

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 S.E. HULSIZER
ANKENY, IOWA

IN RE:)	DIA NO. 96DOCRE-4
)	CASE NO. 95-027
IRMA HENZE (B29827))	
Broker)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
104 1st Avenue S.)	DECISION AND ORDER
State Center, Iowa 50247)	

On June 3, 1996, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Irma Henze, a licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29(2), (3), and (10); 543B.34(3) and (8)(1993); and 193E IAC 1.27, 1.28, and 4.40(6), (16), and (19). A Notice of Hearing set the hearing for July 11, 1996 at 10:00 a.m.

The hearing was held on July 11, 1996 at 10:20 a.m. The following members of the Commission were present and participated in making the decision: Evelyn Rank, Chairperson; Theresa Loffredo; Russ Nading; Terry Rogers; and Mark Odden. The State was represented by Pam Griebel, Assistant Attorney General. The applicant appeared and was represented by her counsel, Joel Greer. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

The hearing was recorded by a certified court reporter. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code section 272C.6(1)(1995). After hearing the testimony and examining the exhibits, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(1995) 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, Acknowledgement; Answer; Respondent's Witness List; testimony of the witnesses, and the following exhibits:

- State Exhibit A: Acknowledgement of Service, 6/14/96
- State Exhibit B: Complaint filed by Maureen Underhill, 3/4/95
- State Exhibit C: Offer and Acceptance (Curtis and Lisa Hansel/Sellers and Gary and Maureen Underhill/Buyers)

- State Exhibit D: Financing arrangements with Hart Foundation Private Loan and Grant Pool:
- (1) Letter, 1/11/94
 - (2) Deposit Statement 2/28/94
 - (3) Letter, 3/1/94, (Bullock to Adkins)
 - (4) Membership and Installment Loan Agreement and Promissory Note
 - (5) Disclosure Statement, 3/1/94
- State Exhibit E: Settlement Statement
- State Exhibit F: Buyer's Statement
- State Exhibit G: Warranty Deed, 2/24/94, recorded 3/7/94 at 3:44 p.m.
- State Exhibit H: Open-Ended Real Estate Mortgage dated 2/28/94, recorded 3/7/94 at 3:44 p.m.
- State Exhibit I: Central State Bank Records and Overdraft:
- (1-2) trust account bank statement (2/28/94-3/31/94)
 - (3) Mike Sharp Note, 3/2/94
 - (4) Letter, 3/5/94, (Bullock to Buck)
 - (5-10) trust account checks
 - (11) overdraft notices
 - (12) deposit of \$57,000, 3/14/94
- State Exhibit J: Mortgage Buyers of America Documents:
- (1) Fax, 4/20/94 (White to Bullock)
 - (2) Fax, 4/26/94 (White to Bullock/Respondent)
 - (3) Fax, 5/11/94 (White to Henze)
 - (4) Letter, 5/12/94 (Respondent to White) and Reply
 - (5) Memo, 5/12/95 (Respondent)
 - (6) Letter, 5/17/94 (Respondent to White) and Reply
 - (7) Letter, 5/19/94 (Respondent to White) and Reply
 - (8) Letter, 5/23/94 (Respondent to White)
 - (9) Bank Wire Transfer Instructions, 5/26/94
- State Exhibit K: Letter dated 5/26/94 (Metwest Services to Underhills)

- State Exhibit L: Hart Financial Letters:
- (1) Letter, 6/1/94 (Henze to Bullock)
 - (2) Letter, 6/27/94 (Bullock to Henze)
 - (3) Letter, 6/29/94 (Geffe to Bullock)
 - (4) Letter, 6/29/94 (Geffe to Henze)
 - (5) Letter, 7/9/94 (Bullock to Henze)
- State Exhibit M: Respondent's Directions to Underhills and Metwest Default:
- (1) Letter, 8/24/94 (Henze to Bullock)
 - (2) Letter, 8/25/94 (Henze to Underhills)
 - (3) Letter, 10/21/94 (Henze to Underhills)
 - (4) Letter, 3/8/95 (Hansen to Underhills)
 - (5) Letter, 3/16/94 (Underhills to Hansen)
 - (6-7) Underhill checks to First State Bank, 10/28/94; 11/26/94
 - (8) Default Notice, 11/18/94
 - (9) Default Notice, 12/19/94
- State Exhibit N: Respondent's Mortgage to First State Bank, 10/26/94
- State Exhibit O: Hart Financial Letters:
- (1) Letter, 2/10/94, (Iowa Division of Banking to Bullock)
 - (2) Letter, 2/16/95 (Jones to Bullock)
 - (3) Letter, 5/26/95 (Bullock to Henze)
 - (4) Letter, 6/26/95 (Bullock to Henze)
 - (5) Letter, 7/28/95 (Bullock to Henze)
- State Exhibit P: Commission/Respondent letters
- (1) Letter, 3/8/95 (Hansen to Henze)
 - (2) Letter, 3/17/94 (Henze to Hansen)
 - (3-4) Letter, 4/6/95 (Hansen to Henze)
 - (5) Letter, 4/10/95 (Henze to Hansen)
 - (6-7) Letter, 8/22/95 (Hansen to Henze)
 - (8) Letter, 10/26/95 (Henze to Hansen)
- State Exhibit Q: Audit Report, 4/20/95
- State Exhibit R: Hansen investigation notes:

