

FILED November 5, 2015 (Date)

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

J.R.L.
Board / Commission
Signature Executive Officer

IN RE:)	
Vincent Muniz	)	CASE NUMBER: 15-256
Broker (B36874000))	
Muniz Real Estate and Consulting, Inc.	)	COMBINED STATEMENT OF
2905 Q Street	)	CHARGES, INFORMAL
Omaha, NE 68107	)	SETTLEMENT AGREEMENT,
	)	AND CONSENT ORDER IN A
RESPONDENT	)	DISCIPLINARY CASE
)	

The Iowa Real Estate Commission (Commission) and Vincent Muniz (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 B36874000 on September 13, 2013. Respondent's license is in full force and effect until December 31, 2015. At all times relevant to this matter, the Respondent was a licensed real estate broker officer, assigned to Muniz Real Estate and Consulting, Inc., license number F05641000, located in Omaha, Nebraska.

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 failing to comply with a decision of the Commission imposing licensee discipline in violation of Iowa Code sections 272C.3(2)(a), 543B.29(1)(c), 543B.34(1)(j), 543B.34(1)(k) (2015) and Iowa Administrative Code sections 18.2(3), 18.2(4), 18.14(5)(s).

CIRCUMSTANCES

4. At their regular meeting on April 21, 2011 the Commission denied the Respondent's application for a real estate broker license in the state of Iowa, based on the five year suspension of his Nebraska real estate salesperson license. The Applicant filed a timely request for a hearing. See IREC Case No. 11-119.

5. On August 18, 2011, the Commission filed a Notice of Hearing and a contested case hearing was held before the Commission on October 13, 2011 re: IREC Case No. 11-119. After hearing and examining the exhibits, the Commission instructed the administrative law judge to draft a Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations. This Decision and Order was voted on and accepted by the Commission on November 17, 2011. A true and accurate copy of the above-referenced document is attached as Exhibit A.

6. Pursuant to the Order in the Findings of Fact, Conclusions of Law, Decision and Order, the Respondent was allowed to take the Iowa-specific examination after he provided the Commission with verification that he attended the eight (8) hour Iowa Real Estate Trust Accounts course. The Respondent provided a certificate of attendance for the aforementioned course dated February 21, 2013, passed the Iowa-specific broker examination on August 21, 2013 and was subsequently licensed as an Iowa real estate broker (B36874000) on September 13, 2013.

7. It was further ordered in the Findings of Fact, Conclusions of Law, Decision and Order, the Respondent was to complete the remaining sixty-four (64) hours of the seventy-two (72) hour pre-broker education courses within the first two (2) years of licensure as a real estate broker. To date, the Respondent has yet to submit to the Commission the sixty-four (64) hours of pre-broker education courses as required by the Order.

SETTLEMENT AGREEMENT

8. 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).

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(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.

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 (2015).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

16. **CIVIL PENALTY.** Respondent shall pay a civil penalty to the Commission in the amount of two thousand, five hundred dollars (\$2,500.00) 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 15-256.

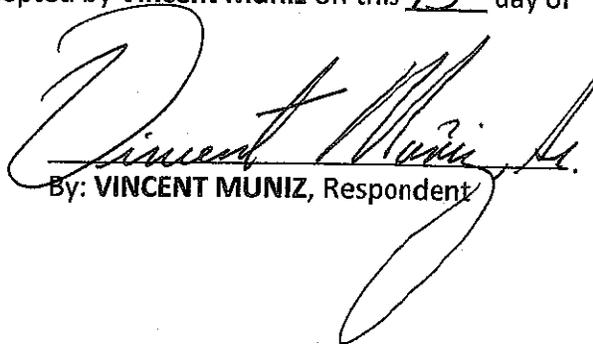
17. SUSPENSION. The Respondent's real estate broker license shall be suspended indefinitely commencing on January 29, 2016, pending submission of the remaining sixty-four (64) hours of the seventy-two (72) hour pre-broker education courses required by the Order in the Findings of Fact, Conclusions of Law, Decision and Order in Docket Number 11-119. Upon the Respondent's submission of the certificate of attendances for the aforementioned courses, the Respondent's real estate broker license shall be reinstated upon order of the Commission's Executive Officer. Should the Respondent submit certificates of attendance for the sixty-four (64) hours of pre-broker education courses to the Commission's Executive Officer at the Commission's offices prior to 1:00 PM on January 29, 2016, the suspension provided for in this paragraph shall not be imposed.

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 **Vincent Muniz** on this 13 day of Oct., 2015.

