

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

IN RE:)
) CASE NUMBER: 23-085
Tracy S Barkalow)
Broker (B36918000)) COMBINED STATEMENT OF
) CHARGES, INFORMAL
Barkalow & Associates Realtors, LLC) SETTLEMENT AGREEMENT,
105 5th Street) AND CONSENT ORDER IN A
Coralville, IA 52241) DISCIPLINARY CASE
)
RESPONDENT)

The Iowa Real Estate Commission (Commission) **Tracy S. Barkalow** Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4).

1. The Commission issued the Respondent real estate broker license number B36918000 on February 1, 2006. Respondent's license is current and in full force and effect through December 31, 2023.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B. 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 engaging in practices harmful or detrimental to the public in violation of Iowa Code sections 543B.29 (1)(d), 543B.29(3), 543B.34(1)(a), 543B.34(b), 543B.34(1)(g), and/or 543B.34(1)(k) by:

- a. Failing to timely return or account for security deposits owed to a tenant of residential rental property the Respondent personally owned or managed. See Iowa Code § 562A.12(3).
- b. Withholding in bad faith security deposits owed to a tenant of residential rental property the Respondent personally owned or managed.

and/or

- c. Committing fraud in the management of residential rental property.

CIRCUMSTANCES

4. Big Ten Property Management, LLC managed residential rental property owned by TSB Holdings, LLC, in the Iowa City, Iowa area.

5. At all times relevant to this matter, the Respondent was the sole member of Big Ten Property Management, LLC and TSB Holdings, LLC.

6. On or about October 8, 2019, Big Ten Properties, LLC, on behalf of TSB Holdings, entered into a lease agreement with four persons for residential property located in Iowa City, Iowa. The term of the lease agreement was from August 1, 2020, through July 25, 2021. The tenants tendered a rental deposit in the amount of \$1,995.00 to Big Ten Properties, LLC.

7. Although it was provided a valid forwarding address, Big Ten Property Management, LLC, failed to either return the security deposit or furnish a written statement showing the specific reason for withholding of the rental deposit to the tenants' designated deposit holder within thirty (30) days of the lease agreement's expiration as required by Iowa Code section 562A.12(3)(a).

8. The tenants filed suit on October 21, 2021, in Johnson County against the Respondent, Big Ten Property Management, LLC, and TSB Holdings, LLC, seeking recoupment of their security deposit and other damages and fees.

9. Following trial, the Court entered judgment in favor of the tenants and against the Respondent finding that he had individually and on behalf of Big Ten Property Management, LLC, acted in bad faith and committed fraud in failing to return the tenants' security deposit in a timely manner. In so ruling, the Court found that the Respondent either ignored communications from the tenants or their representatives and/or provided false, incomplete, or misleading information to them relating to the status of the return of their security deposit.

10. Iowa Code section 543B.29(3) authorizes the Commission to sanction the license of a real estate broker who is an owner or lessor of property or an employee of an owner or lessor for violations of Iowa Code chapter 543B committed with respect to that property.

SETTLEMENT AGREEMENT

11. Respondent admits each and every allegation in the above-stated Statement of Charges. This case shall constitute one violation for purposes of Iowa Code section 543B.29(4).

12. Respondent acknowledges that he 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 his 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.

13. 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.

14. 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. This order shall

15. 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) 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.

16. 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.

17. 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.

CONSENT ORDER

IT IS THEREFORE ORDERED:

18. **REPRIMAND.** Pursuant to 193E Iowa Administrative Code section 18.14(1)(j), the Respondent is reprimanded.

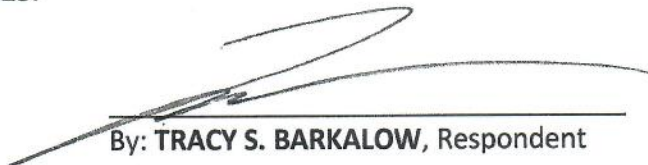
19. **CIVIL PENALTY.** The Respondent shall pay a civil penalty to the Commission in the amount of two thousand five hundred dollars (\$2500.00) no later than six (6) months after acceptance of this Order by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 23-085.

20. **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 **Tracy S. Barkalow** on this 17th day of NOVEMBER, 2023.

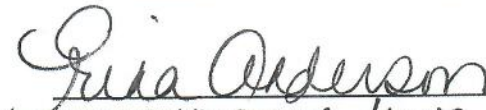

By: **TRACY S. BARKALOW**, Respondent

State of Iowa)

County of Johnson)

Signed and sworn to before me on this 17th day of November, 2023, by:




Notary Public, State of Iowa
Printed Name: Erika Anderson
My Commission Expires: 9-15-24

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 7th day of December, 2023.


JAMES M.H. CLINGMAN, Chair
Iowa Real Estate Commission