

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

IN RE:)	CASE NO. 92-089
MARGERY K. KAHLER (B10588))	DIA NO. 93DOCRE-3
Broker)	
259 BROADWAY)	FINDINGS OF FACT,
BOX 228)	CONCLUSIONS OF LAW,
SPRINGVILLE, IA 52336-0228)	DECISION AND ORDER

On January 26, 1993, the Iowa Real Estate Commission (hereinafter Commission) filed a Complaint against Margery K. Kahler, a licensed Iowa Broker (hereinafter Respondent). The Complaint alleged specific acts or omissions and alleged these acts or omissions constituted violations of Iowa Code sections 117.46(2), (4), (5); 117.29(2) and (3), 117.34(1), (3), (8), and (11), and 193E IAC 1.27 and 4.40(4)(d) and (e), 4.40(5)(a) and (b), and 4.40(15) and (16).

On April 22, 1993, the Commission conducted the hearing to determine whether disciplinary action should be imposed against the Iowa broker's license of the Respondent.

The following members of the Commission were present for the hearing and participated in making the decision: E. Joe Ann Lutz, Jack Knapp, Jerry Duggan, and Marlys Nielsen. The State was represented by Grant Dugdale, Assistant Attorney General. The Respondent did not appear, nor was she represented by counsel. 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 Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117 and 258A as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker. Her license number is B10588. The Respondent is sole proprietor in Springville, Iowa doing business as the Property Shop Real Estate

Company, trade name license number T02880000. (official file; testimony of Roger Hansen)

3. On March 18, 1992, Dorothy Lange sold her business located at 259 Broadway Street, Springville, Iowa, to Rosey's Ribs N Pizza, Inc. by Margery K. Kahler, President. (State's Exhibit 2)

4. Dorothy Lange provided a copy of check #1200, drawn on "The Property Shop Real Estate Trust Account," account #83-853-2, Solon State Bank, Solon, Iowa, signed by M. K. Kahler, payable to Tri-County Dairy, dated 08-11-92 and a notation in the memo "Rosey's." The check was marked "closed account, do not present again." The check was for \$12.00. (State's Exhibit 1)

5. Dorothy Lange provided a copy of check #1210, drawn on "The Property Shop Real Estate Trust Account," account #83-853-2, Solon State Bank, Solon, Iowa, signed by M. K. Kahler, payable to Tri-County Dairy, dated 08-19-92, and a notation in the memo "Rosey's." The check was marked "account closed, do not present again." The check was for \$40.00. (State's Exhibit 1)

6. Dorothy Lange provided a copy of check #1213 drawn on "The Property Shop Real Estate Account, account number 83-853-2, Solon State Bank, Solon, Iowa, signed by M. K. Kahler, payable to Kuba, not dated, and a notation in the memo, "Rosey's Account Old Style." The check was marked "account closed, do not present again," 08-25-92. The check was for \$44.50. (State's Exhibit 1)

7. The Property Shop Real Estate Company is a trade name license T02880000 assigned to respondent. (testimony of Roger Hansen)

8. Respondent's Real Estate Commission Broker file does not contain a Consent to Examine and Audit Trust Account for "The Property Shop Real Estate Trust Account #83-853-2." (testimony of Roger Hansen)

9. Complaint No. 92-089, filed by the Commission on January 26, 1993, and Notice of Hearing was personally served upon the Respondent on March 24, 1993. The Respondent signed an acknowledgement of notice. The Respondent did not appear for the hearing. (Exhibit A)

CONCLUSIONS OF LAW

1. 193E IAC 4.16 provides that a written notice of hearing, together with a statement of charges, shall be mailed to the licensee at least 20 days before the hearing by certified mail return receipt requested to the last known business address of the licensee or may be served in the manner of original notice. Delivery of personal notice to the licensee . . . may constitute commencement of the contested case proceedings.

193E IAC 4.25 provides that if a Respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the Commission may proceed to conduct the hearing and the Respondent shall be bound by the results of such hearing to the same extent as if the licensee were present.

The Respondent was personally served with notice of hearing and the complaint, in accordance with 193E IAC 4.16, but failed to appear. She is bound by this decision of the Commission to the same extent as if she had appeared.

2. Iowa Code section 117.46(2), (3), and (4) (1991) provides in relevant part:

117.46 Trust accounts.

• • •

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the department of inspections and appeals to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the department. The certification and consent shall be furnished on forms prescribed by the department. This does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager.

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

3. Iowa Code section 117.34(8) (1991) provides in relevant part:

117.34 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 the department of inspections and appeals 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:

• • •

(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.

4. Iowa Code section 117.29(3) (1991) provides in relevant part:

117.29 Revocation or suspension.

A license to practice the profession of real estate broker and sales person may be revoked or suspended when the licensee is guilty of the following acts or offenses:

• • •

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

5. 193 IAC 1.27(1)(c) and (d), (5) provide in relevant part:

• • •

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$100 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in

Iowa Code section 117.46, and that at no time are trust moneys used to cover any charges.

d. Money held in the trust account which becomes due and payable to the broker shall be promptly withdrawn by the broker.

The broker shall not use the trust account as a business operating account or for personal uses. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

• • •

1.27(5) A broker shall be required to open and maintain one or more trust accounts if the broker receives or expects to receive trust funds. For each separate trust account opened, the broker shall file with the commission a written "Consent to Examine and Audit Trust Account" form which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission and shall include the account names and number, and the name and address of the depository.

6. 193E IAC 4.40(4)(d)(15) and (16) provide:

193E - 4.40(117) Violation for which civil penalties may be imposed.

4.40(4) Failing to inform commission and remit required fees if appropriate:

• • •

(d) When opening a trust account by not filing a consent to examine for the account.

• • •

(15) Issuing an insufficient fund check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.

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

7. The preponderance of the evidence established that the Respondent failed to notify the Real Estate Commission of the name of the "Property Shop Real Estate Trust Account" and the name of the bank and account number where the trust account was maintained, in violation of Iowa Code sections 117.46(2), 117.34(8), 193E IAC 1.27(5) and 4.40(4)(d). The Respondent has failed to act compe-

tently in such a manner as to safeguard the interests of the public.

8. The preponderance of the evidence established that the Respondent failed to file with the commission an authorization to examine and audit with the certification of the bank attesting to the trust account and consenting to the examination and audit, in violation of Iowa Code section 117.46(3)(8) and 193E IAC 1.27(5) and 4.40(4)(d).

9. The preponderance of the evidence established that the Respondent commingled her personal funds or other funds with the real estate trust account when she issued checks from her trust account for expenses of her personal business. The Respondent has violated Iowa Code sections 117.46(4) and (8) and 193E IAC 1.27(c) and (d).

10. The preponderance of the evidence established that the Respondent issued worthless checks on a closed real estate trust account, in violation of Iowa Code section 117.46(4), 117.29(3), and 193E IAC 4.40(15) and (16). The issuance of worthless checks on a trust account constituted unethical conduct and a failure to act in such a manner as to safeguard the interests of the public.

11. The state did not present evidence on Count V.

DECISION AND ORDER


The Respondent's violations of the Commission's statutes and rules relating to real estate trust accounts demonstrate that she is unworthy and incompetent to act as a real estate broker in such manner as to safeguard the interests of the public. IT IS THEREFORE THE ORDER of the Iowa Real Estate Commission that the broker's license of Margery K. Kahler, No. B10588, is hereby REVOKED.

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 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 27th day of MAY, 1993.



Jack Knapp, Vice-Chairman
Iowa Real Estate Commission



Roger Hansen
Executive Secretary
Iowa Real Estate Commission



Margaret LaMarche
Administrative Law Judge

ML/jmm