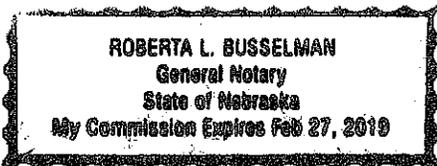

By: **VINCENT MUNIZ**, Respondent

State of Nebraska

County of Washington

Signed and sworn to before me on this 13 day of October, 2015, by:


Notary Public, State of Iowa Nebraska
Printed Name: Roberta L. Busseman
My Commission Expires: 2-27-19



IREC Case No. 15-256
Vincent Muniz

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this
5th day of NOVEMBER, 2015.



TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission

BEFORE THE IOWA REAL ESTATE COMMISSION

IN THE MATTER OF:	)	CASE NO. 11-119
	)	DIA NOS. 11REC012
Vincent Muniz Sr.)	
1338 Wilbur Street)	
Blair, Nebraska 52501	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
APPLICANT	)	DECISION AND ORDER

On April 25, 2011, the Iowa Real Estate Commission (Commission) sent a letter to Victor Muniz Sr. (Applicant) notifying him that the Commission had voted to deny his application for a real estate broker license, based on the five year suspension of his Nebraska real estate salesperson license. The Applicant filed a timely request for hearing.

A prehearing conference was held on October 6, 2011. The hearing was held on October 13, 2011 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. The Applicant was self-represented. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Chairperson; Judy Stevens, Broker; Dick Robert, Broker; Gail Flagel, Broker; Robert Broomfield, Salesperson; Susan Sanders, Salesperson; and Michael Telford, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public, pursuant to 193 IAC 7.39(3). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The Commission instructed the administrative law judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the state's Prehearing Conference Report, testimony of the witnesses, and State Exhibits 1-4 (See Exhibit Index for description).

FINDINGS OF FACT

1. Victor Muniz, Sr. was initially licensed in Nebraska as a real estate salesperson (license number 0951124) in January 1995. During his licensure as a salesperson in Nebraska, the Nebraska Real Estate Commission and Mr. Muniz entered into two Stipulation and Consent Orders imposing license discipline. (Exhibits 2-3 to 2-17)

a. A Joint Stipulation and Consent Order dated March 18, 1999 censured Victor Muniz Sr. for negligence in acting as a salesperson for failing to have his clients initial the changes in the dates or to notify them that he was changing the dates on documents related to listing the clients' residential property. (Exhibits 2-4 to 2-9)

b. A Stipulation and Consent Order dated September 24, 2003 imposed a five (5) year suspension of Mr. Muniz's salesperson license based on Respondent's professional activities as a salesperson with respect to two different real estate transactions. The stipulated facts demonstrated that Respondent committed a number of violations of Nebraska law, including:

- Intentionally using advertising that is misleading or inaccurate in any material particular when he sent correspondence regarding a listing on his own company letterhead rather than on the letterhead under the direct supervision of a broker;
- Failing to account for and remit any money or funds coming into his possession belonging to others;
- Failing to place funds in the custody of his broker as soon after receipt as practicable, when the funds were entrusted to him by a person dealing with him as the representative of the broker;
- Demonstrating negligence, incompetency or unworthiness to act as a salesperson by leaving inappropriate messages on the Buyer's answering machine; and
- Failing to exercise reasonable skill and care on behalf of a client and to promote the interest of the client with the utmost good faith, loyalty, and fidelity. (Exhibit 2-11 to 2-17)

2. After his Nebraska salesperson license was suspended, Victor Muniz attended pre-broker classes and passed the examination to be licensed as a broker in the state of Nebraska. Mr. Muniz activated his Nebraska broker license on July 4, 2009. Since that time he has operated Muniz Real Estate and Consulting, Inc. in Omaha, Nebraska as a self-employed broker. His Nebraska broker license has never been disciplined. Mr.

Muniz currently resides in Blair, Nebraska. (Testimony of Victor Muniz, Sr.; Exhibit 2-2, 2-3)

3. On March 18, 2011, Victor Muniz Sr. submitted a Certificate of License History (letter of good standing) to the Iowa Real Estate Commission (Commission) in support of his request to take the Iowa-specific broker examination. Mr. Muniz hopes to obtain an Iowa broker's license through the procedure outlined in 193 IAC 5.3. This is the procedure for nonresident applicants from states or jurisdictions that do not have a reciprocal licensing agreement or memorandum with Iowa. (Testimony of Victor Muniz, Sr.; Exhibit 2-1 to 2-3)
4. On April 21, 2011, the Commission reviewed the information presented by Mr. Muniz in support of his request to take the Iowa-specific broker examination. On April 25, 2011, Mr. Muniz was notified, in writing, that the Commission had voted to deny his request due to the severity of the infraction which resulted in the five year suspension of his Nebraska license. Mr. Muniz was also notified of his right to request a formal hearing. (Exhibit 3-1)
5. Victor Muniz, Sr. appeared before the Commission at his appeal hearing and explained the circumstances leading to the five year suspension of his Nebraska salesperson license. Mr. Muniz also described his current real estate business in Nebraska and his procedures for handling client funds. He reports that he is handling all of his trust account funds consistently with Nebraska law. His current business is primarily residential, and he is only working with pre-approved buyers. Mr. Muniz is bilingual and many of his clients in Omaha are Spanish-speaking. He is hoping to be able to help clients who are moving between Omaha, Nebraska and Council Bluffs, Iowa by obtaining his Iowa license. (Testimony of Respondent)

CONCLUSIONS OF LAW

The Iowa legislature has authorized the licensure of nonresidents as real estate brokers or salespersons in Iowa under certain circumstances.¹ Nonresident applicants must establish that they are currently licensed in another state, that no charges are pending against them in that state, and that their record in the other state justifies the issuance of a license to the applicant in Iowa.² The nonresident applicant must also take and pass the Iowa-specific examination unless the applicant is licensed in a state that has similar

¹ Iowa Code section 543B.21(2011).

² *Id.*

licensing requirements to Iowa and unless that state has entered into a memorandum with Iowa extending similar recognition and courtesy to Iowa residents.³

193E IAC 5.3 provides, in relevant part:

193E-5.3(543B) License by Iowa-specific examination. A non resident applicant licensed as a salesperson or broker in a state or jurisdiction which does not have a reciprocal licensing agreement or memorandum with Iowa to be issued a comparable Iowa license by passing the Iowa portion of the examination under the following circumstances:

5.3(1) Broker. The person has been actively licensed as a broker or broker associate and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the examination.

...

5.3(3) The applicant must submit a written request for authorization to sit for the appropriate examination.

5.3(4) The applicant must submit certification of the applicant's current qualifying license from the licensing authority that issued the license.

An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.⁴ When considering the denial of license, the Commission shall consider the nature of the offense; any aggravating or extenuating circumstances that are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant; and any other factors the commission deems relevant.⁵

In 2003, Victor Muniz's Nebraska salesperson license was suspended for five years, based on an agreement he reached with the Nebraska Real Estate Commission to resolve two pending complaints. A prior five year license suspension clearly provides the Iowa Real Estate Commission with ample legal authority to deny licensure in this

³ *id.* 193E IAC 5.3, 5.4.

⁴ Iowa Code section 543B.15(4)(2011).

⁵ Iowa Code section 543B.15(6)(2011).

state. However, the Commission has considered several mitigating circumstances, including Mr. Muniz's full cooperation with the Nebraska Real Estate Commission and the length of time that has passed since the suspension was imposed and served. In addition, the Nebraska Real Estate Commission, which is fully familiar with the circumstances leading to the suspension, permitted Mr. Muniz to become licensed as a broker in that state in 2009. Mr. Muniz has not had any disciplinary issues while licensed as a broker in Nebraska.

After listening to Mr. Muniz's testimony, which the Commission felt was sincere and credible, the Commission concluded that he should be given the opportunity to become licensed as a nonresident real estate broker in Iowa, under specified conditions. The Commission determined that its concerns about Mr. Muniz's prior 5 year license suspension may be addressed by requiring him to complete the 72 hour pre-broker education course and by subjecting his Iowa trust account records to quarterly review by the Commission's trust account auditor during his first year of licensure as a broker.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Vincent Muniz Sr. will be allowed to take the Iowa-specific examination *after* he provides the Commission with verification that he has attended the eight (8) hour trust account course. The eight (8) hour trust account course is part of the 72 hour pre-broker education required for new brokers in Iowa. Mr. Muniz may be licensed as a (nonresident) Iowa real estate broker after he completes the eight (8) hour trust account course, passes the Iowa specific examination, and submits the proper application and fee.

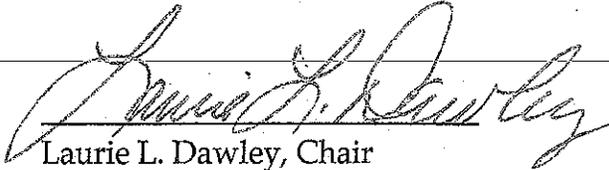
IT IS FURTHER ORDERED that during the first year of his licensure as a real estate broker in Iowa, Mr. Muniz's Iowa trust account records will be subject to quarterly review by the Commission's trust account auditor.

IT IS FURTHER ORDERED that Mr. Muniz shall complete the remaining 64 hours of the 72 hour pre-broker education course within the first two (2) years of his licensure as a real estate broker. Failure to comply with this requirement will result in disciplinary action against Mr. Muniz's Iowa broker license.

Case No. 11-119

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Dated this ⁷ day of Nov, 2011.



Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Vincent Muniz Sr.
1338 Wilbur Street
Blair, Nebraska 68008 [CERTIFIED]

John Lundquist
Assistant Attorney General
Hoover State Office Building (LOCAL)

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. If a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.