

FILED February 13, 2020 (Date)
JNEC
Board / Commission
[Signature]
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION
200 EAST GRAND, SUITE 350
DES MOINES, IOWA 50309

IN RE:)	
)	CASE NUMBER: 18-093
Whitaker Marketing Group)	
Firm (F05899000))	COMBINED STATEMENT OF
)	CHARGES, INFORMAL
26466 San Hill Trail)	SETTLEMENT AGREEMENT,
Ames, IA 50010)	AND CONSENT ORDER IN A
)	DISCIPLINARY CASE
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Whitaker Marketing Group** (Respondent) enter into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4) (2020).

1. The Commission issued the Respondent real estate firm license number F05899000 on February 11, 2008. The Respondent firm license is current and in full force and effect through December 31, 2021. At all times relevant to this matter, David Whitaker, broker officer license number B61078000, served both as the designated broker in charge and a licensed real estate broker officer for the Respondent real estate brokerage firm, located in Ames, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2018). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

STATEMENT OF CHARGES

COUNT I

3. Respondent is charged with failing to properly effectuate the terms of an executed purchase agreement and failing to deposit earnest payments received by the real estate brokerage firm in an Iowa real estate trust account in violation of Iowa Code sections 543B.29(1)(k), 543B.34(1), 543B.46, 543B.56(1)(b) (2018). See 193E Iowa Administrative Code sections 12.3(1)(a), 12.3(1)(b), 13.1, 13.1(1), 18.14(5)(f)(10).

CIRCUMSTANCES

4. The Respondent is responsible for ensuring compliance with all applicable rules and regulations governing its operations in the state of Iowa.

5. On April 24, 2018, an offsite examination of the Respondent's Iowa real estate trust account and transaction records was conducted by the Commission auditor (auditor).

6. In a random sampling of transaction files, the auditor discovered three (3) real estate transactions for properties located in central Iowa, in which the earnest money deposit were deposited into attorney's trust accounts.

7. In reviewing the aforementioned real estate transaction file for the subject properties, the auditor discovered that the executed purchase agreements did not specify as to where the earnest money funds were to be held. By depositing the earnest money funds into attorney's trust accounts, the Respondent failed to properly effectuate the terms of an executed purchase agreement and failed to deposit trust funds in an Iowa real estate trust account.

8. In a random sampling of transaction files, the auditor discovered one (1) 2018 real estate transaction for a property located in Maxwell, Iowa, in which the earnest money funds was deposited into Finneseth, Dalen & Powell, P.L.C. Trust Account.

9. In reviewing the aforementioned real estate transaction file for the subject property, the auditor discovered that the executed purchase agreement and the addendum dated February 6, 2018, nonetheless provided that the earnest money was to be held in trust by Whitaker Marketing Group, not with Finneseth, Dalen & Powell, P.L.C. Trust Account. By depositing the earnest money funds into the Finneseth, Dalen & Powell, P.L.C. Trust Account, the Respondent failed to properly effectuate the terms of an executed purchase agreement and failed to deposit trust funds in an Iowa real estate trust account.

SETTLEMENT AGREEMENT

10. Without admission of wrongdoing or guilt, the Respondent does not contest the violations alleged in the above-stated Statement of Charges.

11. Respondent acknowledges that it has a right to receive notice of the above-stated charges and to request a hearing before the Commission on the merits of the charges. By freely and voluntarily entering into this Order, the Respondent waives its right to notice and a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes discipline against the Respondent, and is the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4.

12. Respondent agrees that the State's attorney and/or Commission staff may present this Order to the Commission and may have *ex parte* communications with the Commission while presenting it. Respondent waives any right of notice of this meeting or any right that the Respondent might have to participate in the discussion of this Order among the Commission, the Commission staff and the State's attorney.

13. This Order shall be part of the permanent record of Respondent and shall be considered by the Commission in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations of the laws and rules governing the practice of real estate by the Respondent.

14. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(1)(d), 543B.34(1) and 272C.3(2)(a) (2020) and shall be grounds for further disciplinary action. However, no action may be taken against the Respondent for violations of this Order without a hearing, or waiver of hearing.

15. This Order is not binding on the Iowa Real Estate Commission until it has been formally approved by a majority of the Commission members.

- (a) In the event that this Order is rejected by the Commission it shall be of no force or effect to either party, and it shall not be admissible for any purpose in further proceedings in this matter.
- (b) If the Commission approves this Order, it shall fully dispose of all issues in this case.

16. Upon acceptance by both the Commission and Respondent, this Combined Statement of Charges, Informal Settlement and Consent Order shall be a public record available for inspection and copying in its entirety in accordance with the requirements of Iowa Code chapter 22 (2020).

CONSENT ORDER

IT IS THEREFORE ORDERED:

17. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of five hundred dollars (\$500.00) no later than six (6) months after acceptance of this Order by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 18-093.

18. FUTURE COMPLIANCE. The Respondent also shall at all future times fully and promptly comply with all pertinent Orders of the Commission and the statutes and Commission rules regulating the practice of real estate.

WHEREFORE, the terms of this Combined Statement of Charges, Informal Settlement Agreement and Consent Order are agreed to and accepted by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:


Voluntarily agreed to and accepted by **Whitaker Marketing Group** on this 27 day of January, 2020.

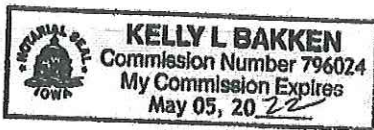

By: **DAVID WHITAKER**, Broker Officer

State of Iowa

County of Harrison

Signed and sworn to before me on this 27th day of January, 2020, by:


Notary Public, State of Iowa
Printed Name: Kelly L. Bakken
My Commission Expires: 5/5/22



FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 13th day of FEBRUARY, 2020.


TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission