

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA

STATE OF NEBRASKA, <i>ex rel.</i> ,)	CASE NO 2014-013
STATE REAL ESTATE COMMISSION)	
OF THE STATE OF NEBRASKA,)	
)	
Complainant,)	
v.)	STIPULATION AND CONSENT ORDER
)	
JANE HARTMAN HEIMBOUCH)	
)	
)	
Respondent.)	

Respondent Jane Hartman Heimboch ("Heimboch") and The State of Nebraska, by and through the State Real Estate Commission of the State of Nebraska (the "Commission"), hereby stipulate and agree as follows:

1. A Complaint was served upon Heimboch for alleged violations of Nebraska Real Estate License Act. The Complaint was issued in the above-captioned case and is incorporated as a part of this Stipulation and Consent Order.

2. Heimboch recognizes her right to a hearing on this matter pursuant to law, acknowledges that she knowingly and voluntarily waives her right to said hearing, acknowledges that she waives her right to any appeal from this Order of the Commission, and she agrees to accept the terms and conditions of this Stipulation and Consent Order.

3. At all times material to this case, Heimboch was and is the holder of a real estate salesperson license issued by the Commission. At all times relevant to this Stipulation and Consent Order Heimboch was a real estate salesperson affiliated with Champion Realty, LLC., 615 S. Beltline Highway West, Scottsbluff, NE 69361.

4. Heimboch, for the purposes of this stipulation and consent order, does not contest the stipulated facts set forth herein.

5. On January 1, 2000, the Commission Issued a Real Estate Salesperson's License to Heimbouch.

The Splichal Property

6. On or about March 4, 2011, Allen and Cheri Splichal (collectively "Splichals") entered into a listing agreement with Heimbouch for the sale of their home, located at 2601 2nd Avenue, Scottsbluff. List price was \$156,500.00.

7. First Splichal/Conner Purchase Agreement

a. On or about July 15, 2011, Heimbouch presented the Splichals with an offer to purchase from Laura Conner for the amount of \$155,000.00 ("First Splichal/Conner Purchase Agreement"). Heimbouch prepared the Purchase Agreement which indicated Heimbouch of Champion Realty was a Limited Dual Agent.

b. The Purchase Agreement indicated that an earnest money deposit of \$500.00 had been received from Buyer, but also noted that the earnest money would be paid by Buyer when Buyer's own property is under contract. Closing was to occur on September 28, 2011, conditional upon Buyer's ability to obtain financing and upon Buyer's ability to sell her home located in Pueblo, Colorado.

c. On or about July 21, 2011, the Splichals accepted the Purchase Agreement.

d. In about late-August, 2011, Heimbouch informed the Splichals that the sale of Buyer's home in Pueblo, Colorado fell through. The Splichals were not provided with any earnest money.

8. **Splichal/Clark Purchase Agreement**

a. On or about August 30, 2011, Heimbouch prepared an offer to purchase the Splichal property on behalf of Gordon and Sally Clark ("Splichal/Clark Purchase Agreement"). The Purchase Agreement indicated Heimbouch was acting as a Limited Dual Agent and that a \$1,000.00 earnest money deposit was received from Buyer. Offer price was \$142,000.00 and sale was contingent upon Buyer obtaining financing. Closing was to occur on October 25, 2011. The Purchase Agreement did not include a signature for Gordon Clark.

b. On or about August 31, 2011, the Splichals countered the Clarks' offer in the Purchase Agreement in the amount of \$155,000.00, all other terms to remain the same. No final agreement was reached between Buyer and Seller.

9. **Splichal/Darling Purchase Agreement**

a. On or about October 10, 2011, Heimbouch presented the Splichals with an oral offer to purchase for the amount of \$141,750.00 on behalf of Jim Darling. The Splichals countered for the amount of \$155,000.00. No final agreement was reached between Buyer and Seller.

10. **Splichal/Dominguez Purchase Agreement**

a. In early 2012, Heimbouch presented the Splichals with an oral offer to purchase for the amount of \$155,000.00 on behalf of Raul Dominguez. The Splichals accepted the offer and Heimbouch advised the Splichals that she had obtained an earnest money deposit from Buyer for the amount of \$500.00.

b. A written Purchase Agreement was never prepared by Heimbouch to

memorialize Dominguez's oral offer to purchase and the Splichals' oral acceptance thereof. Closing on the verbal Splichal/Dominguez transaction did not occur and the Splichals were not provided with any earnest money deposit.

11. Second Splichal/Conner Purchase Agreement

- a. On or about June 16, 2012, Heimbouch prepared a Purchase Agreement for Laura Conner for the amount of \$155,000.00 ("Second Splichal/Conner Purchase Agreement"). The Purchase Agreement indicated an earnest money deposit in the amount of \$500.00.
- b. The Second Purchase Agreement was contingent upon the sale of Conner's home located in "Colorado Springs, CO" and upon Buyer obtaining financing. Additional terms were that the "house was to remain on the market until buyers contingencies are met." Closing was to occur August 3, 2012.
- c. The Second Purchase Agreement was not signed by Buyer.
- d. During the period of approximately June 16, 2012 through August 3, 2012. Heimbouch represented to the Splichals that the closing would occur with respect to the Second Splichal/Conner Purchase Agreement.
- e. On or about August 3, 2012, Heimbouch informed the Splichals that closing would not occur with respect to the Second Splichal/Conner Purchase Agreement. The Splichals did not receive any earnest deposit funds.
- f. Throughout the period of 2011 to August, 2012, Heimbouch informed the Splichals that Laura Conner's parents owned a home in a certain housing addition in Scottsbluff. Upon investigation, the Splichals determined that Laura Conner's parents did not appear as owners of any such home.

g. The Splichals never met or heard from Laura Conner in person. Although Heimbouch informed the Splichals that Laura Conner had frequently visited their home, her visits always coincided with a time that the Splichals were not at home.

12. **Splichal/Moran Purchase Agreement**

a. On or about July 26, 2012, Heimbouch prepared an offer to purchase on behalf of Roger and Marsha Moran for the amount of \$160,000.00. ("Splichal/Moran Purchase Agreement"). Earnest money deposit in the amount of \$500.00. Closing to occur September 4, 2012.

b. Heimbouch advised the Splichals that, although they were under contract with Laura Conner at the time the Splichals received the Moran Purchase Agreement, the Splichals could accept the Moran offer as a "back up" to closing on the Second Splichal/ Conner Purchase Agreement.

c. The Splichal/Moran Purchase Agreement did not indicate whether Heimbouch was an exclusive agent of the Seller, Buyer, or was a Limited Dual Agent.

d. The Splichal/Moran Purchase Agreement was contingent upon closing of the Buyer's property, located at 13th Avenue, Mitchell, Nebraska, which was set to close on August 31, 2012. The Purchase Agreement did not contain a signature for Roger Moran.

e. On August 3, 2012, the Splichals executed their acceptance of the Moran offer.

f. On or about September 4, 2012, Heimbouch informed the Splichals that closing would not occur as scheduled because the Morans were unable to close on

the sale of their home on 13th Avenue in Mitchell, Nebraska.

g. Upon investigation, the Splichals searched the County Assessor's website and were unable to find the Morans listed as property owners of a property in Mitchell, Nebraska. The Splichals never personally met or had contact with the Morans.

13. First Splichal/Jensen Purchase Agreement

a. On or about November 19, 2012, Heimbouch presented the Splichals with an oral offer to purchase on behalf of Shari Jensen for the amount of \$155,000.00. Earnest money was \$500.00 and closing date was December 18, 2012.

b. On or about November 19, 2012, the Splichals accepted the Jensen offer to purchase. Upon the Splichals' acceptance, Heimbouch advised the Splichals that an appraisal of their home would be conducted on November 25, 2012.

c. On December 7, 2012, Heimbouch advised the Splichals that the transaction was on track to close as scheduled on December 18, 2012.

d. A written Purchase Agreement was never prepared by Heimbouch to memorialize Jensen's oral offer to purchase and the Splichals' oral acceptance thereof. On or about December 18, 2012, Heimbouch informed the Splichals that closing would not occur. The Splichals were not provided with the earnest money deposit.

