

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

IN RE:)	CASE NUMBER: 89-068
W. L. Mullenger (B01974))	
Broker)	
1225 W. Broadway)	INFORMAL SETTLEMENT
Denison, Iowa 51442)	

Pursuant to Iowa Code Section 17A.10(1989) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between W. L. Mullenger 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(1989) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. W. L. Mullenger is, and was at all times during the following events, a licensed real estate broker. His license number is B01974.
3. W. L. Mullenger listed property located at 719 2nd Avenue South, Denison, Iowa and owned by LuAnn Harp.
4. Mr. and Mrs. David Green executed an offer to purchase the property located at 719 2nd Avenue South, Denison, Iowa. The offer included \$500.00 earnest money and the offer was subject to the Green's obtaining a conventional loan for \$28,000.00.
5. LuAnn Harp accepted the offer to purchase on April 26, 1989.
6. Mr. and Mrs. David Green were unable to obtain a conventional loan for \$28,000.00
7. W. L. Mullenger returned \$200.00 of the earnest money to Mr. and Mrs. David Green without the written consent of all parties involved.
8. W. L. Mullenger retained \$300.00 of the earnest money for his services in making the attempted sale of the property owned by LuAnn Harp.

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

"No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold the deposit in the trust account until a written release is received from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time payment may be made into court."

10. 193E Iowa Administrative Code Section 1.27(2) 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(6)c states:

"Improper trust account and closing procedures:

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

AGREED ORDER

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

1. W. L. Mullenger 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. By failing to obtain a written release from LuAnn Harp and Mr. and Mrs. David Green to release the earnest money, W. L. Mullenger violated 193E Iowa Administrative Code Section 1.27(1).

3. By retaining \$300.00 of the earnest money, W. L. Mullenger violated 193E Iowa Administrative Code Sections 1.27 (2) and 4.40(6)c.

4. W. L. Mullenger is hereby REPRIMANDED.

5. W. L. Mullenger shall pay a civil penalty of \$350.00. W. L. Mullenger shall deliver a certified check payable to the Iowa Real Estate Commission no later than September 30, 1990 to satisfy this requirement. The certified check must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 89-068.

6. W. L. Mullenger shall take twelve (12) hours of Real Estate Continuing Education in "Real Estate Law, Contract Law and Agency Law" within twelve (12) months of the signing of this Informal Settlement. These twelve (12) hours shall be taken in the area of Broker Pre-Licensing and shall be in addition to all other Real Estate Education hours required by law. Proof of compliance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of signing of this Informal Settlement by the Commission. The certificates of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 89-068.

7. This Informal Settlement shall be made part of the permanent record of W. L. Mullenger 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 violations by W. L. Mullenger.

8. Failure to comply with the provisions of this agreed order shall be considered prima facie evidence of a violation of Iowa Code Sections 117.29(3) and 117.34(2)(1989). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35(1989).

9. 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 89-068.

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FOR THE BROKER:

Dated this 8 day of Aug, 1990.

[Redacted Signature]

W. L. Mullenger

Signed and sworn to before me this 8 day of August, 1990.

[Redacted Signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this 16th day of August, 1990.

[Redacted Signature]

E. Joe Ann Lutz, Chairperson

Executed this 20th day of August, 1990.

[Redacted Signature]

K. Marie Thayer,
Administrator

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 Aug 20 1990

[Redacted Signature]