Marti Thomas, concerning an alleged failure to account for or remit an earnest money deposit.
4. Requests for information were sent certified mail to respondent and Margaret Dougherty on October 9, 1997 (refused), November 13, 1997 (refused, additionally sent to Respondent by regular mail), December 9, 1997 and January 27, 1998.
5. Respondent failed to inform the commission of a change of residence or mailing address.
6. On December 3, 1997, Respondent was contacted by telephone to request the information. No response.
7. Respondent's license was placed on inactive status effective July 15, 1997 and it expired December 31, 1997.

CONCLUSIONS OF LAW

Iowa Code section 543B.16 reads, in part:

. . . Every applicant for a license shall furnish information setting forth the applicant's present address, both of business and residence, a complete list of all former places where the applicant may have been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period. . . .

Iowa Code section 543B.18 reads:

The real estate commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

Iowa Code section 543B.34(10) reads:

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 commission staff or any other duly authorized representative or designee 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. . . .

For all intents and purposes, the Respondent did not refute the charges, and the Commission finds Mr. Hansen's and Ms. Van Winkle's testimonies credible and compelling.

DECISION AND ORDER

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker associate license of Kenneth D. Hamilton, No. B35491 is hereby REVOKED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to 193E IAC 2.13(1)"c"(5), that if the Respondent applies for reinstatement of his license and reinstatement is granted by the Board, that he shall be required to:

1. Pay a reinstatement fee of \$1000.00;
2. Provide the Board with letters of character references from three licensed real estate brokers.
3. Provide the Board with evidence that he satisfactorily completed a 12 hour course in Real Estate Ethics & Law.
4. Provide the Board with evidence that he satisfactorily completed an 8 hour mandatory Real Estate Law Update course.

Issued this 22ND day of APRIL, 1999.



Terry Rogers
Chairperson
Iowa Real Estate Commission

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure Act, from and after the date of the commission's order. 193E IAC 4.35.