- (1) 8/10/95 telephone call to Adkins
- (2) 8/15/95 telephone call to Underhill

State Exhibit S: March, 1994 calendar

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 broker, license number B29827. She is a sole-proprietor broker in State Center, Iowa. (Board file; Testimony of Respondent)
3. On November 13, 1993, the Respondent, as the representative of Gary and Maureen Underhill, buyers, prepared an Offer To Buy Real Estate and Acceptance for property owned by Curtis and Lisa Hansel, sellers, in Garwin, Iowa. The sellers accepted the offer on November 14, 1993. The offer was for a purchase price of \$57,000.00 and proposed a closing date of March 1, 1994. (Testimony of Roger Hansen; Respondent; State Exhibit C)
4. The buyers were moving from Ohio to Iowa. They had some difficulty obtaining financing. A local businessman introduced the Respondent to Bruce Bullock, of the Hart Foundation Private Loan and Grant Pool, Minneapolis, Minnesota, as a possible source of financing. The Hart Foundation agreed to provide financing for the Hansel-Underhill transaction. (Testimony of Respondent; Maureen Underhill; State Exhibit D-1, D-2)
5. The closing was scheduled for March 1, 1994. The Hart Foundation authorized Mark Dean Adkins to sign on the mortgage in its behalf. The mortgage was for \$57,000 with an interest rate of 4%. The buyer agreed to pay a \$39.00 membership fee and a 5% deposit of \$2875.00. The buyer further agreed to pay five points at closing and to pay the principal and interest on the loan in 240 equal monthly installments of \$345.41, beginning on April 1, 1994. (Testimony of Respondent; Roger Hansen; Bruce Bullock; State Exhibit D-3, D-4, D-5)
6. The closing was held at the Respondent's office on March 1, 1994. The Respondent, Mark Adkins, and the buyers were present. The Respondent understood that the mortgage funds were being transferred to her trust account. In an interview with the Commission's Executive Secretary, Mark Adkins recalled that the funds were to be transferred either the day of the closing or the next day. The Respondent did not call her bank to see if the mortgage funds had arrived before proceeding with the closing.

(Testimony of Respondent; Maureen Underhill; State Exhibit R)

7. The Respondent wrote all of the checks for the closing out of her real estate trust account at Central State Bank in State Center, Iowa. The amount of the checks necessary to close the transaction totalled 61,101.00. The checks written by the Respondent included \$35,158.69 to pay off the seller's mortgage, \$17,091.25 to the sellers, and \$3,990.00 for the real estate commission. (Testimony of Respondent; Roger Hansen; State Exhibits E, F, I-5, I-6)

8. Immediately after the closing, the Respondent drove to the abstract office, which was across the street from the Tama County Courthouse. The Respondent hand-delivered the Warranty Deed and Open-End Real Estate Mortgage to the abstractor, believing that they would record them that day. In fact, the Warranty Deed and Open-End Real Estate Mortgage were not recorded until March 7, 1994 at 3:44 p.m. (Testimony of Respondent; State Exhibits G, H)

9. The Hart Foundation did not transfer the mortgage funds to the Respondent's trust account as expected. On March 1, 1994, the Respondent had a balance of \$25,851.99 in her real estate trust account. These funds were from other clients and were unrelated to the Underhill-Hansel transaction. (Testimony of Roger Hansen; Respondent; Mike Sharp; Bruce Bullock; State Exhibit I-1)

