

Iowa Department of Inspections and Appeals
Division of Appeals
Lucas State Office Building
Des Moines, Iowa 50319

IOWA REAL ESTATE)	
COMMISSION)	CASE NUMBER 88-010
Complainant)	
vs.)	
KENNETH D. CHANDLER (B10388))	FINDINGS OF FACT,
Broker-Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On July 21, 1988 the Iowa Real Estate Commission (hereinafter the Commission) filed a complaint against Kenneth D. Chandler, a licensed real estate broker (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Sections 117.29(3), 117.34(2), 117.34(8) and 117.34(11) of the 1987 Iowa Code.

On August 18, 1988 the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny Netcott, Administrative Law Judge, Department of Inspections and Appeals. Commissioners James Berry, Joe Ann Lutz, Jerry Dugan, and Marlys Nielsen were present during the hearing. The Commission was represented by Assistant Attorney General Kathy Skinner. The Respondent did not appear at the hearing. A full presentation of facts was made by Assistant Attorney General Kathy Skinner.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Administrative Law Judge. The Administrative Law Judge was instructed by the Commission to prepare the Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Iowa Real Estate 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.

3. On January 7, 1985 a court ordered judgment was entered against the Respondent in the amount of \$8,250.00.
4. On June 19, 1985 the Respondent entered into an "Assurance of Voluntary Compliance" to resolve a contested case proceeding initiated by the Commission against him.
5. The "Assurance of Voluntary Compliance" reads in part:
"Respondent will pay the total amount of the judgment . . . by making payments of \$100 per month beginning on the first day of July, 1985. These \$100 payment increments will be made regardless of any other amounts collected on the judgment (garnishment, etc.) but the payments will cease when the total amount of the judgment has been paid. The payments will be mailed on or before the first day of each consecutive month . . . or by payment to the . . . county clerk of court."

"Failure to comply with this Assurance of Voluntary compliance shall be prima facie evidence of a violation of the Iowa Real Estate Commission Rules and shall constitute unprofessional conduct. See 700 I.A.C. 1.6(1)(117)."
6. The Respondent failed to remit the October, 1987 payment and each subsequent payment.
7. The Respondent has moved out-of-state and his Iowa real estate broker's license was placed on an inactive status March 11, 1988.

CONCLUSIONS OF LAW

What The Law Says

Iowa Code Section 117.29 (1987) states:

" A license to practice the profession of real estate broker and salesperson 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."



Iowa Code Section 117.34(1987) states the Board "may suspend or revoke the license issued under the provisions of this chapter ... if the licensee is found to be guilty of:

2. Making any false promise of a character likely to influence, persuade or induce.

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 hereinbefore specified, or demonstrates such bad faith, improper, fraudulent, or dishonest dealings as would have disqualified the licensee from securing a license under this chapter."

193E Iowa Administrative Code Section 4.12(117) states in part: ". . . The proposed settlement shall be binding if approved by the commission chairperson (or a member designated by the chairperson) and the respondent and respondent's counsel, if respondent has counsel."

Application of Law

On January 7, 1985 a court ordered judgment was entered against the Respondent in the amount of \$8,250.00. On June 19, 1985 the Respondent entered into an "Assurance of Voluntary Compliance" (AVC) to resolve a contested case proceeding initiated against him by the Real Estate Commission.

By signing the AVC, the Respondent voluntarily agreed to remit \$100 per month payments until the judgment was satisfied in full. The Respondent failed to remit payment in October, 1987 and all subsequent payments.

The Respondent has failed to respond to notices sent to him regarding this matter and has moved out-of-state.

The Commission finds that by the Respondent's lack of adherence to the AVC voluntarily entered into on June 19, 1985, the Respondent engaged in unethical conduct harmful or detrimental to the public and acted in a manner unworthy of a real estate licensee. In so doing, the Respondent violated Sections 117.29(3) and 117.34(8), 1987 Code of Iowa.

The Commission finds that the Respondent falsely promised, by virtue of his signing the AVC, to make payments to satisfy a court ordered judgment. The Commission can only ascertain that

such agreement was signed in order to reduce the disciplinary action imposed against his license in June, 1985. By his actions, the Respondent violated Section 117.34(2), 1987 Code of Iowa.

In addition, by failing to adhere to the terms of the AVC, the Commission finds that the Respondent reneged on a binding settlement as set forth in 193E Iowa Administrative Code Section 4.12(117). The Commission concludes that by the Respondent's actions he demonstrated bad faith and improper dealings in violation of Section 117.34(11), 1987 Code of Iowa.

DECISION AND ORDER


Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Sections 117.29(3), 117.34(2), 117.34(8), and 117.34(11).

It is therefore ORDERED by the Iowa Real Estate Commission that the Iowa real estate broker license of the Respondent be REVOKED, effective on the date of this decision.

Executed this 19th day of September, 1988.



JAMES R. BERRY, CHAIR
IOWA REAL ESTATE COMMISSION



JENNY J. NETCOTT
ADMINISTRATIVE LAW JUDGE

Date: September 16th, 1988.

Date: August 23, 1988

Issued this 19th day of September, 1988.



KENNETH L. SMITH
EXECUTIVE SECRETARY
IOWA REAL ESTATE COMMISSION

JJN/JRB/KLS/mmc

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 on

