

BEFORE THE IOWA REAL ESTATE COMMISSION
1920 SE HULSIZER
ANKENY, IOWA

INRE:)	
)	CASE NUMBER: A07-022
Byron J. Witt)	
Broker (B26592))	
)	COMBINED STATEMENT OF
Sole Proprietor)	CHARGES, INFORMAL
111 East High Street, Box 111)	SETTLEMENT AGREEMENT
Toledo, Iowa 52342)	AND CONSENT ORDER IN A
)	DISCIPLINARY CASE
Respondent.)	

The Iowa Real Estate Commission (Commission) and Byron J. Witt (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.I0(I) and 272C.3(4) (2007).

1. The Commission issued the Respondent real estate broker's license number (B26592) on December 29, 1994. Respondent's license is current and in full force and effect through December 31, 2008. At all times relevant to this matter, the Respondent was a licensed real estate broker sole proprietor located in Toledo, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2007). 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(3), 543B.29(10), 543B.34, 543B.46 and 556.7(2007) by:

- (a) Failing to maintain at all times a record of the Respondent's trust account.
See I93E Iowa Admin. Code §13.1(6).
- (b) Failing to conduct and/or document monthly reconciliation on a written worksheet to ensure the agreement of the general ledger balance, reconciled bank balance, and individual ledger totals. See I93E Iowa Admin. Code §§ 13.1(6)(a)(3), 18.14(5)(e).

- (c) Failing to disburse unclaimed trust funds in accordance with applicable law. See Iowa Code ch. 556; 193E Iowa Admin. Code § 13.1(14).

CIRCUMSTANCES

4. On or about October 31, 2007, an audit of the Respondent's trust account and records was conducted.

5. The auditor was advised by the Respondent that his trust account records had not updated for a long time (auditor did not observe the trust account records)

6. The auditor found the Respondent is not performing a monthly reconciliation on a written worksheet to document and ensure agreement of the general ledger balance, individual ledgers, and reconciled bank balance ("three-way tie").

7. A follow up audit was conducted on December 10, 2007. The auditor found at that time eight earnest money deposits in excess of three years old that are still pending in the Respondent's trust account.

SETTLEMENT AGREEMENT

8. Respondent admits each and every allegation in the above-stated Statement of Charges.

9. 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.

10. 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.

11. 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.

12. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(3), 543B.34(2) and 272C.3(2)(a) (2007) 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.

13. 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.

14. 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 (2007).

CONSENT ORDER

IT IS THEREFORE ORDERED:

15. REPRIMAND. Pursuant to 193E Iowa Administrative Code section 18.14(1)0), the Respondent is reprimanded.

16. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of \$750 no later than 30 calendar days after acceptance of this Order by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer and refer to case A07-017.


17. EDUCATION. The Respondent shall attend the Commission approved eight (8) hour course "Trust Accounts." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance must be submitted to the Iowa Real Estate Commission within twelve (12) months of the signing of this agreement by the Commission and must come under a cover letter addressed to the Commission's Executive Officer and refer to case A07-022.

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 Byron J. Witt on this if day of January, 2008



BYRON J. WITT, Respondent

State of Iowa)
County of Tama)

Signed and sworn to before me on this 11th day of January, 2008 by





Notary Public, State of Iowa
Printed Name: Vivian Paine House
My Commission Expires: 7-15-2010

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the IOWA REAL ESTATE COMMISSION on this 17 day of January, 2008.