14. Second Splichal/Jensen Purchase Agreement

a. On or about March 19, 2013, Heimbouch prepared an offer to purchase on behalf of Shari Jensen for the amount of \$155,000.00 ("Second Splichal/Jenson Purchase Agreement").

- b. Heimbouch did not indicate whether she was an exclusive agent for the Seller, Buyer, or was a Limited Dual Agent. The sale was contingent upon Buyer obtaining financing and an appraised value for at least the purchase price. Earnest money was \$1,000.00 and a provision was made that "Earnest money to be released to Sellers." Closing was set for April 29, 2013.
- c. On March 21, 2013, the Splichals executed their acceptance of the Second Splichal/Jensen Purchase Agreement.
- d. In March 2013, Heimbouch advised the Splichals that the sale of their home to the Jensens was contingent upon the Jensens selling their home, located in Alliance, Nebraska. Upon investigation, the Splichals confirmed that neither Shari Jensen nor Shari "Jenson" was on record with the County Assessor as being a property owner in Alliance, Nebraska. The Splichals confronted Heimbouch with the information that Shari Jensen did not own a home in Alliance, Nebraska, and Heimbouch responded that Jensen no longer had a home for sale in Alliance, Nebraska, but instead was living with a family member.
- e. During the period of about March 25, 2013 through April 19, 2013, the Splichals continually requested that Heimbouch release to them the earnest money pursuant to the Second Splichal/Jensen Purchase Agreement.
- f. In mid-to-late April 2013, Cheri Splichal confronted Heimbouch at Heimbouch's office concerning the earnest money, at which time Heimbouch handed Splichal a sealed envelope and advised Splichal that Jensen had dropped off the envelope to Heimbouch. Upon opening the envelope, Splichal found \$425.00 in cash.

g. On or about April 29, 2013, Heimbouch informed the Splichals that Jensen would not be closing on purchase of the Splichal property. Although the Splichals requested that Heimbouch provide them with the remaining amount of the earnest money deposit, Heimbouch failed to remit the remaining earnest money to the Splichals.

The Soule Property

15. In early spring 2012, David and Marjorie Soule (collectively "Soules") contacted Heimbouch about selling their home. Heimbouch visited the Soules' home, took pictures and communicated interest in listing the home. Heimbouch did not have the Soules sign an Agency Disclosure disclosing that Heimbouch was acting as a Buyer's Agent and the Soules were an unrepresented customer.

16. Soule/Dunlap Purchase Agreement

a. In April 2012, according to Heimbouch, a potential buyer, John Dunlap, came to Heimbouch's office and expressed interest in the Soules' property. Heimbouch told the Soules that Dunlap was interested in the Soules' property. According to Heimbouch, Dunlap refused to sign an agency disclosure. Heimbouch did not note Dunlap's refusal on a copy of the agency disclosure form and/or retain such copy for Heimbouch's file.

b. On May 8, 2012, the Soules signed a listing agreement with Heimbouch ("Soule First Listing Agreement") which continued through October 8, 2012. List price was \$109,500.00 and specifically excluded Dunlap from the Agreement. Also on May 8, 2012, the Soules signed an Agency Disclosure in which

Heimbouch indicated she was acting as a Seller's Agent representing the Soules.

- c. In about June 2012, Hiembouch communicated a verbal offer of \$91,000.00 on behalf of Dunlap to the Soules. Additional verbal counteroffers were exchanged between the Soules and Hiembouch, acting as a Buyer's Agent on behalf of Allen. A written Purchase Agreement was never prepared by Heimbouch to memorialize Dunlap's oral offer to purchase and the Soules' oral acceptance thereof.
- d. On January 16, 2013, the Soules signed a new listing agreement with Heimbouch which continued through March 16, 2013 ("Soule Second Listing Agreement"). List price was \$105,000.00. Heimbouch did not complete a new Agency Disclosure, but instead used the previous agency disclosure dated May 8, 2012.
- e. On January 17, 2013, Heimbouch prepared a purchase agreement for Dunlap in the amount of \$99,500.00. Earnest deposit of \$0, balance of \$75,000.00 to be paid in cash or by certified funds at closing, contingent upon Dunlap's ability to obtain a conventional loan for \$99,500.00. Closing was to occur on February 22, 2013. Also on January 17, 2013, the Soules executed their acceptance of Dunlap's offer. Heimbouch did not prepare an estimated closing cost statement for the Soules.
- f. The transaction with Dunlap did not close on February 22, 2013 because, according to Heimbouch, Dunlap was unable to obtain financing.
- g. The Soule Second Listing Agreement expired on March 16, 2013.
- h. On March 18, 2013, Heimbouch contacted the Soules and stated that

Heimbouch would be meeting with Dunlap. Heimbouch met with Dunlap to discuss Dunlap's options for purchasing the Soule home. According to Heimbouch, Dunlap again refused to sign an Agency Disclosure. Heimbouch did not note Dunlap's refusal on a copy of the disclosure and/or retain such copy in her file.

i. On March 20, 2013, the Soules contacted Heimbouch's designated broker, Respondent Allen and requested that Allen write a letter to Dunlap which Allen did. However, the letter was returned as undeliverable at the address provided by Heimbouch.

j. In March and April, 2013, Heimbouch contacted the Soules and communicated to the Soules that Dunlap was still interested in the property and that additional potential buyers were also interested in the Soule's property.

k. On April 24, 2013, the Soules signed a listing agreement with Heimbouch which continued through July 24, 2013 ("Soule Third Listing Agreement"). List price was \$99,900.00. Heimbouch did not complete a new Agency Disclosure, but instead used the previous agency disclosure dated May 8, 2012.

17. Soule/Jensen Purchase Agreement

a. On April 26, 2013, Heimbouch wrote an offer to purchase for Dale Jensen for the amount of \$87,500.00. The offer listed \$500.00 earnest money deposit which was crossed through and initialed by Jensen. The offer then stated that the "balance of \$87,000 shall be paid in cash, or certified or cashier's check at time of closing." Closing was to occur on May 22, 2013.

b. The Soules made a counter offer increasing the price to \$95,000.00, all

other terms the same and Heimboch advised the Soules that Jensen accepted the counter-offer on April 30, 2013. Heimboch did not complete an estimated closing cost statement for the Soules.

c. The transaction did not close on May 22, 2013 because, according to Heimboch, Jensen was having surgery.

d. On May 23, 2013, the Soules met with Heimboch at Heimboch's office, during which time the Soules requested that Heimboch telephone Jensen. Heimboch dialed a number on speaker phone and the message indicated that the number was disconnected. Heimboch then handed the Soules a sealed envelope containing five (5) One Hundred Dollar bills which Heimboch stated was from Jensen.

18. On June 4, 2013, the Soules met with Heimboch's designated broker, Respondent Allen. During the meeting, Respondent Allen stated that the Soule's property was not under a listing agreement with Allen's company as of June 4, 2013.

19. On June 5, 2013, the Soules were asked to meet with Respondents Allen and Heimboch, during which meeting Heimboch told the Soules that, if Jensen did not close on the property on June 7, 2013, Heimboch would purchase the Soule's property.

20. On June 12, 2013, Heimboch contacted the Soules, stating that Heimboch would make an offer to purchase the property for the appraised value. Respondent Allen communicated to the Soules that the expected appraised value would be around \$48,000.00. The Soules refused to sell the property to Heimboch under the proposed terms and the transaction did not occur.

21. Heimbouch never produced contact information for either John Dunlap or Dale Jensen.

The Rey Property

22. On August 29, 2012, James and Sharon Rey signed a listing agreement with Heimbouch, listing their home in Mitchell, Nebraska ("Rey First Listing Agreement"). List price was \$349,500.00.

23. First Rey/Heller Purchase Agreement

a. In about mid-September, 2012, Heimbouch informed the Reys that she had an interested buyer, Jonathan Heller.

b. On November 6, 2012, Heimbouch presented the Reys with an offer to purchase for Heller for \$340,000 with \$5,000 earnest money. The Reys signed acceptance. A few days later, Heimbouch told the Reys that Heller had an emergency surgery and then later, an infection that precluded him from purchasing the home.

c. On January 29, 2013, the Reys signed a new listing agreement with Heimbouch (Rey Second Listing Agreement).

