

FILED February 4, 2016 (Date)

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

JRC
Board / Commission
[Signature]
Signature, Executive Officer

IN RE:)	
)	CASE NUMBERS: 14-085, 14-175
Ben J. Bryant)	
Broker (B60085000))	INFORMAL SETTLEMENT
)	AGREEMENT AND CONSENT
Associated Realty, LLC)	ORDER IN A DISCIPLINARY CASE
812 Ashworth Road)	
West Des Moines, IA 50265)	
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Ben J. Bryant** (Respondent) enter into this 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 B27068000 on July 9, 1987. Respondent's license is in full force and effect until December 31, 2016. At all times relevant to this matter, the Respondent was a licensed real estate broker officer and the designated broker in charge assigned to Associated Realty, LLC, a licensed real estate firm, license number F05632000, located in West Des Moines, 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.

SETTLEMENT AGREEMENT

3. On November 9, 2015, 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.

4. The parties voluntarily enter into this Order in compromise of contested matters. Without admission of wrongdoing or guilt, the Respondent does not contest the allegations stated in Counts I and II of Case No. 14-085 and Counts II and III of Case No. 14-175 of the attached Statement of Charges. In consideration of the Respondent's agreement to enter into this Order, the Commission agrees to dismiss Count I of Case No. 14-175. All allegations resolved through this Order shall constitute one (1) violation for purposes of Iowa Code section 543B.29(4) (2015).

5. The Respondent acknowledges that he 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 his right to a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.

6. The 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.

7. 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. This Order shall be part of the permanent record of the 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.

8. 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.

9. This Order is not binding on the 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.

10. Upon acceptance by both the Commission and Respondent, this Informal Settlement Agreement 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:

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

12. CIVIL PENALTY. Respondent shall pay a civil penalty to the Commission in the amount of five thousand dollars (\$5,000) no later than twelve (12) 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 Numbers 14-085, 14-175.

13. EDUCATION. Respondent shall attend the following Commission approved courses: the twelve (12) hour "Listing Practices" course, the twelve (12) hour "Developing Professionalism and Ethical Practices" course and the eight (8) hour "Contract Law and Contract Writing" course. These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificates of attendance shall be submitted to the Iowa Real Estate Commission no later than twelve (12) months after acceptance of this Order by the Commission. The certificates must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Numbers 14-085, 14-175.

14. DISMISSAL. Count I of Case No. 14-175 is dismissed.

15. 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 Informal Settlement Agreement and Consent Order is agreed to by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:

Voluntarily agreed to and accepted by **Ben J. Bryant** on this 20 day of January, 2016.

Ben J. Bryant
By: **BEN J. BRYANT** Respondent

State of Iowa)

County of Polk)

Signed and sworn to before me on this 20 day of January, 2016, by:

Anita M. Olson
Notary Public, State of Iowa
Printed Name: Anita M. Olson
My Commission Expires: 10/5/2016



FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this
4th day of FEBRUARY, 2016.



TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission

FILED November 9, 2015 (Date)

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

JOS
Board / Commission
[Signature]
Signature, Executive Officer

IN THE MATTER OF:)	
)	CASE NUMBERS: 14-085, 14-175
Ben J. Bryant)	
Broker (B27068000))	NOTICE OF HEARING AND
)	STATEMENT OF CHARGES
Associated Realty, LLC)	
812 Ashworth Road)	
West Des Moines, IA 50265)	
)	
RESPONDENT)	

The Iowa Real Estate Commission ("Commission") issues this Notice of Hearing pursuant to Iowa Code Section 17A.12(2). The Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (2015). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

The Commission issued the Respondent real estate broker license number B27068000 on July 9, 1987. Respondent's license is in full force and effect until December 31, 2016. At all times relevant to this matter, the Respondent was a licensed real estate broker officer and the designated broker in charge assigned to Associated Realty, LLC, a licensed real estate firm, license number F05632000, located in West Des Moines, Iowa.

NOTICE OF HEARING

1. **HEARING.** A contested case hearing will be held concerning the below-stated disciplinary charges before the Iowa Real Estate Commission on the 3rd day of **December, 2015**, at **9:30 o'clock AM**, at 200 East Grand, Suite 350, Des Moines, Iowa.

2. **ACKNOWLEDGMENT.** The Commission requests that you file a statement to acknowledge receipt of the notice of hearing within 10 days of the date you are served with this Notice.

3. **ANSWER.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Administrative Code 7.9.

4. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the 24th day of **November, 2015** at **9:30 o'clock AM** before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALI"). You are responsible for notifying the

Commission office of the telephone number at which you or your counsel can be reached. Commission rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.

5. **PRESIDING OFFICER.** The full Commission shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(1). The Commission may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

6. **HEARING PROCEDURES.** Commission rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses and examine any documents introduced at hearing. You may appear personally and be represented by counsel at your own expense. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

7. **DEFAULT.** If you fail to appear at hearing, the Commission may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

8. **STATE'S COUNSEL.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Commission, with copies mailed to:

John R. Lundquist
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319

Phone: 515-281-3658
Fax: 515-281-4209
John.Lundquist@iowa.gov

9. **RESPONDENT'S COUNSEL.** Copies of all pleadings filed with the Commission shall also be provided to Respondent's counsel of record:

NONE

10. **SETTLEMENT.** The procedural rules governing the Commission's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General John R. Lundquist.

11. COMMUNICATIONS. You may not contact Commission members by phone, letter, facsimile, e-mail or in person about this Notice of Hearing and Statement of Charges. Commission members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Commission office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General John R. Lundquist at 515-281-3658, or the Commission's Executive Officer at 515-725-9026 or Fax 515-725-9032.

12. ADA NOTICE. If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call or e-mail the Commission's Executive Officer at 515-725-9026. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

STATEMENT OF CHARGES (Case No. 14-085)

COUNT I

13. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or failing to diligently exercise reasonable skill and care in providing real estate brokerage services to a client in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1), 543B.56(1)(b) (2014) by failing to have a listing price and definite expiration date on an executed listing agreement. See 193E Iowa Administrative Code sections 11.1, 11.3, 12.3(1)(a), 12.3(1)(b), 18.14(5)(s).

COUNT II

14. Respondent is charged with engaging in a practice harmful or detrimental to the public, being unworthy to act as a real estate broker in such manner as to safeguard the interests of the public and/or failing to provide brokerage services to all parties to a transaction honestly and in good faith in violation of Iowa Code sections 543B.29(1)(c), 543B.29(1)(d), 543B.34(1)(h), 543B.56(2) (2014) by charging an undisclosed commission for a transaction and/or inducing another to alter, modify or change a commission that has previously been agreed upon. See 193E Iowa Administrative Code sections 11.1, 11.1(5), 11.3(6)(d), 11.3(8), 12.3(1)(b), 12.3(1)(c), 12.3(1)(c)(7), 18.2(2), 18.14(5)(s).

CIRCUMSTANCES

15. The Respondent's real estate firm was the listing firm for a residential property located in Polk City, Iowa.

16. A listing agreement between the sellers of the subject property and the Respondent was executed on January 31, 2014. The executed listing agreement did not include a listing price or definite expiration date.

17. Paragraph #2 of the listing agreement stated the following pertaining to compensation: "Seller agrees to pay the Listing broker a 2.0% commission of the Sale price at time of settlement for dissemination to selling broker. The cooperating broker's commission, if any, may be reduced by for listing administrative allowance/MLS marketing fee payable to Associated Realty."

18. Paragraph #23 of the listing agreement stated under Remarks that: "All fees and commission have already been paid to Associated Realty through owners.com Premium Package."

19. Respondent's brokerage represented to the sellers that any commission charged would be distributed solely to the real estate firm representing the buyers.

20. On or about February 10, 2014 the Respondent received a written offer to purchase for the subject property from a licensed real estate salesperson affiliated with another licensed real estate firm. An e-mail was sent by the Respondent's brokerage to the sellers, informing them that they have a pending offer contingent upon them paying 3 – 3.5 % commission to the buyer's agent at the time of closing. The sellers ultimately agreed to pay a 3% commission (\$6,975.00) to the real estate firm representing the buyer and accepted the offer on February 12, 2014.

21. Before the April 11, 2014 closing for the subject property, the Respondent submitted an invoice to the attorney conducting the closing demanding that .5% (\$1,162.50) commission be paid to the Respondent's brokerage with the remaining 2.5% (\$5,812.50) commission to be paid to the real estate firm representing the buyers.

22. Pursuant to the HUD dated April 11, 2014, \$5,975.00 was paid to the real estate firm representing the buyers at the time of closing. The \$1,000.00 earnest money, which was being held in the Respondent's trust account, was not delivered at the time of closing and ultimately retained by the Respondent's brokerage.

23. The sellers never authorized the distribution of additional compensation or commission to the Respondent's brokerage.

STATEMENT OF CHARGES (Case No. 14-175)

COUNT I

24. Respondent is charged with professional incompetency, engaging in a practice harmful or detrimental to the public and/or being unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public in violation of Iowa Code sections 543B.29(1)(c), 543B.29(1)(d), 543B.34(1)(h) (2014) by advertising and marketing a property in Iowa without the written authorization or signature of the true owner. See 193E Iowa Administrative Code sections 11.1, 18.14(5)(j), 18.14(5)(s)

COUNT II

25. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or being unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public in violation of Iowa Code sections 543B.29(1)(c), 543B.29(1)(d), 543B.34(1)(h), 558A (2014) by failing to obtain original signatures of the sellers on the seller property condition disclosure form and the lead-paint disclosure form at the time of listing. See 193E Iowa Administrative Code sections 14.1(2), 18.14(5)(j), 18.14(5)(s).

COUNT III

26. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or failing to diligently exercise reasonable skill and care in providing real estate brokerage services to a client in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1), 543B.56(1)(b) (2014) by failing to have a definite expiration date on an executed listing agreement. See 193E Iowa Administrative Code sections 11.1, 11.3, 12.3(1)(a), 12.3(1)(b), 18.14(5)(s).

CIRCUMSTANCES

27. On or about October 24, 2014 the Commission received a written complaint filed against the Respondent surrounding the circumstances of the advertising of a property located in Des Moines, Iowa that that appeared on the Des Moines Area Association of Realtors (DMAAR) Multiple Listing Service (MLS) from January 2014 – July 2014.

28. The Respondent provided a listing agreement between the purported sellers of the subject property and the Respondent's real estate brokerage that was purportedly executed on December 31, 2013. The executed listing agreement did not include a definite expiration date. On line 24 of the listing agreement, the names of the property owners were typed, but the signature of the purported seller that was affixed to the document was not the seller's signature.

29. The Respondent provided copies of the Seller Property Condition Disclosure form and Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards form that were completed at the time the listing for the subject property were obtained. On each one of the respective forms, the names of the property owners were typed, but the signatures of the sellers were not obtained by the Respondent.

30. Reasonable diligence would have revealed that the true owner of the subject property did not list the property or otherwise authorize the Respondent's brokerage to market the property for sale.

This Notice of Hearing and Statement of Charges is filed and issued on the 9th day of November, 2015.



Jeffrey M. Evans, Executive Officer
Iowa Real Estate Commission

Copies to:
Assistant Attorney General, John Lundquist
Department of Inspections and Appeals, assigned Administrative Law Judge