

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

FILED

February 4, 2016

(Date)

Board / Commission

Signature, Executive Officer

IN RE:	)	
	)	CASE NUMBERS: 15-216, 15-252
Kathleen F. Miller	)	
Broker (B20204000)	)	COMBINED STATEMENT OF
	)	CHARGES, INFORMAL
Premier Realty Group, Inc.	)	SETTLEMENT AGREEMENT,
513 7 <sup>th</sup> Street	)	AND CONSENT ORDER IN A
Sioux City, IA 51101	)	DISCIPLINARY CASE
	)	
RESPONDENT	)	

The Iowa Real Estate Commission (Commission) and **Kathleen F. Miller** (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) (2015).

1. The Commission issued the Respondent real estate broker license number B20204000 on July 29, 1991. Respondent's license is in full force and effect until December 31, 2017. At all times relevant to this matter, the Respondent was a licensed real estate broker officer, assigned to Premier Realty Group, Inc., license number F03883000, located in Sioux City, Iowa.

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 (Case No. 15-216)**

COUNT I

3. Respondent is charged with professional incompetency, engaging in a practice harmful or detrimental to the public, being unworthy to act as a real estate broker in such manner as to safeguard the interests of the public, and/or failing to provide brokerage services to all parties honestly and in good faith in violation of Iowa Code sections 543B.29(1)(c), 543B.29(1)(d), 543B.34(1)(h), 543B.56(1)(a), 543B.56(1)(c) (2014) by failing to disclose all material adverse facts known to a party to a real estate transaction. See 193E Iowa Administrative Code sections 12.3(2) 14.1, 14.1(5), 18.2(1), 18.14(5)(s).

## CIRCUMSTANCES

4. On or about April 24, 2015 the Respondent listed a residential property located in Sioux City, Iowa, for sale with her real estate brokerage firm. The Respondent herself was the seller of the subject property. At the time, the Respondent had owned the subject property continuously since February 1983.
5. On or about December 15, 2003 the subject property was "red tagged" as uninhabitable by the City of Sioux City Inspection Services Division. Among the deficiencies cited by the city inspections services division were: a foundation that was deteriorating, crumbling and creating a hazard; the lack of operational utilities; the ceiling in the front entryway was falling down; water had damaged the walls; and, the front porch pillars and deck were rotting. Occupants/tenants of the subject property were directed to immediately vacate the subject property following the posting of the "red tag." On or about September 17, 2004 the City of Sioux City removed the "red tag" after a re-inspection was conducted by the Inspection Services Division.
6. On or about April 24, 2015, the Respondent completed and signed a Seller Disclosure of Property Condition form for the subject property. This seller disclosure form did not reference the fact that the subject property was deemed uninhabitable by the City of Sioux City in December 2003, or any of the structural deficiencies that resulted in the City's actions.
7. On or about May 8, 2015, a written offer was presented to the Respondent by a real estate licensee representing a potential buyer of the subject property. The Respondent accepted the offer to purchase on the same day. The aforementioned Seller Disclosure of Property Condition form was signed and dated by the buyer on May 11, 2015.
8. On or about June 5, 2015 the real estate sale for the subject property closed and the transaction was completed.
9. As the seller, listing agent, and principal to the transaction, the Respondent had a duty to disclose to the buyers that the subject property was deemed uninhabitable by the City of Sioux City in December 2003 and the existence and subsequent correction of the structural deficiencies that resulted in the City's actions. The Respondent did not through the Seller Disclosure of Property Condition form, or otherwise, inform the buyer or the buyer's agent of these adverse material facts.

## **STATEMENT OF CHARGES (Case No. 15-252)**

### COUNT I

10. 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(1)(k), 543B.34(1), 543B.46 (2015) by:

- (a) Failing to maintain at all times a record of the Respondent's trust account and improper trust account procedures. See 193E Iowa Administrative Code §§ 13.1(6), 18.14(5)(e), 18.14(5)(f).
  
- (b) Failing to provide a means for a monthly reconciliation of the Respondent's trust account to ensure agreement of the general ledger balance, reconciled bank balance and individual ledger accounts. See 193E Iowa Administrative Code §§ 13.1(6)(a)(3), 18.14(5)(e), 18.14(5)(f).

### CIRCUMSTANCES

11. On or about September 10, 2015, an onsite examination of the Respondent's Iowa real estate trust account and transaction records was conducted by the Commission auditor.

12. The auditor found that for the Respondent's Iowa real estate trust account, there was not an accurate monthly reconciliation being performed to ensure agreement of the general ledger balance, reconciled bank balance and sum of the individual ledgers.

13. At the time of the examination and using the bank statement dated August 31, 2015, the auditor found a variance between the total of the Individual Ledgers, the General Ledger balance and the Reconciled Bank Balance. The General Ledger Balance was \$18,308.01, the sum of the Individual Ledgers was \$18,308.01 and the Reconciled Bank Balance was \$17,308.01; resulting in a shortage in the Respondent's Iowa real estate trust account in the amount of \$1,000.00.

14. The Respondent rectified the deficiency by depositing \$1,000.00 in the real estate trust account on or about September 14, 2015.

### SETTLEMENT AGREEMENT

15. Respondent admits each and every allegation in the above-stated Statement of Charges. The allegations charged and admitted to in this Settlement Agreement shall constitute one violation for purposes of Iowa Code section 543B.29(4).

16. Respondent acknowledges that she 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 her 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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:**

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

23. **CIVIL PENALTY.** Respondent shall pay a civil penalty to the Commission in the amount of \$4,000.00 (\$2,500 for Case No. 15-216, \$1,500 for Case No. 15-252) no later than twelve (12) 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 Numbers 15-216, 15-252.

24. EDUCATION. Respondent shall attend the Commission approved twelve (12) hour course "Developing Professionalism and Ethical Practices" (for Case No. 15-216) and the Commission approved eight (8) hour course "Trust Accounts" (for Case No. 15-252). These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificates of attendance must be submitted to the Iowa Real Estate Commission no later than twelve (12) months after acceptance of this Order by the Commission. The certificates of attendance must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Numbers 15-216, 15-252.

25. FUTURE COMPLIANCE. 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 Kathleen F. Miller on this 17<sup>th</sup> day of December, 2015.

*Kathleen F. Miller*

By: KATHLEEN F. MILLER, Respondent

State of Iowa

County of Woodbury

Signed and sworn to before me on this 17<sup>th</sup> day of December, 2015, by:

*Michael Roeber*

Notary Public, State of Iowa

Printed Name: Michael Roeber

My Commission Expires: 1-6-16



**FOR THE COMMISSION:**

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this  
4th day of FEBRUARY, 2018.

T. M. Duggan FOR CHAIR  
**TERRANCE M. DUGGAN**, Chair  
Iowa Real Estate Commission