24. Second Rey/Heller Purchase Agreement

a. On March 29, 2013, Heimbouch presented the Reys with a new offer from Jonathan Heller for the amount of \$345,000.00, with \$2,000.00 earnest money and a closing date of June 1, 2013.

b. On April 4, 2013, according to Heimbouch, she arranged for Mr. Heller to have an inspection of the property by Old Home Lovers, LLC. Also in April 2013, the Reys notified Heimbouch that an irrigation bill for the property would

be due soon and Heimbouch responded that Heller agreed to pay the bill which was due May 1, 2013.

c. On May 8, 2013, the Reys were notified that the irrigation bill had not been paid by Heller. The Reys contacted Heimbouch and she responded that Heller brought the payment to her office and Heimbouch then delivered the payment to the irrigation district office.

d. In May 2013, the Reys began moving out of the property, which was under contract with Heller. When the Reys arrived for closing on May 31, 2013, Heimbouch informed them that Heller was having an emergency surgery for a heart attack.

e. Following the failure to close on May 31, 2013, the Reys asked Heimbouch about Heller's \$2,000.00 earnest money deposit, but Heimbouch did not offer to remit the payment until October 2, 2013. During the meeting between the Reys and Heimbouch on October 2, 2013, Heimbouch provided the Reys with a cashier's check for \$2,000.00.

25. In June 2013, the Reys asked Heimbouch to arrange for a gardener for the Reys' property because the Reys were now living in Colorado. Heimbouch hired a personal acquaintance, Jim Dunlap. Heimbouch told the Reys that she would forward them a bill from Dunlap but she never did.

26. In September 2013, Jim Dunlap contacted the Reys asking for payment of outstanding invoices for gardening work. Dunlap informed the Reys that Heimbouch had previously told Dunlap that the Reys had not responded to his invoices because Mr. Rey was in the hospital and Mrs. Rey was beginning to have dementia. Further investigation revealed Mr.

Rey had not been in the hospital and Mrs. Rey did not have dementia.

The Nelson Property

27. In August 2012, Chad and Diane Nelson (the "Nelsons") made an offer on a home listed by Heimbouch.

28. In about late August 2012, the Nelsons agreed to list their own home, located at 27 Crestview Road, Scottsbluff, Nebraska, with Heimbouch.

29. Nelson/Campbell Purchase Agreement

a. On or about September 6, 2012, Heimbouch prepared a written offer on behalf of Leonard Campbell to purchase the Nelson property on the following terms: (A) purchase price of \$152,000.00; (B) earnest money in the amount of \$1,000.00; (C) closing to occur on October 25, 2012; and (D) closing was contingent upon inspections, appraisal and loan approval. Heimbouch indicated in the Purchase Agreement that she was acting as a Limited Dual Agent

b. On or about September 6, 2012, Heimbouch prepared a counter-offer on behalf of the Nelsons for the amount of \$159,900.00, the price to include furniture and all other terms stay the same.

c. Heimbouch advised the Nelsons that Campbell accepted the counter-offer and that closing was to occur on October 25, 2012.

d. A few days before the scheduled closing, Heimbouch informed the Nelsons that Campbell had a heart attack and was in the hospital in Cheyenne, Wyoming. Upon investigation in trying to arrange for the signing of paperwork in the hospital in Cheyenne, the Nelsons discovered that the loan officer whom Heimbouch had advised was handling the transaction for Campbell had never

heard of Leonard Campbell.

e. Upon investigation, the Nelsons discovered that Leonard Campbell was not a patient at a hospital in Cheyenne, Wyoming. The Nelsons confronted Heimbouch with this information and Heimbouch stated that Campbell was in a hospital in Casper, Wyoming. Upon investigation, the Nelsons discovered that Campbell was not a patient in a hospital in Casper, Wyoming.

30. In November, 2012, the Nelsons met with Heimbouch and her designated broker, Respondent Allen, to confront Heimbouch and Allen with the information that Campbell never existed. During the meeting, Heimbouch offered to purchase the Nelsons' home.

31. Heimbouch closed on the purchase of the Nelsons' home in November, 2012.

32. Also in November, 2012, the Nelsons requested that Heimbouch remit to them the \$1,000.00 earnest money deposit from Campbell. Thereafter, Heimbouch provided two separate payments to the Nelsons, each payment consisting of \$500.00 in cash in sealed envelopes.

