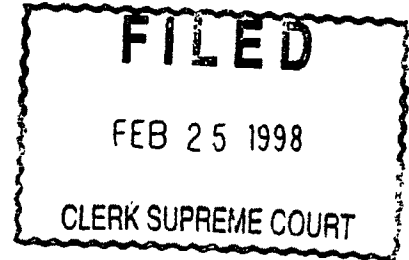


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IN THE COURT OF APPEALS OF IOWA

No. 7-752 / 97-0071
Filed February 25, 1998



IRMA M. HENZE,
Appellant,

vs.

IOWA REAL ESTATE COMMISSION,
Appellee.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

The petitioner appeals from the district court's ruling on judicial review
affirming the respondent's revocation of her real estate broker's license.

AFFIRMED.

Joel T. S. Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, and Pamela D. Griebel, Assistant
Attorney General, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

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STREIT, J.

Plaintiff appeals the trial court's affirmance of the Iowa Real Estate Commission's revocation of her real estate broker's license. Because the commission did not abuse its discretion in imposing the sanction, we affirm.

I. Background & Facts.

Irma Henze, a real estate broker, assisted Gary and Maureen Underhill in buying a house for \$57,000 in Garwin, Iowa. Henze arranged for the Underhills to obtain financing from the Hart Foundation, a Minnesota company. Henze had never done business with the Hart Foundation before. The Hart Foundation sent a written confirmation accepting the Underhills mortgage agreement.

At closing on March 1, 1994, the \$57,000 had not been wired from the Hart Foundation into Henze's trust account. Henze assumed the \$57,000 would be wired into her trust account by the end of the day. Henze wrote closing checks on the trust account and completed the real estate transaction for the sale. Hart Foundation never sent the money but did receive the mortgage. Henze's bank covered the checks by using approximately \$25,000 of trust funds belonging to other clients and issuing overdraft notices for the remaining amount. To cover checks, Henze borrowed \$57,000 from First State Bank.

The Hart Foundation sold the Underhill mortgage and the Underhills were notified to send payments to Metwest Services. The Underhills started sending payments to Metwest. After paying Metwest for a couple of months, Henze sent the

Underhills a letter directing them to send future mortgage payments to First State Bank. Henze did not tell the Underhills their mortgage payments were being applied to her personal loan with First State Bank. Metwest sent default notices threatening to accelerate the Underhills loan. The Underhills resumed making mortgage payments to Metwest. They have never been reimbursed for their payments on Henze's personal loan.

The Underhills filed a complaint with the Iowa Real Estate Commission against Henze. The commission found Henze had "utterly failed to safeguard" the interests of the Underhills and engaged in "egregious" violations of Commission rules. The Commission revoked Henze's broker's license, allowing her to apply for reinstatement in two years.

Henze filed a petition for judicial review challenging the severity of the sanction imposed by the Commission. The district court affirmed revocation of Henze's license. Henze appeals.

II. Severity of Sanctions Imposed by Professional Licensing Board.

Henze does not challenge the factual findings, of the Commission. Rather, she challenges only the sanction imposed by the commission for her transgressions.

Review of agency action is severely circumscribed. *Burns v. Board of Nursing*, 528 N.W.2d 602, 604 (Iowa 1995) A court may reverse, modify, or grant relief other than that afforded by the agency only if agency action is affected by error

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of law, unsupported by substantial evidence in the record, or characterized by abuse of discretion. Iowa Code § 17A.19(8).

A professional licensing board's authority to impose sanctions against those it licenses is extremely broad¹, see *Iowa Board of Dental Examiners v. Hufford*, 461 N.W.2d 194, 202 (Iowa 1990). The trial court is not empowered to substitute its own judgment for the sanction imposed by the agency. *Burns*, 528 N.W.2d at 604. Thus, judicial review is limited and this court can modify the sanction imposed by the Commission only upon a finding the Commission abused its discretion in imposing revocation of Henze's license. See *id.* see also *McClure v. Iowa Real Estate Commission*, 356 N.W.2d 594, 596 (Iowa App. 1984).

The gist of Henze's appeal is that although she committed numerous rule violations, the only person who has been victimized is herself. She argues the Underhills still have their house, while she is paying off a personal loan to cover the funds Hart Foundation never sent. We cannot find the board abused its discretion in revoking Henze's license. An abuse of discretion is synonymous with unreasonableness. See *Arora v. Iowa Board of Medical Examiners*, 564 N.W.2d 4,

¹ Other jurisdictions also give great deference to a licensing authority's discipline of the professionals it licenses. *Burns*, 528 N.W.2d 602 citing *Massa v. Department of Registration & Educ.*, 116 Ill.2d 376, 385, 107 Ill.Dec. 661, 666, 507 N.E.2d 814, 819 (1987) (court defers to agency sanctions unless they are "against the manifest weight of the evidence."); *Ahsaf v. Nyquist*, 37 N.Y.2d 182, 184, 371 N.Y.S.2d 705, 707, 332 N.E.2d 880, 881 (1975) (licensing body has authority to punish licensees unless the measures are "shockingly unfair"); *Yurick v. Commonwealth*, 43 Pa.Comm.w. 248, 252, 402 A.2d 290, 292 (Commw.Ct.1979) (court will not substitute its own judgment if the penalty is reasonable).

7 (reversing decision of board that was clearly arbitrary and unreasonable); *Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986). Unreasonableness is defined as “action in the face of evidence as to which there is no room for a difference of opinion among reasonable minds or not based on substantial evidence.” *Arora*, 564 N.W.2d 4, 7 (Iowa 1997).

There is ample evidence of Henze’s rule violations. Henze wrote checks from her trust account when there were insufficient funds in the trust account to cover the checks. She commingled the trust funds of her clients to cover the checks. She proceeded with a real estate closing knowing she had not received the mortgage funds. She intentionally directed her clients to stop making mortgage payments to their lender and to start paying her. Henze failed to explain to her clients the effect of making payments to the bank rather than to Metwest. As a result, the Underhills were facing potential default with the company holding their mortgage. This situation is not like the one in *Sahu v. Iowa Bd. of Medical Examiners*, 537 N.W.2d 674, 678 (Iowa 1995), where Sahu’s over billing of his patients was an honest mistake. Henze acted voluntarily and intentionally in deceiving her clients.

Under these circumstances it was not an abuse of discretion for the Commission to impose the sanction of revocation of Henze’s license. Her conduct was less than competent, less than honest, and harmful to her clients.

AFFIRMED.