

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

IN RE:)
) CASE NUMBER: A11-020
Mel Foster Company, Inc. of Iowa)
Firm (F05439)) COMBINED STATEMENT OF
) CHARGES, INFORMAL
) SETTLEMENT AGREEMENT
3211 E. 35th Street Ct.) AND CONSENT ORDER IN A
Davenport, Iowa 52807) DISCIPLINARY CASE
Respondent.)

The Iowa Real Estate Commission (Commission) and **Mel Foster Company, Inc. of Iowa** (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 firm license number F05139 on July 26, 2010. Respondent's license is current and in full force and effect through December 31, 2013. At all times relevant to this matter, the Respondent was a licensed real estate firm located in Davenport, Iowa.

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. Respondent is charged with engaging in practices harmful or detrimental to the public in violation of Iowa Code sections 543B.29(1)(c), 543B.29(1)(j) and 543B.46 (2011) by:

- (a) Failing to maintain the Respondent's trust account to ensure the agreement of the general ledger balance, reconciled bank balance and the individual ledger totals. See 193E Iowa Admin. Code §§ 13.1(6)(3), 18.14(5)(e).
- (b) Failing after three years to forward unclaimed trust funds to the Treasurer of the State of Iowa. See 193E Iowa Admin. Code §13.1(14).

CIRCUMSTANCES

4. On or about June 28, 2011, an audit of the Respondent's trust account and records was conducted.

5. The auditor found a variance between the total of the Individual Ledgers, the General Ledger balance, and the Reconciled Bank Balance. The General Ledger was \$171,904.00, the reconciled Bank Balance was \$171,882.60, and the total of the Individual Ledgers was \$171,904.00, resulting in a shortage on the bank side of \$21.40.

6. The auditor found the Respondent's trust account number (812xxxxxxx) contained three earnest fund deposits from 2004-2006 totaling \$2,100.00 that are still pending, and trust account number (640xxxxxxx) contained two earnest fund deposits totaling \$600.00 dated from 2003-2004 that are still pending.

7. The auditor found that while the Respondent was maintaining an Individual Ledger Card for Brokers Equity, the Ledger Card carried a negative balance.

SETTLEMENT AGREEMENT

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

9. Respondent acknowledges that they have 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 their 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) (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.

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 (2011).

CONSENT ORDER

IT IS THEREFORE ORDERED:

15. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of \$1,000 no later than thirty (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 A11-020.

16. 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 **Mel Foster Company, Inc. of Iowa** on this day of 10/20/11, 2011.



By: **BRIAN P. SMITH**, Broker Associate

State of Iowa)

County of SCOTT)

Signed and sworn to before me on this 20th day of OCTOBER,
2011, by:



Notary Public, State of Iowa

Printed Name: Mary Lee Leslein

My Commission Expires: 9/3/13



FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION**
on this 17 day of NOVEMBER, 2011.



Laurie Dawley, Chair
Iowa Real Estate Commission