

FILED May 2, 2019 (Date)
JRG
Board / Commission
[Signature]
Signature, Executive Officer

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

IN RE:)	
)	CASE NUMBER: 17-199
Gary W. Fenster)	
Broker (B38075000))	COMBINED STATEMENT OF
)	CHARGES, INFORMAL
Sole-proprietor Broker)	SETTLEMENT AGREEMENT,
616 N 29 th Street)	AND CONSENT ORDER IN A
Council Bluffs, IA 51501)	DISCIPLINARY CASE
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **Gary W. Fenster** (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) (2019).

1. The Commission issued the Respondent real estate broker license number B38075000 on September 30, 1999. Respondent's license is in full force and effect until December 31, 2019. At all times relevant to this matter, the Respondent was a licensed real estate broker associate assigned to Heartland Properties, Inc., a licensed real estate firm, license number F02938000, located in Council Bluffs, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2017). 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 and/or failing to diligently exercise reasonable skill and care in providing brokerage services to all parties in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1)(h), 543B.56(1)(a), 543B.56(1)(b) (2017) by entering a property without first obtaining permission from the listing brokerage or property owner. See 193E Iowa Administrative Code §§ 18.2(1), 18.14(5)(s).

CIRCUMSTANCES

4. The Respondent, acting as the buyer's agent for the subject property located in Council Bluffs, Iowa, represented the buyers in an executed purchase agreement dated June 9, 2017. The closing for the transaction was scheduled to take place on July 28, 2017.

5. On June 21, 2017, while with the prospective buyers for the subject property, the Respondent entered the property by ripping a screen and breaking a window. The Respondent had failed to make an appointment with the listing brokerage to view the property and entered the property without authorization and consequently damaged the property when he gained entrance.

6. Before the scheduled closing date, the prospective buyers were informed by their lender that their request for a mortgage loan had been denied. A "Release of Contract to Buy or Sell and Discharge of Earnest Money" was signed by all parties on July 20, 2017 and the transaction failed to consummate.

7. The Respondent's brokerage was invoiced for the repair of the aforementioned damages on July 21, 2017.

8. The Respondent engaged in practices harmful or detrimental to the public and failed to diligently exercise reasonable skill and care by entering a property without first obtaining permission from the listing brokerage or property owner.

SETTLEMENT AGREEMENT

9. Respondent admits each and every allegation in the above-stated Statement of Charges. This case shall constitute one violation for purposes of Iowa Code section 543B.29(4) (2019).

10. 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.

11. 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.

12. 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.

13. 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) (2018) 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.

14. 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.

15. Upon acceptance by both the Commission and Respondent, this Combined Statement of Charges, 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 (2019).

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

17. **CIVIL PENALTY**. Respondent shall pay a civil penalty to the Commission in the amount of two thousand dollars (\$2,000.00) on or before October 31, 2019. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 18-133.

18. **EDUCATION**. The Respondent shall attend the Commission approved twelve (12) hour course "Developing Professionalism and Ethical Practices." These hours shall be in addition to any real estate continuing education required by law for license renewal. The original certificate of attendance shall be submitted to the Iowa Real Estate Commission on or before October 31, 2019. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 18-133.

19. SUSPENSION. The Respondent's real estate broker license shall be suspended indefinitely commencing on October 31, 2019, pending submission of the civil penalty and proof of completion of the education required by Paragraphs 17 – 18 of this informal settlement agreement entered between the Respondent and the Commission. Upon the Respondent's submission of the civil penalty and education to the Commission's Executive Officer, the Respondent's real estate broker license shall be reinstated upon order of the Commission's Executive Officer. Should the Respondent submit the full amount of the civil penalty and a course completion certificate for the 12-hour course "Developing Professionalism and Ethical Practices" to the Commission's Executive Officer at the Commission's offices prior to 1:00 PM on October 31, 2019, the suspension provided for in this paragraph shall not be imposed..

20. 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 **Gary W. Fenster** on this 11 day of April, 2019.

Gary W. Fenster
By: **GARY W. FENSTER**, Respondent

State of IOWA)

County of Pottawattamie

Signed and sworn to before me on this 11th day of April, 2019, by:

Michael W. Morse
Notary Public, State of IOWA
Printed Name: MICHAEL W. MORSE
My Commission Expires: 9-10-19



FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this
2ND day of MAY, 2019.



TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission