

FILED December 3, 2015 (Date)

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

IREC
Board / Commission
[Signature]
Signature Executive Officer

IN RE:)	
)	CASE NUMBER: 15-003
Shawn P. Carmichael)	
Salesperson (S39698000))	COMBINED STATEMENT OF
)	CHARGES, INFORMAL
Progressive Real Estate RN)	SETTLEMENT AGREEMENT,
1001 5 th Street)	AND CONSENT ORDER IN A
Nevada, IA 50201)	DISCIPLINARY CASE
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Shawn P. Carmichael** (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 salesperson license number S39698000 on June 3, 1999. Respondent's license is now current and in full force and effect through December 31, 2017.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2015). 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 a practice harmful or detrimental to the public and/or being unworthy to act as a real estate salesperson in such manner as to safeguard the interests of the public in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1)(h), 543B.34(1)(f), 543B.62(3)(b) by conducting real estate business independently outside of the licensed broker or firm to which he was assigned. See 193E Iowa Administrative Code sections 4.1(3), 7.1(8), 7.11(1), 18.14(5)(n), 18.14(5)(s).

COUNT II

4. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or being unworthy to act as a real estate salesperson in such manner as to safeguard the interests of the public in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1)(e), 543B.34(1)(f), 543B.34(1)(h), 543B.62(3)(b) by accepting consideration as a real estate salesperson for the performance of acts constituting dealing in real estate from a party other than his affiliated broker. See 193E Iowa Administrative Code sections 4.1(3), 7.1(8), 7.11(1), 18.14(5)(n), 18.14(5)(s).

COUNT III

5. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or being unworthy to act as a real estate salesperson in such manner as to safeguard the interests of the public in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46 by failing to timely deposit trust funds received in an affiliated broker's Iowa real estate trust account. See 193E Iowa Administrative Code sections 13.1, 13.1(1), 18.14(5)(f)(9).

CIRCUMSTANCES

6. From the time period of April 9, 2013 through December 31, 2014 the Respondent was an actively licensed real estate salesperson assigned to Re/Max Real Estate Concepts, a licensed real estate firm, license number F04363000, located in Urbandale, Iowa. On December 31, 2014 the Respondent's real estate salesperson license expired.

7. On or about April 30, 2015 the Respondent reinstated his expired real estate salesperson license and at that time became assigned to Progressive Real Estate RN, a licensed real estate firm, license number F05456000, located in Nevada, Iowa.

8. On or about May 2014 the owner of a property located in Des Moines, Iowa contacted the Respondent to assist him in the marketing and sale of his distressed property. The Respondent marketed the subject property on Craigslist as a contract sale without a brokerage listing agreement and without the knowledge of his brokerage, Re/Max Real Estate Concepts.

9. On or about July 17, 2014 the Respondent contacted the owner of the subject property, informing him that he had procured two potential buyers for the subject property. The parties agreed to a contract purchase for a purchase price of \$69,000.00, with a down payment of \$5,000.00.

10. The buyers of the subject property wrote two (2) checks, both in the amount of \$2,500.00 to "Midwest Green", the Respondent's commercial cleaning company. The Respondent deposited the aforementioned checks on July 18, 2014 and July 26, 2014 respectively in his business bank account, not his affiliated broker's trust account.

11. On or about August 28, 2014 the Respondent paid \$3,800.00 of the \$5,000.00 down payment to the seller, keeping the remaining balance.

SETTLEMENT AGREEMENT

12. 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) (2015).

13. 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.

14. 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.

15. 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.

16. 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) (2015) 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.

17. 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.

18. 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 (2015).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

20. **SUSPENSION.** Respondent's real estate salesperson license shall be suspended for a period of no less than six (6) months. The six (6) month license suspension shall commence upon the date this Order is accepted by the Commission.

21. **CIVIL PENALTY.** Respondent shall pay a civil penalty to the Commission in the amount of two thousand, five hundred dollars (\$2,500.00) as a condition precedent to the reinstatement of his Iowa real estate salesperson license. The civil penalty shall come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 15-003.

22. **EDUCATION.** Respondent shall attend the Commission approved twelve (12) hour course "Developing Professionalism and Ethical Practices." These hours shall be in addition to any real estate continuing education required by Iowa law for license renewal. The original certificate of attendance must be submitted to the Commission as a condition precedent to the reinstatement of his Iowa real estate salesperson license. The certificate of attendance shall come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 15-003.

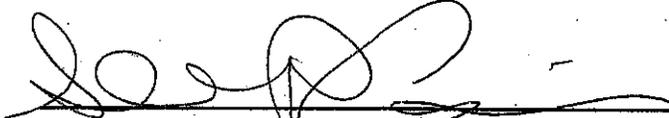
23. **LICENSEE REINSTATEMENT.** Reinstatement of the Respondent's Iowa Real Estate license shall be governed by 193E Iowa Administrative Code section 18.15. Upon serving a minimum of six (6) months of the license suspension ordered in paragraph 21 and upon the Respondent's submission of the civil penalty and proof of education to the Commission's Executive Officer, the Respondent's real estate salesperson license shall be reinstated upon order of the Commission's Executive Officer.

24. **FUTURE COMPLIANCE.** The Respondent 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 Shawn P. Carmichael on this 30 day of November, 2015.

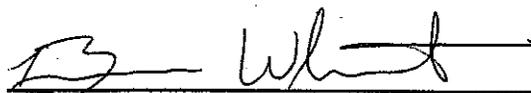

By: **SHAWN P. CARMICHAEL**, Respondent

State of Iowa

County of Polk

Signed and sworn to before me on this 30 day of November, 2015, by:




Notary Public, State of Iowa
Printed Name: Bryce Whitaker
My Commission Expires: 01-13-2017

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 3rd day of December, 2015.


TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission