

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

IN RE:)	
)	CASE NUMBER: 88-017
Kay E. Vilmont (B02885),)	
Broker)	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 Kay E. Vilmont 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. Kay E. Vilmont is, and was at all times during the following events, a licensed real estate broker. Her license number is B02885.

3. Broker Vilmont received and deposited to her trust account \$500 earnest money from Delores McCoy towards the purchase of 1420 Lawrence, Camanche, Iowa.

4. The transaction did not consummate.

5. A November 23, 1987 check from Broker Vilmont's trust account for \$290 was written to Delores McCoy. This represented the \$500 earnest money less a \$210.00 abstracting bill which was due for work done in anticipation of closing the transaction. Broker Vilmont retained the \$210 pursuant to her understanding that Delores McCoy had orally agreed to pay the abstracting bill.

6. This \$290 check was not cashed. Delores McCoy returned the check to Broker Vilmont and demanded her earnest money be returned in full.

7. Broker Vilmont voided the \$290 check and on December 1, 1987 issued a \$500 check to Delores McCoy.

8. Iowa Code Section 117.34 states disciplinary action may be taken against a real estate license if the licensee is found to be guilty of:

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

9. 193E Iowa Administrative Code Section 1.27(2) (117) 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. Broker Vilmont erred by failing to return the full amount of earnest money when the transaction failed to consummate thereby violating Iowa Code Section 117.34(7) and 193E Iowa Administrative Code Section 1.27(2)(117).

AGREED ORDER

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

1. A date and time for an administrative hearing has been established for this matter, and Broker Vilmont has received proper notice of this hearing. Broker Vilmont waives her right to hearing and all attendant rights by entering into this Informal Settlement.

2. Broker Vilmont shall take twelve hours of real estate continuing education in "Real Estate Law, Contract Law, and Agency Law." This course must be approved as a "broker prelicense course" (See 193E Iowa Administrative Code Section 3.2[3][117]). These hours shall be in addition to all other real estate continuing education hours required by law for license renewal. The original certificates of attendance for the course must be submitted to the Commission no later than October 31, 1989 as evidence that this requirement has been fulfilled. The certificates of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case number 88-017.

3. This Informal Settlement shall be made a part of the record of Broker Vilmont 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 violation by her.

4. Failure to comply with the provisions of this Agreed Order shall be considered prima facie evidence of a violation of Iowa Code Section 117.29(3) and 117.34(2) (1987). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35(1987).

5. 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 88-017.

FOR THE BROKER:

Dated this 5th day of October, 1988.

[Redacted signature]

Kay Vilmont, Broker

Signed and sworn to before me this 5th day of October, 1988.



[Redacted signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

Dated this 20th day of October, 1988.

[Redacted signature]

James R. Berry, Chairperson

Executed this 21st day of October, 1988.

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 10-21 19 88

[Redacted signature]

Kenneth L. Smith
Executive Secretary