

DEPARTMENT OF COMMERCE  
PROFESSIONAL LICENSING DIVISION  
1918 S.E. HULSIZER AVENUE  
ANKENY, IOWA

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IOWA REAL ESTATE COMMISSION	)	
	)	CASE NUMBER 88-079
Complainant	)	
	)	
vs.	)	
	)	FINDINGS OF FACT,
HAROLD SHIPLER	)	CONCLUSIONS OF LAW,
(B02562)	)	DECISION AND ORDER
	)	
Broker-Respondent	)	

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On February 9, 1990 the Iowa Real Estate Commission (hereinafter Commission) filed a complaint against Harold Shipler, a licensed Iowa real estate broker (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Iowa Code Section 117.34(10) and Iowa Administrative Code Section 193E - 4.40(9)(117).

On March 22, 1990 the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny J. Flaherty, Administrative Law Judge, Department of Inspections and Appeals, and heard by Commissioners Joe Ann Lutz, Jerry Duggan, Marlys Nielsen and Robert Christensen. The Iowa Real Estate Commission was represented by John Parmeter, Assistant Attorney General. The Respondent appeared at the hearing pro se. A full presentation of facts was made by both parties.

A court reporter was present and recorded the proceedings. The hearing was also tape recorded by the Administrative Law Judge. The Administrative Law Judge was instructed by the Commission to prepare the Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Iowa Real Estate 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. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker.

3. On September 19, 1988 the Department of Inspections and Appeals (DIA) sent a letter to the Respondent informing him that a complaint had been filed with the Commission regarding a particular real estate transaction asking that he respond to the allegations within fourteen calendar days.

4. The Respondent contacted the Commission by telephone to discuss the complaint; he testified that he understood that a written response to DIA was required.

5. The Respondent did not submit a written response to DIA or the Commission concerning the September 19, 1988 letter.

6. On November 10, 1988 DIA sent a certified letter to the Respondent reminding him that DIA had not received a response to the September 19, 1988 letter.

7. The Respondent acknowledged delivery of the November 10, 1988 certified letter by signing the certified letter receipt.

8. The Respondent did not respond to the certified letter of November 10, 1988 from DIA.

9. On June 6, 1989 DIA sent a letter to the Respondent informing him that he failed to respond to a September 19, 1988 letter and a November 10, 1988 letter from DIA.

10. On September 20, 1989 DIA sent a certified letter to the Respondent informing him that he failed to respond to a request for information concerning a complaint filed with the Commission.

11. The Respondent acknowledged delivery of the September 20, 1989 letter from DIA signing the certified return receipt card.

12. The Respondent did not reply to the certified letter of September 20, 1989 from DIA.

13. During the administrative appeal hearing the Respondent testified that he received all the aforementioned correspondence sent to him from DIA; he knew he was required to respond in writing but failed to do so because he was unsure how to answer the letters since he understood the transaction had been completed satisfactorily and the complaint resolved.

#### CONCLUSIONS OF LAW

Iowa Code Section 117.34 (1989) states:

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima-facie case, request the

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department of inspections and appeals to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

10. Failing within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

193E Iowa Administrative Code Section 4.40(117) states:

Violations for which civil penalties may be imposed.

9. Failing to provide information to the commission when requested relative to a complaint (14 calendar days).

In September 1988 DIA sent a letter to the Respondent informing him that a complaint had been filed with the Real Estate Commission requesting that he respond in writing to the allegations within 14 calendar days. Although the Respondent contacted the Commission by telephone, he failed to respond in writing to the September 19 letter from DIA. The Respondent testified that he was aware that he was required to provide information to the Commission by responding to the DIA inquiry and that a telephone call did not fulfill this requirement.

In November 1988 DIA again sent the Respondent a letter concerning the complaint and requesting a written response. The Respondent failed to submit a written response. In June 1989 the Respondent was again sent a letter concerning the complaint filed with the Commission. Again the Respondent failed to reply. In September 1989 DIA sent the Respondent another letter of inquiry to which the Respondent again failed to reply.

For a period of one year DIA attempted to elicit a response for information concerning a real estate complaint filed against the Respondent. The Respondent failed to provide the information requested even though he testified that he understood the requirement to provide information requested concerning the complaint filed. By so doing, the Respondent specifically violated Iowa Code Section 117.34(10). The Commission does not condone this type of negligent behavior and issues a REPRIMAND to the Respondent for failing to respond to a request for information concerning a real estate transaction conducted by the Respondent.

Iowa Administrative Code Section 193E--4.40(9)(117) allows the Commission to assess a civil penalty when a licensee fails to respond to a request for information relative to a complaint.

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DECISION AND ORDER

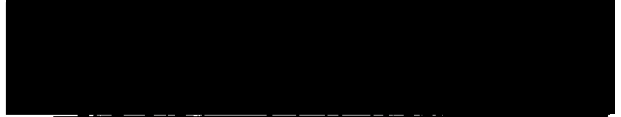
Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Section 117.34(10) and 193E Iowa Administrative Code Section 4.40(9) (117).

The Commission REPRIMANDS the Respondent for his actions and ORDERS payment of a \$250.00 civil penalty to the Iowa Real Estate Commission within 30 days of the date of this decision.

Executed this 30<sup>th</sup> day of April, 1990.



MARLYS NIELSEN, CHAIR  
Iowa Real Estate Commission



JENNY J. FLAHERTY  
Administrative Law Judge

Issued this 30<sup>th</sup> day of April, 1990



K. MARIE THAYER  
Administrator  
Professional Licensing Division

JJF/jmm

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case 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 in the pleadings, on May 1, 1990.

