

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

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IN RE: )  
First Realty, Ltd. (F01527) )  
Firm )  
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CASE NUMBER: 88-047  
INFORMAL SETTLEMENT

Pursuant to Iowa Code Section 17A.10 (1987) and 193E Iowa Administrative Code Section 4.12 (117), this Informal Settlement is entered into between First Realty, Ltd. (First) 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(1987) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. First Realty, Ltd. (First) is, and was at all times during the following events, an Iowa corporation holding real estate license number F01527.

3. First received and deposited to their trust account \$500 earnest money from Mr. and Mrs. Steven Stoner for the purchase of property at 3916 Maquoketa, Des Moines.

4. The parties later decided to cancel the purchase agreement.

5. First withheld \$136.40 from the \$500 earnest money to pay bills incurred in preparing for closing this transaction, specifically \$100 for a title opinion and \$36.40 for a termite inspection.

6. The balance of \$363.60 was returned to Mr. and Mrs. Stoner.

7. Since being notified of the Stoner's complaint, First sent a check to Mr. and Mrs. Stoner for \$136.40.

8. Iowa Code Section 117.34 states disciplinary action may be taken against a real estate license if the licensee is found to be guilty of:

"7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others."

9. 193E Iowa Administrative Code Section 1.27(1)(117) states:

"No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all parties."

10. 193E Iowa Administrative Code Section 1.27(2)(117) states:

"Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The money must be returned to the purchaser or paid to the seller and the broker must look to the broker's employer for compensation."

11. 193E Iowa Administrative Code Section 4.40(117) provides a list of violations for which civil penalties may be imposed. Within that list is item 6c which states:

"Withholding earnest money unlawfully when the transaction fails to consummate."

12. First erred by failing to return the full amount of the earnest money when a transaction failed to consummate, thereby violating Iowa Code Section 117.34(7) and 193E Iowa Administrative Code Sections 1.27(1)(117), 1.27(2)(117) and 4.40(6)c(117).

AGREED ORDER

By agreement, it is therefore ORDERED, ADJUDGED, and DECREED by the Commission as follows:

1. A date and time for an administrative hearing has been established for this matter, and First has received proper notice of this hearing. First waives its right to hearing and all attendant rights by entering into this Informal Settlement.

2. First assures the Commission that instructions implementing the above provisions of law have been given to those individuals who are involved in the day-to-day handling of trust funds within the organization.

3. Pursuant to 193E Iowa Administrative Code Section 4.40(6)c (117), First shall pay a civil penalty of \$300.00. Payment shall be made to the Commission no later than November 30, 1988 to satisfy this requirement.

4. This Informal Settlement shall be made a part of the record of First 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 First.

5. Failure to comply with the provisions of this Agreed Order shall be considered prima facie evidence of a violation of Iowa Code Section 117.29(3) and 117.34(2) (1987). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35 (1987).

6. The within settlement is subject to the approval of the Commission and if the Commission fails to approve this settlement, it shall be of no force or effect on either the Commission or the licensee, and it 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 88-047.

FOR FIRST REALTY, LTD.:

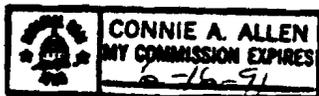
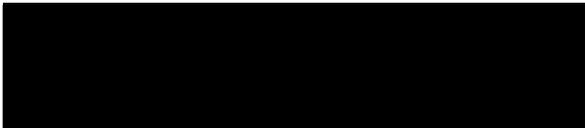
Dated this 5 day of October, 1988.

FIRST REALTY, LTD.



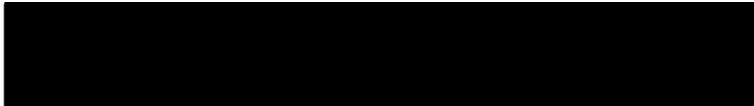
Gene W. Stanbrough *Gene W. Stanbrough*

Signed and sworn to before me this \_\_\_\_\_ day of October, 1988.



Notary Public, State of Iowa

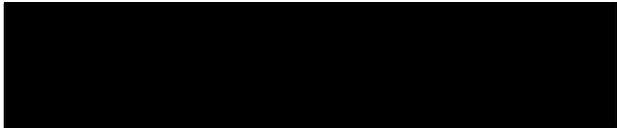
Dated this 3rd day of October, 1988.



Smith, Schneider, Stiles, Mumford,  
Schrage, and Zurek  
Attorneys for First Realty, Ltd.

FOR THE COMMISSION:

Dated this 20th day of October, 1988.



James R. Berry, Chairperson

Executed this 21st day of October, 1988.



Kenneth L. Smith  
Executive Secretary

**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 10-21, 1988

