



completed correctly). See 193E Iowa Admin. Code §§ 13.1(6)(a)(3), 18.14(5)(e).

## COUNT II

4. 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), 543B.34, and 543B.46 (2011) by:

- (a) Failing maintain at all times a record of the Respondent's property management trust account to include individual ledger accounts for each tenant identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. See 193E-13.1(6)(c) and 18.14(5)(e)

## CIRCUMSTANCES

5. On or about October 17, 2012, an audit of the Respondent's trust account and records was conducted.

6. The auditor found that the Respondent's property management trust account had security deposits in the "outstanding checks" that should not have been in the trust account.

7. The auditor found the Respondent is not correctly performing a monthly reconciliation on a written worksheet to document and ensure agreement of the general ledger balance, individual ledgers, and reconciled bank balance ("three-way tie" is not being completed and documented correctly).

8. The auditor found the Respondent was not maintaining and/or accounting for all of the individual Ledgers.

9. The auditor found there has been a variance between the total of the individual ledgers, the general ledger balance, and the reconciled bank balance for a period of two and a half years.

## SETTLEMENT AGREEMENT

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

11. 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.

12. 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.

13. 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.

14. 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) (2009) 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.

15. 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.

16. 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:**

17. CIVIL PENALTY. The Respondent shall pay a civil penalty to the Commission in the amount of \$5,000 (\$2,500 for each Count I and Count II) no later than 180 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 A12-011.

18. CPA AUDIT. The Respondent shall hire an Iowa licensed Certified Public Accountant (CPA), at the Respondent's expense to audit and to establish trust account records following Generally Approved Accounting Principles. When completed, a copy of the trust account records shall be promptly submitted to the Commission. The CPA's audit report demonstrating Respondent's compliance with applicable standards, Iowa law, and Commission trust account rules must be submitted **no later than sixty (90) days** upon acceptance of this Order by the Commission. The audit must come under a cover letter addressed to the Commission's Executive Officer and refer to case A12-011.

19. 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 **David J. Kacena** on this 29 day of January, 2013.

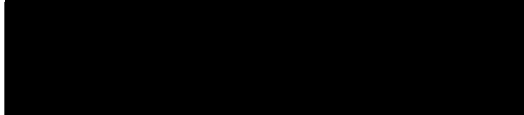


By: **DAVID J. KACENA**, Respondent

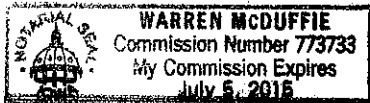
State of IA

County of Johnson

Signed and sworn to before me on this 29 day of January, 2013, by:



Notary Public, State of Iowa  
Printed Name: Warren McDuffie  
My Commission Expires: July 5, 2015



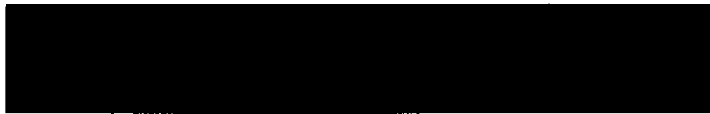
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A10-042

**David J. Kacena**

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**FOR THE COMMISSION:**

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION**  
on this 7 day of Feb., 2013.



**JUDITH E. STEVENS**, Chair  
Iowa Real Estate Commission