

FILED November 5, 2015 (Date)

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

[Signature]
Board / Commission
[Signature]
Executive Officer

IN RE:)	
)	CASE NUMBER: 15-204
Barry P. A'Hearn)	
Broker (B55614000))	COMBINED STATEMENT OF
)	CHARGES, INFORMAL
Marcus & Millichap R.E. Invest. Services of)	SETTLEMENT AGREEMENT,
Chicago, Inc.)	AND CONSENT ORDER IN A
425 2 nd Street SE #610)	DISCIPLINARY CASE
Cedar Rapids, IA 52401)	
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Barry P. A'Hearn** (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 B55614000 on July 27, 2007. 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 Marcus & Millichap R.E. Invest. Services of Chicago, Inc., license number F04995000, located in Cedar Rapids, Iowa.

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. The Respondent is charged with failing to comply with all procedures mandated by statute to effectuate a change of employment for a salesperson to be employed by the Respondent's brokerage by failing to make a reasonable effort to ensure the Commission received the completed "Application to Transfer" form and old license within 72 hours. See Iowa Code section 543B.33 (2015) and 193E Iowa Administrative Code sections 6.2, 6.2(4), 18.14(5)(c)(2).

CIRCUMSTANCES

4. In June of 2015, an Iowa licensee was sent a random audit by the Commission for compliance with the mandatory errors and omissions insurance requirement. At the time of the audit letter, Commission records indicated the licensee was assigned to Terrus Real Estate Group, LLC, license number F04186000, located in Des Moines, Iowa

5. On July 7, 2015 a copy of an "Application to Transfer" form dated May 2, 2014 was provided to the Commission after Terrus Real Estate Group received a copy of the errors and omissions audit letter for the aforementioned licensee. The "Application to Transfer" form indicated the licensee was to be released from Terrus Real Estate Group and transferred to Marcus & Millichap R.E. Invest. Services of Chicago, Inc. on or about May 2, 2014.

6. The aforementioned licensee was listed as an agent for Marcus & Millichap R.E. Invest. Services of Chicago, Inc. on the website www.marcusmillichap.com.

7. The Respondent failed to make a reasonable effort to ensure the Commission received the completed "Application to Transfer" form and old license within 72 hours.

SETTLEMENT AGREEMENT

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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:

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

15. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of two hundred fifty dollars (\$250.00) 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, referencing Case Number 15-204.

16. 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 **Barry P. A'Hearn** on this 1 day of OCTOBER, 2015.

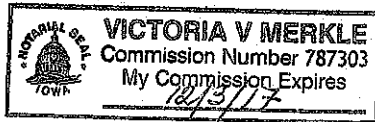

By: **BARRY P. A'HEARN**, Respondent

IREC Case No. 15-204
Barry P. A'Hearn

State of Iowa

County of Johnson

Signed and sworn to before me on this 1st day of October, 2015, by:



V Merkle

Notary Public, State of Iowa

Printed Name: Victoria Merkle

My Commission Expires: 12/3/17

FOR THE COMMISSION:

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

Terrance M. Duggan

TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission