

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

IN RE:)	
)	CASE NUMBER: 21-133
First Choice Real Estate, LLC)	
Firm (F05385000))	COMBINED STATEMENT OF
)	CHARGES, INFORMAL
)	SETTLEMENT AGREEMENT,
115 W 4 th Street)	AND CONSENT ORDER IN A
Wilton, IA 52778)	DISCIPLINARY CASE
)	
RESPONDENT)	

The Iowa Real Estate Commission (Commission) and **First Choice Real Estate, LLC** (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).

1. The Commission issued the Respondent real estate firm license number F05385000 on December 2, 2009. Respondent's license is in full force and effect until December 31, 2023. At all times relevant to this matter, Dan Oien was a licensed real estate broker officer and the designated broker in charge assigned to First Choice Real Estate, LLC, located in Wilton, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B. 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

1. 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 interest 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)(b) 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

2. Dan Oien was assigned as the designated broker in charge of real estate brokerage firm First Choice Real Estate, LLC, at all times relevant to this matter. The Respondent is responsible for ensuring compliance with all applicable rules and regulations governing the operations in the state of Iowa, including maintenance of the trust account used by the firm.

3. The Respondent was the listing firm for a residential property located in Wilton, Iowa.

4. A listing agreement between the sellers of the subject property and the Respondent was executed on May 11, 2020.

5. Paragraph #4 of the listing agreement stated the following pertaining to compensation: "Owner will pay to Listing Broker a commission amounting to 1.5% of the selling price."

6. The Closing Cost Details indicated at closing a commission in the amount of \$4,080.00 was received, equal to 3% of the selling price of the subject property.

7. The sellers never authorized the distribution of additional compensation or commission to the Respondent.

SETTLEMENT AGREEMENT

8. 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).

9. Respondent acknowledges that it 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 its 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(1)(d), 543B.34(1) and 272C.3(2)(a) 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.

CONSENT ORDER

IT IS THEREFORE ORDERED:

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

16. **CIVIL PENALTY.** Respondent shall pay a civil penalty to the Commission in the amount of two thousand five hundred dollars (\$2500.00) 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 Number 21-133.

17. **EDUCATION.** Respondent shall attend the following Commission approved course: twelve (12) hour "Developing Professionalism and Ethical Practices" course. This course 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 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 21-133.

18. **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:

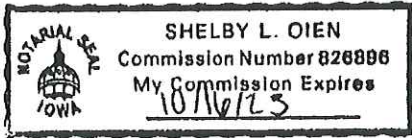
Voluntarily agreed to and accepted by First Choice Real Estate, LLC on this 1st day of May, 2023.

Daniel A. Oien
By: **DANIEL A. OIEN**, Broker for Respondent

State of Iowa

County of Muscatine

Signed and sworn to before me on this 1st day of May, 2023, by:



Shelby L. Oien
Notary Public, State of Iowa
Printed Name: Shelby Oien
My Commission Expires: 10/16/23

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 4th day of May, 2023.

James M.H. Clingman
JAMES M.H. CLINGMAN, Chair
Iowa Real Estate Commission