

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 S.E. HULSIZER
ANKENY, IOWA**

IN RE:)	
)	CASE NUMBER: 08-286 and A09-007
Cathy J. McCarthy)	
Broker (B35823))	
)	
Iowa Realty by Estherville R E, Inc.)	INFORMAL SETTLEMENT
2 South 8th Street)	AGREEMENT, AND CONSENT
Estherville, Iowa 51334)	ORDER IN A DISCIPLINARY CASE
)	
Respondent.)	

The Iowa Real Estate Commission (Commission) and **Cathy J. McCarthy** (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) (2007 & 2009).

1. The Commission issued the Respondent real estate broker officer license number B35823 on February 24, 2006. Respondent's license is in full force and effect, and expires on December 31, 2011. At all times relevant to this matter, the Respondent was a licensed real estate broker officer assigned to Iowa Realty by Estherville Real Estate, Inc., a licensed firm, license number F05066, located in Estherville, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2007 & 2009). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

SETTLEMENT AGREEMENT

3. On February 13, 2009, the Commission issued a Statement of Charges against the Respondent. A true and accurate copy of said Statement of Charges is attached to this Order as Exhibit 1. The Respondent, admits each and every allegations recited in the attached Statement of Charges.

4. The Respondent acknowledges that she has a right to 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 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.

5. 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.

6. 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.

7. 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) (2009) 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.

8. 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.

9. Upon acceptance by both the Commission and Respondent, this 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 (2009).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

11. **CIVIL PENALTY.** The Respondent shall pay a civil penalty to the Commission in the amount of \$3,500 (\$1,000.00 on Count I, and \$2,500.00 for Counts II & III) within 180 days of 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 08-286 and A09-007.

12. **CPA AUDIT.** The Respondent shall hire an Iowa licensed Certified Public Accountant (CPA), at the Respondent's expense to audit and to establish trust account records following Generally Accepted Accounting Principles. The CPA's audit report shall specifically address how the trust account deficiencies identified by the Trust Account Auditor in her

January 28, 2009 audit of the Respondent's trust account have been corrected. When completed, a copy of the trust account records shall be promptly submitted to the Commission. The CPA's audit report demonstrating Respondent's compliance with applicable accounting standards, Iowa law, and Commission trust account rules must be submitted **no later than sixty (60) days** upon acceptance of this Order by the Commission. The audit must come under a cover letter addressed to the Commission's Executive Officer and refer to case A09-007.

13. 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 A09-007.

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 **Cathy J. McCarthy** on this 20th day of April, 2009.


CATHY J. MCCARTHY, Respondent

State of Ia)

County of Emmett

Signed and sworn to before me on this 20th day of April, 2009, 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 23 day of April, 2009.



JAMES E. HUGHES, Chair
Iowa Real Estate Commission