

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

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RE: HAROLD F. SHIPLER	)	CASE NUMBER 90-046
(B02562)	)	DIA NO. 90DOCRE-11
	)	FINDINGS OF FACT,
Broker/Respondent	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER

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On July 24, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a complaint against Harold Shipler, a licensed Iowa real estate broker (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Iowa Code section 258A.3(2)(a) (1989).

On August 23, 1990, the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The entire Commission was present for the hearing. The Commissioners are E. Joe Ann Lutz, Jerry Duggan, Marlys Nielsen, Robert Christensen, and James R. Berry. The State was represented by John Parmeter, Assistant Attorney General. The Respondent did not appear. 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 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 chapter 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. His license number is B02562. (Official file)
3. The Respondent was served with Notice of Hearing and Complaint and Statement of Charges by certified mail, return receipt requested. The return receipt card indicates that Respondent signed for the certified mail on July 25, 1990. (State's Exhibit 2)

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4. The Commission previously filed a Complaint against the Respondent on February 9, 1990. A hearing was held on this Complaint on March 22, 1990. Following the hearing, the Commission found that Respondent had violated Iowa Code section 117.34(10) and 193E Iowa Administrative Code section 4.40(9). The Commission reprimanded the Respondent for his actions and ordered Respondent to pay a \$250.00 civil penalty to the Commission within 30 days of the date of the decision. (State's Exhibit 1; Testimony of Ronald Siepker)

5. A Field Auditor II from the Iowa Department of Inspections and Appeals testified that he had reviewed the Respondent's file at the Commission office. According to the file, Respondent has not yet paid the \$250.00 penalty imposed by the Board's Order dated April 30, 1990. If the Respondent had paid the penalty there would be a receipt of payment on the original copy of the Findings of Fact, Conclusions of Law, Decision and Order. No receipt of payment was attached to the original copy of the Decision and Order. (Testimony of Ronald Siepker)

#### CONCLUSIONS OF LAW

1. 193E Iowa Administrative Code section 4.16 provides that a written notice of hearing together with a statement of the charges shall be mailed 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 as in the manner of original notices. The preponderance of the evidence established that the Notice of Hearing and Complaint and Statement of Charges was served on the Respondent by certified mail more than 20 days before the hearing.

2. 193E Iowa Administrative Code section 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 or hearing officer may proceed to conduct the hearing, and the Respondent shall be bound by the results of the hearing to the same extent as if the licensee were present. The Respondent did not appear for the hearing after proper notice had been served upon him. The Commission elected to proceed with the hearing, and the Respondent will be bound by the results of this hearing as if he had appeared.

3. Iowa Code section 258A.3(2)(a) states:

Authority of licensing boards:

2. Each licensing board may impose one or more of the following as license discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 114.21, 116.21, 117.29, 118.13, 118A.15, 147.55, 148B.7, 153.34, 154A.24, 169.13, or 602.3203 or chapter 135E, 151, 507B,

or 552, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board or upon failure of the licensee to comply with the decision of the board imposing licensee discipline.


The preponderance of the evidence established that Respondent failed to pay the \$250.00 penalty as imposed by the Board's Order dated April 30, 1990. Therefore, the Respondent has violated Iowa Code section 258A.3(2)(a) (1989).


DECISION AND ORDER

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker's license of Harold S. Shipler, Number B02562, shall be suspended for a minimum period of one year. Respondent's license will not be reinstated until the one year suspension is served and the \$250.00 penalty is paid.

Executed this *21st* day of *September*, 1990.


  
E. Joe Ann Lutz, Chair  
Iowa Real Estate Commission

  
Margaret LaMarche  
Administrative Law Judge

  
K. Marie Thayer  
Administrator  
Professional Licensing Division

ML/jmm

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings:  


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