

FILED October 31, 2013 (Date)

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

REC  
Board / Commission

Signature, Executive Officer

|                                |   |                        |
|--------------------------------|---|------------------------|
| IN RE:                         | ) |                        |
|                                | ) | CASE NUMBER: 12-422    |
| Hugh E. O'Byrne                | ) |                        |
| Broker (B05810000)             | ) | COMBINED STATEMENT OF  |
| INACTIVE                       | ) | CHARGES, INFORMAL      |
|                                | ) | SETTLEMENT AGREEMENT,  |
| 72894 220 <sup>th</sup> Street | ) | AND CONSENT ORDER IN A |
| Albert Lea, MN 56007           | ) | DISCIPLINARY CASE      |
|                                | ) |                        |
| Respondent.                    | ) |                        |

The Iowa Real Estate Commission (Commission) and Hugh E. O'Byrne (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) (2011).

1. The Commission issued the Respondent real estate broker license number B34524000 on January 1, 1994. Respondent's license is in full force and effect until December 31, 2014. At all times relevant to this matter, the Respondent was a licensed real estate broker assigned to Century 21 O'Byrne Realty Inc, a licensed real estate firm, license number F00222000, located in Albert Lea, Minnesota. The Respondent's license was placed on inactive status on October 4, 2013.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2011). 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. The Respondent is charged with failing to comply with the mandatory errors and omissions insurance requirement for his Iowa real estate broker license in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1), 543B.47(6) (2011) and 193E Iowa Administrative Code sections 18.2(5), 18.14(5)(s), 19.6(5) & (6).

CIRCUMSTANCES

4. In November of 2012, the Respondent was sent a random audit for his mandatory errors and omissions insurance.

5. The Respondent failed to maintain uninterrupted errors and omission while he was actively licensed and could therefore not provide proof of insurance coverage to the Commission for the period of November 1, 2012 to December 31, 2012.

#### SETTLEMENT AGREEMENT

6. Without admission of wrongdoing or guilt, the Respondent does not contest the violations alleged in the above-stated Statement of Charges. This case shall constitute one violation for purposes of Iowa Code section 543B.29(4) (2011).

7. 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.

8. 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.

9. 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.

10. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(1)(c), 543B.34(2) and 272C.3(2)(a) (2011) 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.

11. 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.

12. 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 (2011).

**CONSENT ORDER**

**IT IS THEREFORE ORDERED:**

13. CIVIL PENALTY. The Respondent shall pay to the Commission a civil penalty in the amount of \$1,000:00 as a condition precedent to:

- (a) The Respondent's reactivation of his inactive Iowa real estate broker license.
- (b) The Respondent's reinstatement of his Iowa real estate broker license in the event of its expiration.

The Commission shall not reactivate or reinstate the Respondent's real estate broker license before and until it has received payment in full of the required civil penalty from the Respondent. Payment of the civil penalty shall not excuse the Respondent from demonstrating compliance with all other applicable statutory and regulatory requirements or otherwise qualifying for reactivation or reinstatement of his real estate broker license.

14. 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 Hugh E. O'Byrne on this 10 day of October 2013.



By: HUGH E. O'BYRNE, Respondent

IREC Case No. 12-422  
Hugh E. O'Byrne

State of \_\_\_\_\_)

County of \_\_\_\_\_)

Signed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by:

\_\_\_\_\_  
Notary Public, State of Iowa

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**FOR THE COMMISSION:**

Voluntarily agreed to and accepted by the IOWA REAL ESTATE COMMISSION on this  
31 day of October 2013.

  
SUSAN J. SANDERS, Chair  
Iowa Real Estate Commission

*JAIL FLAHEL, V CHAIR*