

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

IN RE:)	CASE NUMBER: 93-020
)	
MARK L. HUNTER (B30077))	
Broker)	STATEMENT OF CHARGES
)	
P O Box 23)	
Council Bluffs, Iowa)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1993).

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

MARK L. HUNTER is, and was at all times during the following events except when revoked, a licensed real estate broker. His license number is B30077. MARK L. HUNTER is currently an inactive licensed broker.

COUNT I

The Respondent pled guilty in the United States District Court of the Southern District of Iowa on January 21, 1993, to bank fraud, in violation of Iowa Code sections 543B.29(5), 543B.34(8) and 543B.34(11) (1993).

CIRCUMSTANCES OF THE COMPLAINT

1. The Respondent was an active broker licensed as an officer of Hunter Realty Inc. from 07-27-71 until revoked 02-16-87. Respondent was granted a salesperson license again on 11-07-89 and a broker license again on 01-01-90. Respondent was licensed as a broker associate with Key Real Estate from 01-01-90 until being placed on inactive status on 01-25-93.

2. Respondent was hired by Utility Construction Inc. to conduct an auction of equipment and other assets upon which The National Bank, Dyersville, Iowa had finance liens.

3. Respondent sold all the equipment owned by Utility Construction, Inc. on or about March 13, 1993.
4. Respondent knowingly and willingly executed and attempted to execute a scheme and artifice to defraud The National Bank, Dyersville, Iowa, and to obtain the moneys, funds, credits, assets, securities and other property owned by and under the custody and control of The National Bank, Dyersville, Iowa by means of false and fraudulent pretenses, representations and promises.
5. Respondent falsely represented to the President of The National Bank, Dyersville, Iowa, that proceeds from the March 13, 1986, auction would be paid as soon as checks received at auction had cleared. In reliance upon this false representation, the bank released its liens on the equipment in question.
6. Respondent refused to pay the bank the money to which it was entitled.
7. Respondent created and maintained a network of corporate entities, including Hunter Realty through which auction sale proceeds were transferred, enabling Respondent to conceal and disguise the nature, location and ownership or control of the auction proceeds. The trust account of Hunter Realty was used as part of this fraudulent scheme.
8. Respondent converted significant portions of The National Bank's funds to personal and corporate uses in excess of \$125,000.00.

FINDING OF PROBABLE CAUSE

On August 18, 1994 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 6th day of OCTOBER, 1994.


Rogey L. Hansen, Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General
File 93-020

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

IN RE:)	DIA NO. 94DOCRE-3
)	CASE NO. 93-020
MARK L. HUNTER)	
BROKER (B30077))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
108 IVY DRIVE)	DECISION AND ORDER
COUNCIL BLUFFS, IOWA 51503)	

On October 6, 1994, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Mark L. Hunter, an inactive licensed Iowa broker (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29(5), 543B.34(8), and 543B.34(11) (1993) when he pled guilty to bank fraud on January 21, 1993 in the United States District Court for the Southern District of Iowa. A Notice of Hearing set the hearing for November 3, 1994 at 1:00 p.m.

The hearing was held on November 3, 1994 at 1:00 p.m. The following members of the Commission were present and participated in making the decision: Theresa Loffredo, Jack Knapp, Russ Nading, and Evelyn Rank. The State was represented by Pamela Griebel, Assistant Attorney General. The Respondent appeared, and was not represented by counsel. 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 Respondent's request, pursuant to Iowa Code section 272C.6(1) (1993). After hearing the testimony and examining the exhibits, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f) (1993) 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, the testimony of the witnesses, and the following exhibits:

- State's Exhibit A: Certified mail receipt
- State's Exhibit B: Letter dated 2/9/93 (Hansen to Hunter)
- State's Exhibit C: Letter dated 2/15/93 (Hunter to Hansen)
- State's Exhibit D: Letter dated 2/26/93 (Dopf to Hansen)

- State's Exhibit E: Certified Copy of Indictment, Criminal Case No. 92-59, United States District Court, Southern District of Iowa.
- State's Exhibit F: Certified Copy of Plea Agreement and attached Stipulation of Facts, Criminal Case No. 92-59.
- State's Exhibit G: Answer filed 5/3/93
- State's Exhibit H: Letter dated 1/5/94 (Hunter to Hansen)
- State's Exhibit I: Complaint, Case Nos. 85-086, 86-001 and 86-025
- State's Exhibit J: Informal Settlement/Assurance of Voluntary Compliance, Case Nos. 85-086, 86-001, and 86-025.

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 was an active broker licensed as an officer of Hunter Realty, Inc. from July 27, 1971 until revoked on February 16, 1987. Subsequently, Respondent was granted a salesperson license on November 7, 1989 and a broker license on January 1, 1990. Respondent was licensed as a broker associate with Key Real Estate from January 1, 1990 until being placed on inactive status on January 25, 1993. (Testimony of Roger Hansen; Respondent)
3. On May 19, 1992, the Respondent, Hunter Realty, Inc., and others were indicted in the United States District Court for the Southern District of Iowa, on thirty counts. (Testimony of Hansen; Respondent; State's Exhibit E)
4. On January 21, 1993 the Respondent pled guilty to one count of Bank Fraud, in violation of Title 18, U.S.C. section 1344, which had been count 27 of the Indictment. A Stipulation of Facts was attached to the Plea Agreement and furnished the factual basis for the plea. The Stipulation of Facts provides:
 - a. At all times material hereto, the Defendants, James F. Hunter, Mark L. Hunter and Michael J. Hunter served as either officers, directors, agents or employees of Hunter Inc. Auctioneers (hereinafter referred to as "HIA"), an Iowa corporation, with its principal place of business in

Council Bluffs, Iowa which is within the Southern District of Iowa.

b. At all times material hereto, The National Bank, Dyersville, Iowa (hereinafter referred to as "TNB") was a financial institution with deposits insured by the Federal Deposit Insurance Corporation.

c. At all times material hereto, TNB had liens on the assets of Utility Construction, Inc., (Utility) and Central Pipeline, Inc., (Central).

d. On March 5, 1986, the Defendants James F. Hunter and Mark L. Hunter, met with Merle Leigh, an official representing Utility and Central (Leigh) and Jerry Renk, President of TNB (Renk). During this meeting, the parties agreed that HIA would auction off the assets held by Utility and Central on March 13, 1986.

e. As a part of the discussions leading to the final agreement for sale, the Defendants, James F. Hunter and Mark L. Hunter, induced and enticed Renk to authorize and agree to the auction sale by representing to Renk that proceeds from the auction sale would be paid to TNB as soon as checks received at the auction had cleared. Based on this false representation, TNB released its liens on various pieces of equipment sold at the auction.

f. Following the auction, the Defendants, James F. Hunter, Mark L. Hunter and Michael J. Hunter, collected and deposited the auction sale proceeds and provided TNB with a closing statement but thereafter refused to pay TNB the money to which it was entitled.

g. Following receipt of the auction proceeds described above, the Defendants, James F. Hunter, Mark L. Hunter and Michael J. Hunter, and each of them, knowingly transferred or caused to be transferred said auction sale proceeds and other assets of HIA through and among a network of corporate entities which they had created and maintained with the intent to conceal and disguise the nature, location and ownership or control of said assets.

h. Following the aforementioned intercorporate transfers, the Defendants, James F. Hunter, Mark L. Hunter and Michael J. Hunter, and each of them, used or caused to be used significant portions of said funds for their own corporate purposes, all to the detriment and loss of TNB of in excess of \$125,000.00.

(Testimony of Hansen; Respondent; State's Exhibit F)

5. On August 17, 1994 the Respondent met with an investigative committee of the Commission. At that meeting, the Respondent admitted that the proceeds from the auction were placed in his real estate trust account and later removed from the trust account when the error was discovered. (Testimony of Hansen; Respondent)

6. The practice of real estate frequently requires the salesperson or broker to handle money belonging to others, including earnest money and money received through escrow agreements, property management and contract sales. The mission of the Commission, as expressed in its administrative rules at 193E IAC 2.1, is to protect the public. To this end, the Commission has promulgated numerous rules governing the handling of money by licensed salespersons and brokers. (Testimony of Hansen)

7. The Respondent's license as a broker was previously revoked by the Commission on February 16, 1987, pursuant to an Informal Settlement/Assurance of Voluntary Compliance, following the filing of a three count Complaint by the Commission. The prior Complaint alleged that the Respondent unlawfully withheld sellers' proceeds, misappropriated funds, violated the trust account, and failed to promptly deliver proceeds. The Respondent did not admit those matters alleged in the Complaint, but agreed that the Informal Settlement/Assurance of Voluntary Compliance would be considered by the Commission in determining the nature and severity of the disciplinary sanction to be imposed for any future license law violations. (Testimony of Hansen; Respondent; State's Exhibits I, J)

CONCLUSIONS OF LAW

1. Iowa Code section 543B.29(5)(1993) provides:

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:

5. Conviction of a felony related to the profession or occupation of the licensee or conviction of a felony that would affect the licensee's ability to practice the profession of real estate broker and salesperson. A copy of the record of conviction or plea of guilty is conclusive evidence.

The Respondent's conviction for bank fraud affects his ability to practice the profession of real estate broker or salesperson. A broker or salesperson must be trustworthy to handle money belonging to others. This conviction establishes that the Respondent is not

trustworthy to handle money belonging to others. The Respondent has violated Iowa Code section 543B.29 (5) (1993)

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

543.34 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:

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.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter...

The preponderance of the evidence established that the Respondent is unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public, in violation of Iowa Code section 543B.34(8)(1993). The Stipulation of Facts attached to Respondent's Plea Agreement establishes that the Respondent falsely represented to an officer of the bank that they would be paid the proceeds from the auction sale as soon as the checks cleared. In reliance on this false representation, the bank released its liens on various pieces of equipment. Subsequently, the Respondent and the other defendants used or caused to be used significant portions of the funds for their own corporate purposes, all to the detriment and loss to the bank of an amount in excess of \$125,000.00.

The handling of money belonging to others in an appropriate manner is critical to the practice of a real estate broker. Although the Respondent was not acting as a broker in the transaction underlying his conviction, it involves the misappropriation of money belonging to others. It is highly relevant to a determination of his ability to practice as a broker in a manner that safeguards the interests of the public.

It is not necessary for the Commission to reach the issue of whether the Respondent's conviction also violates Iowa Code section 543B.34(11). An additional violation, based upon the same conviction, would not affect the sanction to be imposed in this case.

DECISION AND ORDER


193E IAC 4.3 lists factors which may be considered by the Commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee. These factors include the relative seriousness of the violation, the facts of the particular violations, the number and seriousness of prior violations, and the impact of the particular activity upon the public.

The broker's trustworthiness to handle funds belonging to others is critical to the practice of the profession of the broker and to the protection of the public. The Respondent's conviction for bank fraud establishes that he is not trustworthy or competent to handle the funds of others.

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker license of Mark L. Hunter, No. B30077, is hereby REVOKED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.41, that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty (30) days of the date of this Order. In addition, the Executive Secretary shall bill the Respondent for any transcript costs associated with this hearing, and the Respondent shall remit payment within thirty (30) days of receipt of the bill.

Issued this 23rd day of November, 1994.


Theresa Loffredo
Vice-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.