

BEFORE THE IOWA REAL ESTATE COMMISSION

STATE CAPITOL  
DES MOINES, IOWA

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IOWA REAL ESTATE COMMISSION	)	
	)	
Complainant,	)	Case No. 85-093
	)	
vs.	)	Informal Settlement/
	)	Assurance of Voluntary
DENNIS R. LIPPON (B01652)	)	
	)	Compliance
Broker-Respondent.	)	

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Pursuant to 700 I.A.C. section 1.6(1)(117) and 700 I.A.C. section 4.12(117), this Informal Settlement/Assurance of Voluntary Compliance is entered into between the Iowa Real Estate Commission (Commission) and Dennis R. Lippon (Respondent). The Commission and Respondent agree as follows:

Stipulated Statement of Facts

1. The Respondent enters into this Informal Settlement/Assurance of Voluntary Compliance knowingly and voluntarily.
2. The Respondent is now and was during the events that follow a licensed real estate broker.
3. The Commission has jurisdiction of this matter under the provisions of Iowa Code Chapters 17A, 117, and 258A.
4. On September 26, 1985, a routine trust account examination was conducted by a representative of the Commission as allowed by 700 I.A.C. 2.4(1)(117). The examiner, C. Fred Andrews, noted that the account was short \$100.00 of the amount necessary to cover clients' deposits to the account.

5. This deficiency was due to a clerical error resulting in a \$100.00 overpayment at the closing of the FmHA-Waltman transaction. The Respondent had received a \$100.00 earnest money deposit from buyer Waltman earlier on a different property. When that transaction did not consummate, the earnest money was returned to Waltman. Shortly thereafter, buyer Waltman made an offer on the subject property. Believing the initial earnest money deposit was still in the trust account, the Respondent paid \$100.00 from the trust account at the closing.

6. The deficiency was not corrected until September 26, 1985, when, at the direction of the examiner, the Respondent deposited \$100.00 to the trust account.

7. The Respondent states that he could have made a deposit at any time to cover the deficiency but did not for fear of violating Iowa Code section 117.46(4) which limits the amount of personal funds a broker holds in the trust account to \$100.00.

8. Although section 117.46(4) does prohibit the broker from commingling his own funds with those of his clients in the trust account, money deposited by a broker to cover a shortage cannot be considered the broker's funds once the deposit is made. The deposited funds belong to the clients, just as they belonged to the clients before the error causing the shortage occurred.

9. The Respondent now understands that when the trust account is short of the amount necessary to cover clients balances, he must make an immediate deposit to cover the deficiency.

10. The trust account irregularity was not intentional, willful or fraudulent, but arose from a lack of understanding of the scope of commingling in the trust account and a misunderstanding of the proper handling of the situation.

11. Iowa Code section 117.29(3) 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...practice harmful or detrimental to the public."

12. By failing to carry a sufficient balance in the trust account to cover clients' deposits for approximately two years due to the error mentioned in paragraph 5, the Respondent violated Iowa Code section 117.29(3).

13. The Respondent committed the aforementioned acts as a real estate licensee.

Agreed Order

1. The Respondent agrees that by failing to correct the \$100.00 deficiency immediately, he violated Iowa Code section 117.29(3). When and if shortages in the trust account are detected in the future, the Respondent shall take immediate action to correct the deficiency.

2. 700 I.A.C. section 4.40(117) provides as follows:

"4.40(117) Violations for which civil penalties may be imposed:

"4.40(6) Improper trust account and closing procedures:

"a. Failing to deposit funds as required."

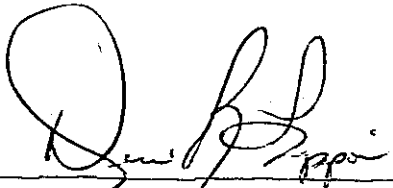
3. By authority of 700 I.A.C. section 4.40(6)a(117), the Respondent shall pay a civil penalty of \$100.00. The Respondent shall deliver a check payable to the Iowa Real Estate Commission no later than March 31, 1986, to satisfy this requirement.

4. The Respondent shall take six hours of real estate education within twelve months of the signing of this Informal Settlement/Assurance of Voluntary Compliance by the Commission. These six hours shall be taken in the area of trust accounts and closing procedures and shall be in addition to all other real estate education hours required by law. Proof of compliance (the original certificate of attendance) must be submitted to the Iowa Real Estate Commission within thirteen months of the signing of this Informal Settlement/Assurance of Voluntary Compliance by the Commission.

5. 700 I.A.C. subsection 1.6(1)(117) states that "proof of failure to comply with the Assurance of Voluntary Compliance shall be prima facie evidence of violation of these rules and shall constitute unprofessional conduct."

6. The Respondent recognizes that his right to a hearing under Iowa Code section 117.35 and all other rights attendant thereto are hereby waived in settling this complaint through an Informal Settlement/Assurance of Voluntary Compliance.

7. This Informal Settlement/Assurance of Voluntary Compliance shall be made a part of the permanent record of Respondent Dennis R. Lippon 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 the Respondent.

 2/10/86

Dennis R. Lippon, Broker-Respondent

Barbara J. Thayer  
Notary Public

Signed and sworn to before me this

10<sup>th</sup> day of February 1986.

Seal

Iowa Real Estate Commission

Executed this 20th day of February 1986.

Joan I. Ballantyne  
Joan I. Ballantyne, Chairman