The Hoff Property

33. In late-December, 2012, Victor and Bonnie Hoff (the "Hoffs") entered into a listing agreement with Heimbouch for the sale of their property, located at 719 Monument Circle, Scottsbluff, Nebraska.

34. In February, 2013, Heimbouch communicated an oral purchase offer to the Hoffs on behalf of an unnamed lady from Minatare, Nebraska, for the amount of \$164,000.00. The Hoffs verbally communicated their acceptance of the offer to Heimbouch. Heimbouch advised the Hoffs that Buyer needed two weeks to get a will prepared before the transaction closed. Near the end of the two-week period when the transaction was to close, Heimbouch advised the Hoffs that, while the Buyer was at the bank signing the financing paperwork, the Buyer learned that her

daughter had attempted suicide and was unable to close on the transaction. A written Purchase Agreement was never prepared by Heimbouch to memorialize Buyer's oral offer to purchase and the Hoffs' oral acceptance thereof.

35. Hoff/Aldean Purchase Agreement

- a. On or about March 28, 2013, Heimbouch prepared a written offer to purchase the Hoffs' property on behalf of "Aldean" on the following terms: (A) purchase price of \$164,000.00; and (B) earnest money deposit in the amount of \$500.00. Only the last name for the Buyers, "Aldean," was provided by Heimbouch.
- b. On or about March 30, 2013, the Hoffs accepted the Aldean offer. Closing was scheduled for April 17, 2013.
- c. Heimbouch advised the Hoffs that the Aldeans lived in Wyoming. Heimbouch advised the Hoffs that she went to Wyoming to visit the Aldeans in about early April, 2013 because Mr. Aldean had a heart attack.
- d. On or about April 17, 2013, Heimbouch advised the Hoffs that closing would be delayed because Mr. Aldean had passed away as a result of the heart attack.
- e. On or about the next scheduled closing date, Heimbouch advised the Hoffs that Mrs. Aldean was in a hospital in Cheyenne, Wyoming because she had a cataract surgery while visiting her daughter in Cheyenne. Heimbouch advised the Hoffs that closing would again be delayed.
- f. The Hoffs were no longer living at the property on Monument Circle

because they had already moved to assisted living. They advised Heimbouch that they were concerned about incurring utility charges for the property as the closing date continued to be delayed. Heimbouch advised the Hofffs that Mrs. Aldean would reimburse the Hofffs for utility charges incurred as a result of the delays.

g. The closing date was again delayed several times, during 2013. Each time the closing date approached and passed, the Hofffs would contact Heimbouch and she would advise them at that time that the closing had not occurred.

36. In May, 2013, Heimbouch communicated an oral offer to purchase to the Hofffs on behalf of "Linda" for the amount of \$164,000.00. The Hofffs gave their oral acceptance of the offer to Heimbouch. Heimbouch advised the Hofffs that "Linda" had the cash on hand for the transaction and that she just needed to complete paperwork for closing. A written Purchase Agreement was never prepared by Heimbouch to memorialize "Linda's" oral offer to purchase and the Hofffs' oral acceptance thereof.

37. In late June, 2013, the Hofffs contacted Respondent Allen and Respondent Allen advised the Hofffs not to have any further contact with Heimbouch. Respondent Allen also advised the Hofffs that another Champion Realty realtor, Steve Ruhl, would be their new listing agent.

38. On about July 8, 2013, Heimbouch contacted the Hofffs and advised them that she had cash in the amount of \$1,250.00, which she had received from the Aldeans to cover the utility charges they had incurred as a result of the delays in closing. Also on or about July 8, 2013, Heimbouch provided the Hofffs with a check for the amount of \$1,250.00, which check was written on the account of Heimbouch's ranch business.

39. In about mid-July, 2013, the Hofffs entered into a listing agreement with Steve

Ruhl and Champion Realty. Approximately two days later, the Hoffs received an offer for the amount of \$157,500.00, which they accepted and the transaction subsequently closed.

