

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

IN RE: : CASE NUMBER: 88-068

Don Knudsen Realty, Inc. :

(F02780)
Donald E. Knudsen (B01495) : 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 Don Knudsen Realty, Inc. (DKR) and Donald E. Knudsen 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. DKR is, and was at all times during the following events, a corporation holding real estate license number F02780. Donald E. Knudsen holds license B01495.
3. Iowa Code Section 117.46(1) (1987) 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 salesperson 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. (Emphasis supplied).

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4. 193E Iowa Administrative Code Section 1.27(117) states in relevant part:

1. All money belonging to others and accepted by the broker or the broker's salesperson on the sale, purchase or exchange of real property located in the state of Iowa shall no later than the next banking day after acceptance of the offer be deposited in one or more interest-bearing checking accounts separate from the money belonging to the broker, except for funds deposited to cover bank service charges as specified in Iowa Code section 117.46. The name of the separate account(s) shall be identified by the word "trust." (Emphasis supplied).

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). (Emphasis supplied).

5. DKR's bank did not pay interest on DKR's trust account from July 1, 1985 to the date the company's trust account was examined, August 3, 1988.

6. During this period of time, DKR was engaged in the real estate business and was handling client funds through its trust account.

7. DKR denies violating Iowa Code Section 117.46 (1987) as well as 193E Iowa Administrative Code Section 1.27(117) and at all times had no intent to violate the statute or rule. At no time did the bank pay DKR interest.

AGREED ORDER

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

1. DKR has a right to a hearing on this matter, but waives its right to hearing and all attendant rights by entering into

this Informal Settlement.

2. DKR submits payment of the balance of interest due, \$10,992.26, with this Informal Settlement with a reservation of all rights to proceed against the bank.

3. The within settlement is subject to approval of the Commission. If the Commission fails to approve this settlement, it shall be of no force or effect on either party and shall not be admissible for any purposes at any further proceedings in this matter. If approved by the Commission, the settlement will dispose of all matters contained in the complaint for case number 88-068.

FOR THE LICENSEE:

Dated this 17th day of March, 1989.

[Redacted signature]

Donald E. Knudsen

[Redacted signature]

Don Knudsen Realty, Inc. by
Donald E. Knudsen, Broker

Signed and sworn to before me this 17th day of March, 1989.



[Redacted signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

This Informal Settlement is approved.

Signed this 22nd day of March, 1989.

[Redacted signature]

James R. Berry, Chairperson

Executed this 22nd day of March, 1989.

[Redacted signature]

Kenneth L. Smith
Executive Secretary

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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 March 22, 1989.

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