

Iowa Department of Inspections and Appeals
Division of Appeals and Fair Hearings
Lucas State Office Building
Des Moines, Iowa 50319

IOWA REAL ESTATE COMMISSION, Complainant)	
)	CASE NUMBER 88-034
vs.)	
)	
KEY-STONE, LTD. (F00758), Firm-Respondent)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RICHARD H. WILLIE (B16695), Broker-Respondent)	DECISION AND ORDER

On July 21, 1988 the Iowa Real Estate Commission (hereinafter Commission) filed a complaint against Richard H. Willie, a licensed Iowa real estate broker (hereinafter Respondent) and his company, Key-Stone, Ltd. (hereinafter Firm). The complaint alleged specific acts and alleged these acts constituted a violation of Section 117.46(1), 1987 Code of Iowa and 193E Iowa Administrative Code Sections 1.27(117) and 4.40(6)(j) and (k)(117).

On August 18, 1988 the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate licenses of the Respondent and Firm.

The proceedings were conducted by Jenny J. Netcott, Administrative Law Judge, Department of Inspections and Appeals. Commissioners James Berry, Joe Ann Lutz, Jerry Duggan and Marlys Nielsen were present during the proceedings. The Iowa Real Estate Commission was represented by Assistant Attorney General Kathy Skinner. 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.

DISCUSSION

The Respondent stated that he had no intention of deliberately deceiving the State of Iowa but that he thought the bank had converted his trust account to interest-bearing. He feels he is only guilty of failing to review his bank statements on a monthly basis. He stated that he verbally informed the bank President to convert his account to interest-bearing and thought the bank had complied with his verbal request. The President of the Bank testified that he did not recall the conversation but it could

have occurred. The Respondent requested exoneration of the debt due to his present financial situation.

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, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.
2. The Respondent and Firm have been at all times relevant to the matters contained herein licensed as an Iowa real estate corporation and broker-officer respectively.
3. In June, 1985 the Respondent contacted the President of the Central State Bank in Elkader concerning converting his real estate trust account to interest bearing.
4. In July, 1985 the Director of the Real Estate Commission issued a letter to all Iowa real estate brokers informing them that real estate trust accounts must be interest-bearing effective July 1, 1985; a sample form to effect the transfer was enclosed.
5. In August, 1985 the Director of the Real Estate Commission issued a letter to all Iowa real estate brokers to again reiterate the law change; rules adopted by the Commission were enclosed.
6. In June and October, 1985 the Commission issued newsletters containing articles on the converting of trust accounts to interest-bearing; the Respondent receives the newsletters issued by the Commission.
7. The Firm's trust account was not interest-bearing from July 1, 1985 to April 19, 1988.
8. From July 1, 1985 to April 19, 1988 the total amount of funds held in the Firm's trust account would have accrued \$2,025.60 in interest if the account had been interest-bearing.
9. No interest was remitted to the State of Iowa for the period July 1, 1985 to April 19, 1988.
10. There was no monetary gain to the Respondent in this matter.

CONCLUSIONS OF LAW

What The Law Says

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 salespersons on behalf of the broker's principal, except that a broker acting as a sales person 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."

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 working 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."

2. Unless there is a written agreement between a buyer and 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)."

193E Iowa Administrative Code Section 4.40(117) provides a list of violations for which civil penalties may be imposed; the list contains the following:

"Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code Section 117.46." 193E IAC 4.40(6)(j).

"Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 117.46." 193E IAC 4.40(6)(k)

Application of Law

The facts in this case were undisputed. The Respondent was aware of the law change requiring real estate trust accounts to be interest-bearing effective July 1, 1985. In June, 1985 the Respondent discussed the upcoming change with the President of his bank, who is also a real estate broker. The Respondent thought his account had been converted to interest-bearing in a timely manner and was unaware that it had not been converted until he was so informed by a real estate auditor during the course of a routine audit of his trust account. He promptly converted the account to interest-bearing.

Iowa Administrative Code section 193E--1.27(2)(117) explicitly states that it is the responsibility of the broker to see that the interest is remitted to the State of Iowa in a timely manner. The broker erred by relying solely on his bank to remit the interest.

The Commission recognizes that the situation here was simply an oversight by the Respondent. However, this oversight characterizes inattention to business matters concerning his real estate trust account. The Respondent receives monthly bank statements which he does not review. Had he been following sound business practice by reviewing the bank statements every month he could have easily recognized that his trust account had not been converted to interest-bearing and he could have promptly rectified the license law violation. The Commission also recognizes that the Respondent received no monetary gain in this matter.

In light of the above, the Commission finds that the Respondent violated Iowa Code Section 117.46(1)(1987) and 193E Iowa Administrative Code Sections 1.27(117) and 4.40(6)(j) and (k).

The Commission finds that there was no deliberate attempt at dishonesty on the part of the Respondent in this matter. However, the Respondent's trust account review procedures must be revised and a monthly review by the Respondent initiated immediately.

The Commission concludes that the interest which would have been remitted to the state for the period of July 1, 1985 to April 19, 1988 (\$2,025.60) must be paid in full by the Respondent.

DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Section 117.46(1)(1987) and 193E Iowa Administrative Code Sections 1.27(117) and 4.40(6)(j) and (k).

It is therefore ORDERED by the Iowa Real Estate Commission that the Respondent be required to remit \$2,025.60 to the Office of the Commission in full by December 31, 1988. In lieu of payment in full, the Respondent may enter into a 12 month repayment agreement by September 30, 1988 to satisfy this amount. The Respondent should contact the Office of the Commission to enter into a repayment agreement. In addition, the Respondent is ordered to pay a \$250 civil penalty on or before December 31, 1988 for failure to comply with the law and commission rules. The Respondent is advised that the interest (\$2,025.60) and penalty (\$250) may be remitted in full at any time prior to December 31, 1988.

No disciplinary action is taken against the license of the Firm.

Executed this 14th day of September, 1988.

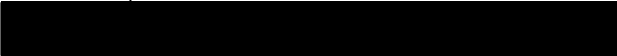

JAMES R. BERRY, CHAIR
IOWA REAL ESTATE COMMISSION


JERRY S. NETCOTT
ADMINISTRATIVE LAW JUDGE

Date: September 14, 1988.

Date: August 23, 1988.

Issued this 15th day of September, 1988.


KENNETH L. SMITH
EXECUTIVE SECRETARY
IOWA REAL ESTATE COMMISSION

JJN/JRB/KLS/mmc

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 Sept 15, 1988

