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PROFESSIONAL LICENSING
DIVISION

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

31-90-3865-000183 •• X • 000 950.00
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IN RE:)	CASE NUMBER: 88-038
Lynn L. Allen (B06039))	
Broker)	
)	
2911 Ontario Street)	INFORMAL SETTLEMENT
Ames, Iowa 50010)	

Pursuant to Iowa Code Section 17A.10(1989) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between Lynn L. Allen and The Iowa Real Estate Commission (Commission). The parties agree as follows:

STIPULATED STATEMENT OF FACTS

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1989) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. Lynn L. Allen is, and was at all times during the following events, a licensed real estate broker. His license number is B06039.
3. On May 16, 1988, the trust account records of Broker Allen were audited by Department of Inspections and Appeals Auditor Bernard G. Hall.
4. The Auditor noted that the trust account of Broker Allen had an overage of \$1,987.85.
5. The general ledger had no running balance. Prior to November, 1987, Broker Allen was not maintaining a general ledger or an individual ledger sheet for each transaction.
6. It was also noted by the Auditor that interest in the amount of \$1,034.48 had accrued in the trust account and had not been remitted to the State of Iowa.
7. On July 6, 1989, the trust account records of Broker Allen were audited by Department of Inspections and Appeals Auditor Ron Rasmussen.
8. The Auditor noted that on that date the trust account was \$1,358.65 long.

9. In May 1988, Broker Allen had an overage of \$1,987.85. In the exit interview on May 16, 1988, Broker Allen agreed to attempt to reconstruct all his closed files to determine the rightful owners. On July 6, 1989, Broker Allen was audited and had an overage of \$1,358.65. Broker Allen is unable to account for the difference of \$629.20. Broker Allen has been unsuccessful in locating the rightful owners.

10. Broker Allen did not remit interest to the State of Iowa during the 14 month period between the two audits.

11. On July 3, 1989, Broker Allen, with check number 3676, remitted interest in the amount of \$400.74 to the State of Iowa.

12. Broker Allen failed to reconcile the trust account on a regular basis.

13. Broker Allen failed to properly account for the client's money in the trust account.

14. Broker Allen failed to remit interest to the State of Iowa on a quarterly basis.

15. 193E Iowa Administrative Code Section 1.27(117) states:

"Earnest payments, rents collected, property management funds, and other trust funds received by the broker shall be deposited in an identified "trust" account in a bank, savings and loan association, savings bank, or credit union located in Iowa. A broker shall maintain in the broker's office a general ledger for the trust account and an account ledger for each account or transaction which shall provide a complete record of all moneys received on real estate transactions, rents and management funds, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The notification to the commission of the name, depository, and address of the broker's trust account shall include the account number.

2. Unless there is a written agreement between a buyer and a seller to the contrary, the interest on the account shall be transferred quarterly to the state. The beginning of the first

quarter is July 1, 1985. The broker may have the depository remit the interest directly, or the broker may remit the interest, but in either case, it will be the responsibility of the broker to see that the interest is remitted. The amount to be remitted to the state will be the net of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. If the interest is remitted by the broker, the broker shall include with the remittance a copy of the applicable bank statement(s)."

16. Iowa Code Section 117.46(1) 1989 states:

"Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 220.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession."

17. 193E Iowa Administrative Code Section 4.40(117) provides a list of violations for which civil penalties may be imposed. Within that list are the following:

"5. Maintaining inadequate transaction records such as:

- a. Failing to maintain a general ledger.
- b. Failing to maintain individual account ledgers."

"6. Improper trust account and closing procedures:

- (k) Failing to account for and remit to the state accrued interest due in accordance with Iowa Code Section 117.46."

AGREED ORDER

By agreement it is therefore ORDERED, ADJUDGED, AND DECREED by The Iowa Real Estate Commission as follows:

1. Broker Lynn L. Allen has the right to a hearing on this matter, but waives his right to a hearing and all attendant rights by freely entering into this Informal Settlement.

2. Broker Lynn L. Allen agrees to adopt proper bookkeeping procedures through use of the required ledgers and monthly trust account reconciliations as a preventative measure against trust account irregularities.

3. By authority of 193E Iowa Administrative Code Section 4.40(5) a,b (117) and 4.40(6)k (117), Broker Allen shall pay a civil penalty of \$350.00. Broker Allen shall deliver a certified check payable to the Iowa Real Estate Commission no later than January 31, 1990 to satisfy this requirement. The certified check must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 88-038.

4. Broker Lynn L. Allen shall take twelve hours of real estate continuing education in "Trust Accounts and Closing Procedures." This course must be approved as a "broker prelicense course" [See 193E Iowa Administrative Code Section 3.2(3)(117)]. These hours shall be in addition to all other real estate continuing education hours required by law for license renewal. The original certificate of attendance for the course must be submitted to the Commission no later than December 31,

1990 as evidence that this requirement has been fulfilled. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case number 88-038.

5. This Informal Settlement shall be made part of the record of Broker Allen and shall be considered by the Commission in determining the nature and severity of the disciplinary action to be imposed for any future license law violation by him.

6. Failure to comply with the provision of this Agreed Order shall be considered prima facie evidence of a violation of Iowa Code Section 117.29(3) and 117.34(2)(1989). However, no action may be taken against a licensee without a hearing as provided for in Iowa Code Section 117.35(1989).

7. The within settlement is subject to the approval of the Commission. If the Commission fails to approve this settlement, it shall be of no force or effect on either the Commission or the licensee, and shall not be admissible for any purposes at any further proceedings in this matter. If approved by the Commission, the settlement will be deemed an agreed-upon disposition of a contested case initiated by the Commission and will dispose of all matters contained in the complaint for case 88-038.

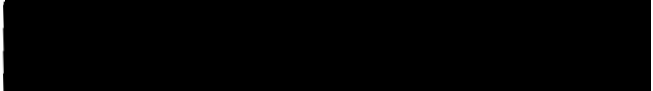
FOR THE BROKER:

Dated this 28 day of DEC, 1989.



Lynn L. Allen

Signed and sworn to before me this 28 day of December, 1989.



Notary Public, State of Iowa

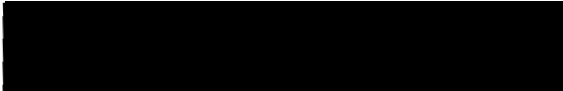
FOR THE COMMISSION:

Signed this 15 day of February, 1990.



Marlys Nielsen, Chairperson

Executed this 15th day of February, 1990.



Kenneth L. Smith
Executive Secretary