

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

	)	CASE NUMBERS 87-010, 87-024
	)	
IN RE:	)	88-020 & 89-023
	)	
Frank P. Joens, Jr. (B04882)	)	
Broker	)	INFORMAL SETTLEMENT
	)	
R. R. 1 Box 3C	)	
Delhi, IA 52223	)	

Pursuant to Iowa Code Section 17A.10(1989) and 193E Iowa Administrative Code Section 4.12 (117) this Informal Settlement is entered into between Broker Joens 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 Chapter 17A, 117, and 258A(1989) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. Frank P. Joens is, and was at all times during the following events, a licensed real estate broker. His license number is B04882.

CASE NUMBER: 87-010

3. Thomas Heaney, a Minnesota resident, had an Iowa residence which he wished to sell.

4. Broker Joens and Mr. Heaney (Complainant) entered into a "Residential Lease with Option to Purchase".

5. Broker Joens then sublet the property and collected rents from his tenants.

6. Despite collecting rents from his tenants, Broker Joens did not make timely and consistent rent payments to the Complainant.

7. In making his rent payment, Broker Joens wrote at least two checks which were returned non-sufficient funds.

CASE NUMBER: 87-024

8. Broker Joens had property at 302 North Market, Solon, listed for sale.

9. Broker Joens purchased the property himself. Broker Joens and the sellers Herbert K. and Doris L. McDonald entered into an installment contract.

10. Broker Joens sold the property on contract to Lois Ann Renard.

11. Part of the payments made by Renard were to be applied to pay property taxes.

12. Broker Joens received this tax money from Renard, but did not pay the taxes on the property.

13. The McDonalds forfeited Broker Joens contract.

CASE NUMBER: 88-020

14. Broker Joens sold property he owned at 250 Lynda Drive, Cedar Rapids, to Paul A. Viktora and Shari L. Novak.

15. The property was encumbered by a mortgage dated October 7, 1975 in the original amount of \$24,000.

16. The Viktora Novak monthly payments on their contract were \$230.00. Broker Joens monthly mortgage payments were \$193.11.

17. Paul A. Viktora and Shari L. Novak made their contract payments to Broker Joens through August 1987. In August they were notified of a pending foreclosure against their property.

18. Broker Joens was delinquent in his mortgage payments since March 1, 1987.

CASE NUMBER 89-023

19. Broker Joens purchased a 4-plex at Lot 35, Linwood Acres, 3rd Addition, Marion, Iowa from Jim and Lynne Albrecht on June 20, 1988 on an assumption. Sales transaction was not completed in a timely manner.

20. In September 1988, the Albrecht's began receiving notices from the V.A. about legal action on their property for non-payment.

21. Rent payments by tenants made to Broker Joens through his manager were not applied by him to the mortgage. The Albrecht's received a notice of forfeiture executed by the Administrator of Veteran's affairs.

22. The Albrecht's credit rating has been adversely affected because of Broker Joens actions.

23. Broker Joens failed to respond to the Commission with information, upon request to do so.

LAWS AND RULES CITED

Iowa Code Section 117.29(1989) 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. . . engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

8. . . "Willful or repeated violations of the provision of this Act."

A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 117.34 except subsections 4,5,6 and 9 with respect to that property.

Iowa Code Section 117.34(1989) states the commission . . . may suspend or revoke any license issued under the provision of this chapter. . . if the licensee is found guilty of

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

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

8) Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interest 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 dealing as would have disqualified the licensee from securing a license under this chapter.

193E Iowa Administrative Code Section 1.27(6)(117) States:

Broker as principal. Where a licensee acts as a principal in the sale of property owned by the licensee and receives payments from the purchases, those payments must be deposited into the trust account when the licensee is acting in the capacity of a real estate broker and in those instances where any party of the funds must be used to pay taxes, insurance, mortgage, or any other types of encumbrances. When a licensee is acting as a principal in the renting of property owned by the licensee, funds other than security deposits should not be deposited into the broker's trust account except when the broker is not the sole owner of the property or is acting in the broker's capacity as a real estate licensee under a management agreement relative to the management of the property whether it

244

87-010; 87-024; 88-020 + 89-023

(3)

be for the licensee or others. Whenever a licensee is in doubt as to whether activities as a principal require that funds received be deposited into the broker's trust account, the safest course of action is to account for those funds through a broker's trust account.

This rule is intended to implement Iowa Code Section 117.46.

Allegations - Case Number: 87-010

By failing to pass through rents received on the property to the owners, Broker Joens violated Iowa Code Sections 117.29(3), 117.34(7) and 117.34(8).

By writing insufficient funds checks to Complainant Heaney, Broker Joens violated Iowa Code Section 117.29(3).

Allegations - Case Number 87-024

By receiving Renards monthly tax installments, but failing to pay the taxes on the property, Broker Joens violated Iowa Code Sections 117.29(3), 117.34(7) and 117.34(8).

By making a false promise on the installments contract that he would pay the taxes, Broker Joens violated Iowa Code Section 117.34(2) and Iowa Administrative Code 193E 1.27(6).

By failing to deposit Renards payments into a trust account (when a portion of those payments were to be used to pay taxes as well as Broker Joens installment payments to Mr. McDonald) Broker Joens violated Iowa Code Section 117.29(3).

Allegations - Case Number 88-020

By receiving monthly installments but by failing to remit payments to the bank since March 1, 1987, Broker Joens violated Iowa Code Section 117.29(3), 117.34(7), 117.34(8).

Allegations - Case Number 89-023

By failing to make contract payments when funds were remitted to him for such purpose, Broker Joens violated Iowa Code Section 117.29(3), 117.34(7), 117.34(8).

By failing to complete the sales transaction in a timely manner, Broker Joens violated Iowa Code Section 117.29(2), 117.34(2) 117.34(8).

By failing to cooperate with the Commission investigation, Broker Joens violated Iowa Code Section 117.34(10).

AGREED ORDER

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

87-010; 87-024; 88-020 + 89-023

244

1. Broker Joens 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. Frank P. Joens' Iowa real estate license is hereby suspended for two years beginning September 1, 1989 and ending August 31, 1991.

3. Broker Joens will comply with all continuing education requirements and renew his Iowa real estate broker license on or before December 31, 1990.

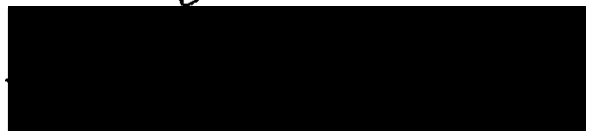
4. This Informal Settlement shall be made a part of the permanent record of Broker Joens and shall be considered by the Commission in determining the nature and severity of the disciplinary sanction to be imposed for any future license law violations by Broker Joens.

5. 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).

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 for either party and shall not be admissible for any purposes in further proceedings of this matter. If the Commission does not approve and accept this settlement, the hearing will be rescheduled.

FOR THE BROKER:

Dated this 10 day of Aug, 1989.



Frank P. Joens Jr.

Signed and sworn to before me this 10th day of Aug, 1989.



Notary Public, State of Iowa

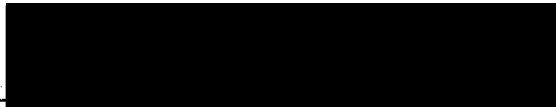
FOR THE COMMISSION:

Signed this 17 day of August, 1989.



Marlys Nielsen, Chairperson

Executed this 17th day of August, 1989.



Kenneth L. Smith  
Executive Secretary