10. On March 2, 1994, the checks to the seller's mortgage company and to the sellers were presented to the Respondent's bank for payment. These checks totalled \$52,249.94. The bank paid the checks, using the Respondent's balance of \$25,851.99, and issuing an overdraft for the remainder. On March 2, 1994, a bookkeeping clerk from the bank notified the Respondent that her trust account was overdrawn. Additional checks from the Underhill-Hansel closing were presented to the bank for payment between March 3rd and 14th. The bank also paid these checks. The Respondent was sent an overdraft notice on March 4, 1994. (Testimony of Roger Hansen; Mike Sharp; Respondent; State Exhibit I)

11. On March 4, 1994, Bruce Bullock spoke to the Respondent's bank by phone. On March 5, 1994, he wrote to the bank and explained that the overdraft on the Respondent's account was due to his inability to obtain funds from Europe. Bullock assured the bank that he would wire the funds, and any applicable penalty charges, as soon as he received them. Bullock did not wire the mortgage funds. (Testimony of Roger Hansen; Respondent; State Exhibit I-4)

12. On March 14, 1994, the Respondent signed a personal note for \$57,000.00 to cover the amount of the overdraft on her trust account, at the request of her bank. (Testimony of Roger Hansen; Respondent; State Exhibit I-1, I-12)

13. In an attempt to remedy the situation, Bullock contacted Mortgage Buyers of America, Inc., to try to resell the Underhill's mortgage and obtain funds to reimburse the Respondent. In May 1994, Hart Financial (formerly Hart Foundation) assigned the Underhill mortgage to Western United Life Assurance Company. Hart Financial received a discounted amount of proceeds for the assignment; Bullock could not recall how much he received, and his records were in storage. Bullock claims that the bulk of the proceeds were sent to the Respondent, but he cannot recall the amount. This testimony was not credible, and it is contradicted by subsequent correspondence between the Respondent and Bullock. (Testimony of Respondent; Bruce Bullock; State Exhibits J; L; O-3 to O-5)

14. The Respondent admits that Bullock did wire her \$8,000.00, but this amount was to pay back other clients who were owed money by Hart Financial for loans that were never issued. (Testimony of Respondent; State Exhibit L-3)

15. On May 26, 1994, the Underhills were notified by Metwest Services, authorized servicer for Western United Life Assurance, that they were to remit all further installments on their mortgage to Metwest. Coupon books were provided to the Underhills. The Underhills had been making the payments on their mortgage to Hart Financial. (Testimony of Maureen Underhill; State Exhibit K)

16. Bullock continued to make promises to pay the Respondent the \$57,000.00 dollars that he owed her. The Respondent sought legal assistance from her bank's attorney, from the attorney generals of Minnesota and Iowa, from the Marshall County Attorney, and from the Federal District Attorney, but no lawsuits or charges were filed against Bullock. (Testimony of Respondent; State Exhibit L)

17. On August 24, 1994, the Respondent wrote to Bullock and enclosed a copy of a letter which she intended to send to the Underhills if she or her bank were not contacted by Bullock by the following Thursday. The proposed letter stated that the Underhills should not pay Hart Financial as of September 1st, since they never sent funds for the mortgage. The letter further stated that the Underhills would have to obtain a new mortgage and both the Respondent and the Underhills would have to seek legal counsel to obtain a refund of the down payment and payments made to Hart. (Testimony of Roger Hansen; Respondent State Exhibit M-1)

a) The Respondent provided the Commission with a typed letter dated August 25, 1994. The Respondent believed that her secretary had sent this letter to the Underhills, with copies to Mortgage Buyers of America, Mark Adkins, the bank's attorney, and First State Bank. Maureen Underhill credibly testified that she never received this letter. The letter stated that the

Underhills should not pay Hart Financial as of September 1st. Payments should be sent to the Respondent to be applied toward the mortgage at First State Bank of Melbourne. The letter further stated that a new mortgage would have to be obtained, and they would have to seek legal counsel to obtain refunds from Hart Financial. (Testimony of Roger Hansen; Respondent; Maureen Underhill; State Exhibit M-2)

b) Maureen Underhill credibly testified that she had run into the Respondent at the grocery store a couple of months after they had begun making their payments to Metwest. The Respondent told her that there were problems with their mortgage, that Hart had not done what it was supposed to do, and Hart had sold the loan to Metwest, but it was not theirs to sell. Later, the Underhills received a handwritten letter (M-3) in the mail. They never received the typed letter referred to in paragraph (a). (Testimony of Maureen Underhill; State Exhibits M-2, M-3)

c) The Respondent's handwritten letter asked the Underhills to fill out the enclosed application so "Melbourne can have this on file." The letter further stated that "Hopefully Bruce Bullock will get his P&Q's together soon. Make your next check to First State Bank." (Testimony of Maureen Underhill; Respondent; State Exhibit M-3)

d) Maureen Underhill asked the Respondent why she needed to fill out an application. The Respondent replied that it was "standard procedure." Maureen Underhill thought that she had to fill it out because First State Bank took over the mortgage. (Testimony of Maureen Underhill)

18. On October 26, 1994, the Respondent secured her \$57,000.00 personal loan with the First State Bank by taking out a mortgage on her own home for \$57,000.00, with an interest rate of eight and one-half percent. Monthly payments were due beginning on December 1, 1994. (Testimony of Roger Hansen; Respondent; State Exhibit N)

19. Maureen Underhill made payments to First State Bank on October 28 and November 26, 1994. First State Bank had not provided her with a coupon book, so she made a notation on the face of the checks that they were for the November and December house payments. (Testimony of Maureen Underhill; State Exhibits 6, 7)

a) On November 18, 1994, Metwest sent the Underhills a notice that they had not received the November house payment. Effective December 1, 1994, their account would

be in default and two payments would be required to cure the default. Maureen Underhill called Metwest and told them to call the Respondent. Metwest called the Underhills and said the Respondent would not speak to them. Maureen Underhill called the Respondent numerous times, but her calls were not returned. (Testimony of Maureen Underhill; State Exhibit M-8)

b) On December 19, 1994, the Underhills were sent a Notice of Default and Intent to Accelerate by Metwest. Metwest's lawyers spoke to Maureen Underhill. They told her that they did own her loan, and she should make her payments to them. They agreed to add the two missed payments to the end of the loan to avoid foreclosure. (Testimony of Maureen Underhill; State Exhibit M-9)

c) Metwest called the First State Bank in Melbourne, but were told that the bank could not give out any information. Maureen Underhill called the First State Bank and insisted on being provided the number of her loan. The bank told Maureen Underhill that the payments were applied to the Respondent's private loan, and they thought it had all been worked out between the Respondent and the Underhills. (Testimony of Maureen Underhill)

d) The Underhills resumed making payments to Metwest in January 1995. The loan has been extended by two months to recoup the two missed payments. The Underhills have not been reimbursed for the two payments they made on the Respondent's loan. (Testimony of Maureen Underhill)

e) At the hearing, the Respondent testified that she thought that First State Bank had sent the two disputed payments back to Metwest. The Respondent intends to reimburse the Underhills for the amount of the two payments. (Testimony of Respondent).

20. On March 4, 1995, Maureen Underhill filed a complaint against the Respondent with the Commission. An investigation was conducted, and the Respondent's trust account was audited. Since the facts were extremely complicated, it was time consuming to gather documentation and determine what had occurred. A Statement of Charges was filed on June 3, 1996. (Testimony of Roger Hansen; Mike Sharp; State Exhibits A, B, Q, R)

CONCLUSIONS OF LAW

1. Iowa Code section 543B.29 (1993) provides, in relevant part:

543B.29 Revocation or suspension

A license to practice the profession of real estate

broker or salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

2. Professional incompetency.

3. ... engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

10. Noncompliance with the trust account requirements under section 543B.47.

2. Iowa code section 543B.34 (1993) provides in relevant part:

543B.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 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 is found to be guilty of any of the following:

...

3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.

...

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. 193E IAC 1.27 and 1.28 provide, in relevant part:

1.27(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account must include the date, name of depositor, name of principal or identify the property, the check number and

the amount deposited.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

1.28(543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed...

4. 193E IAC 4.40(6), (16), and (19) provide, in relevant part:

193E-4.40 Violations for which civil penalties may be imposed.

...
4.40(6) Improper trust account and closing procedures:
a. Failing to deposit funds as required.

...
4.40(16) Issuing an insufficient funds check on the broker's trust account.

...
4.40(19) Violating any of the remaining provisions in 193E-Chapters 1 to 6 inclusive, which have not heretofore been specified in this rule.

COUNT I and COUNT III

Counts I and III are factually and logically related and will be addressed together.

The preponderance of the evidence established that the Respondent was professionally incompetent and engaged in a practice harmful or

detrimental to the public, as alleged in Counts I and III. The Respondent issued insufficient fund checks from her trust account at closing, which resulted in a negative balance in her real estate trust account. In addition, she conducted the closing on a property without verifying the receipt of the buyers' mortgage funds and filed a warranty deed and mortgage when the mortgage funds had not been received, in violation of Iowa Code sections 543B.29(2), (3) and (10), 543B.34(8)(1993), and 193E IAC sections 1.27, 1.28, and 4.40(6) and (16).

The Respondent admits that she knew that the Hart Foundation had not yet wired the mortgage funds into her trust account at the time of the closing. The Respondent proceeded to close the transaction and issue all of the required checks from her trust account, without confirming that the funds were in the account to cover the checks. The Respondent expected the funds to be transferred to her account shortly.

This was a highly risky and improper decision by the Respondent. She should have delayed the closing until the mortgage funds were deposited in the trust account. The Respondent made the faulty assumption that the mortgage funds would in fact be deposited before the checks were presented for payment. This alone was a serious error resulting in the issuance of insufficient fund checks on her trust account.

The Respondent seriously compounded this error by immediately taking the warranty deed and the mortgage to the abstractor's office for filing, without confirming that the mortgage funds had been deposited. In fact, the abstractor did not actually file the warranty deed and the mortgage until six days later. If the Respondent had called the abstractor after discovering that the funds had not been transferred as promised, she could have prevented the mortgage and warranty deed from being filed. She failed to do so and both were duly filed. After the mortgage and warranty deed were filed, Hart Foundation was able to resell the mortgage, even though they had never funded the mortgage in the first place.

At the hearing, both the Respondent and the state identified the Hart Foundation and Bruce Bullock as the "villains" in this case. However, the responsibility of the Respondent, as the licensed broker, has to be the Commission's first concern. The Respondent had a professional responsibility to handle the closing of this transaction in a competent manner. The closing of the transaction and the filing of the warranty deed and the mortgage prior to the receipt of the mortgage funds from the Hart Foundation was incompetent and a practice that was harmful or detrimental to the public. The Respondent wholly failed to safeguard the interests of her clients.

COUNT II

The Commission has determined that the factual allegations underlying Count II are closely related to the facts underlying Counts I and III. The funds in the Respondent's trust account at the time she issued the closing checks for the Underhill-Hansel transaction were unrelated to that transaction. They were trust funds belonging to other clients. Since the bank went ahead and paid the checks from the closing when they were presented, some of the checks were paid out of these unrelated trust funds, and the rest were considered overdrafts by the bank. As a result of the payment of the trust fund balance, commingling of trust funds automatically occurred, i.e. trust funds belonging to another client were used to pay closing checks on the Underhill transaction.

While the Respondent should have foreseen that this "commingling" would occur if the checks were presented for payment prior to the deposit of the mortgage funds, the Commission feels that the Respondent's primary error was the issuance of the insufficient fund checks in the first place, which was adequately addressed by Counts I and III.

COUNT IV

The preponderance of the evidence established that the Respondent was professionally incompetent, engaged in a practice harmful or detrimental to the public, and pursued a continued and flagrant course of misrepresentation by notifying the buyers of a property to discontinue mortgage payments to the mortgage company and to send the payments to Respondent, and by trying to induce the buyers into committing to a second mortgage on the same property. The Respondent has violated Iowa Code sections 543B.29(2) and (3), and 543B.34(3) and (8) (1993) and 193E IAC section 4.40(19).

This count addresses the most egregious violations of the Respondent. At least initially, the Respondent recognized that her error in issuing the insufficient fund checks and recording the warranty deed and mortgage had resulted in her own personal liability of \$57,000.00. The Respondent gave the bank a signature loan for \$57,000.00 and later secured the loan with a mortgage on her own residence. She pursued Bruce Bullock for payment of the mortgage funds that he had promised. Her liability was personal and her cause of action was against Hart Foundation and Bruce Bullock.

In the meantime, the Underhills were obligated to pay the mortgage on their home to the Hart Foundation and later, to Metwest. The mortgage and warranty deed had been duly filed. The Respondent committed a grave violation when she directed the Underhills to stop making payments to Metwest and start making payments to First

State Bank. In addition, she asked them to fill out another loan application, without adequately explaining the ramifications of that application. It is clear that the Underhills were led to believe that First State Bank had been assigned their mortgage. This was not true, and the Respondent knew it. She intentionally misled the Underhills into making payments on her personal mortgage, while their obligation to pay Metwest continued. As a result, their loan went into default, and they were threatened with foreclosure. As of the time of the hearing, the Underhills had not been reimbursed for the two payments they made on the Respondent's mortgage, and their own mortgage had been extended two months due to their missed payments. The Respondent severely breached her professional responsibility to the Underhills and utterly failed to safeguard their interests.

DECISION AND ORDER

For the reasons stated above, the Commission regards the Respondent's violations of its statutes and rules to be egregious. She has completely failed to fulfill her professional responsibilities to her clients as a licensed real estate broker. After her initial error, she failed to recognize several steps which she could have taken to protect her clients. Instead, she attempted to make her clients pay her own liabilities.

IT IS THEREFORE ORDERED, that the Iowa Broker's License issued to Irma Henze, No. B29827, is hereby REVOKED.

IT IS FURTHER ORDERED, that the Respondent shall immediately return her broker's license to the Commission office. In addition, the Respondent shall return the licenses of any salespersons or associate brokers employed by her.

Dated this *26* day of *July*, 1996.


Evelyn Rank
Chairperson
Iowa Real Estate Commission

cc: Joel T.S. Greer
CARTWRIGHT, DRUKER & RYDEN
112 West Church Street
Marshalltown, IA 50158
(CERTIFIED)

Pam Griebel
Assistant Attorney General
Iowa Department of Justice

DIA No. 96DOCRE-4

Page 14

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.

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

IN RE:)	
)	
IRMA HENZE (B29827))	CASE NUMBER: 95-027
Broker)	STATEMENT OF CHARGES
)	
104 1st Avenue S)	
State Center, Iowa 50247)	
)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1995).

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

IRMA HENZE is, and was at all material times during the following events, a licensed sole-proprietor broker in State Center, Iowa. Her license number is B29827.

COUNT I

The Respondent is charged with engaging in a practice harmful or detrimental to the public by issuing insufficient fund checks from the trust account at closing and having a negative balance in her real estate trust account of \$44,607.96, in violation of Iowa Code sections 543B.29(2), (3), and (10), and 543B.34(8) (1993), and 193E IAC sections 1.27, 1.28, and 4.40(6) and (16).

COUNT II

The Respondent is charged with professional incompetency and engaging in a practice harmful or detrimental to the public by commingling the trust funds of others to cover checks written at closing, in violation of Iowa Code sections 543B.29(2), (3), and (10) and 543B.34 (8) (1993) and 193E IAC sections 1.27, 1.28, and 4.40(6) and (16).

COUNT III

The Respondent is charged with professional incompetency and engaging in a practice harmful or detrimental to the public by conducting the closing on a property without verifying the receipt of the buyers' mortgage funds and filing a warranty deed and mortgage knowing the mortgage funds had not been received, in violation of Iowa Code sections 543B.29(2) and (3), and 543B.34(8) (1993) and 193E IAC sections 1.28, and 4.40(6) and (16).

COUNT IV

The Respondent is charged with professional incompetency, engaging in a practice harmful or detrimental to the public, and pursuing a continued and flagrant course of misrepresentation by notifying the buyers of a property to discontinue mortgage payment to the mortgage company immediately and to send the payments to Respondent, and trying to induce the buyers into committing to a second mortgage on the same property, in violation of Iowa Code sections 543B.29(2) and (3), and 543B.34(3) and (8) (1993) and 193E IAC section 4.40(19) (1994).

CIRCUMSTANCES OF THE COMPLAINT

1. Each of the above Counts arise from a real estate transaction between Gary and Maureen Underhill as buyers and Curtis and Lisa Hansel as sellers, which closed on March 1, 1994.
2. The Respondent prepared the offer on behalf of the Underhills and handled the real estate closing. She completed the closing before the buyers' financing arrangements were fulfilled. As a result, Respondent's trust account was over drawn and trust funds belonging to others were improperly commingled to cover closing expenses.
3. The Respondent later personally borrowed money to replenish her trust account. She directed the Underhills to stop making mortgage payments to the assignee of their mortgage and start paying funds directly to Respondent's bank for application to her personal loan, causing actual and potential harm to the Underhills.

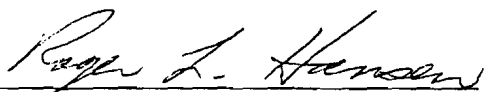
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FINDING OF PROBABLE CAUSE

On January 25, 1996, 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.

Executed this 3RD day of JUNE, 1996.



Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General