Findings

40. The State Real Estate Commission of the State of Nebraska, after due consideration, finds as follows:

- (D). Jane Hartman Heimbouch by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(16) (it is an unfair trade practice to violate any provision of NEB. REV. STAT. §§ 76-2401 to 76-2430.), in failing to satisfy the requirements of § 76-2422(4) (Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419...), in one or more of the following particulars:
- a. By failing to obtain the written consent of the Splichals before acting as dual agent with respect to the offering of brokerage services for the Splichals' property located at 2601 2nd Avenue, Scottsbluff, Nebraska, as set forth above in Paragraphs 6 through 14.
 - b. By failing to obtain the written consent of Laura Conner, as Buyer, before acting as dual agent with respect to the offering of brokerage services for the Splichals' property located at 2601 2nd Avenue, Scottsbluff, Nebraska, as set forth above in Paragraph 7.
 - c. By failing to obtain the written consent of Gordon and Sally Clark, as Buyers, before acting as dual agent with respect to the offering of brokerage services for the Splichals' property located at 2601 2nd Avenue, Scottsbluff, Nebraska, as set forth above in Paragraph 8.
 - d. By failing to obtain the written consent of the Nelsons before acting as dual agent with respect to the offering of brokerage services for the Nelsons' property located at 27 Crestview Road, Scottsbluff, Nebraska, as set forth above in Paragraphs 27 through 32.
 - e. By failing to obtain the written consent of the Leonard Campbell before acting as dual agent with respect to the offering of

brokerage services for the Nelsons' property located at 27 Crestview Road, Scottsbluff, Nebraska, as set forth above in Paragraph 29(b).

- (II). Jane Hartman Heimbouch by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(16) (it is an unfair trade practice to violate any provision of NEB. REV. STAT. §§ 76-2401 to 76-2430.), in failing to satisfy the requirements of § 76-2421(1) (At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall, in one or more of the following particulars: (a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and (b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.....)
- a. By failing to disclose in writing to the Splichals and/or Roger and Marsha Moran the party whom Heimbouch was representing with respect to Heimbouch's offering of brokerage services for the Splichals' property as described above in Paragraphs 6 and 12.
 - b. By failing to disclose in writing to the Splichals and/or Shari Jensen, the party whom Heimbouch was representing with respect to Heimbouch's offering of brokerage services for the Splichals' property as described above in Paragraphs 6 and 14.
 - c. By failing to have the Soules sign an Agency Disclosure disclosing that Heimbouch was acting as Buyer's Agent and that the Soules were an unrepresented customer as described above in Paragraph 15.
 - d. By failing to note John Dunlap's alleged refusal to sign an agency disclosure and/or retain a copy for Heimbouch's file as described above in Paragraph 16(a) and/or Paragraph 16(h).
- (III). Jane Hartman Heimbouch by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(3) (it is an unfair trade practice for a licensee to fail to account for and remit any money coming into his or her possession belonging to others.), NEB. REV. STAT. § 81-885.24(4) (it is an unfair trade practice for a licensee to commingle the money or other property of his or her principals with his or her own.), NEB. REV. STAT. § 81-885.24(24) (it is an unfair trade practice for an associate broker or salesperson to fail to place, as soon after

receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker.), NEB. REV. STAT. § 81-885.24(26) (it is an unfair trade practice for a licensee to violate any rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Act.), 299 NAC 3-005 (provides that, "[e]arnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account."), NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.), 299 NAC 5-003.14 (failure to deposit any funds received as an earnest money deposit within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. In the event an offer is not accepted, said earnest money deposit shall be returned forthwith.), and 299 NAC 5-003.15 (withholding earnest money when the purchaser or seller is rightfully entitled to the money; provided, a broker may retain funds to cover expenses he or she has prepaid for a purchaser or seller from the broker's funds.), in one or more of the following particulars:

- a. Failing to timely deposit earnest money received from Raul Dominguez and/or failing to remit said earnest money to the Splichals as described above in Paragraph 10.
- b. Failing to timely deposit earnest money received from Laura Conner and/or failing to remit said earnest money to the Splichals as described above in Paragraph 11.
- c. Failing to timely deposit earnest money received from Roger and Marsha Moran and/or failing to remit said earnest money to the Splichals as described above in Paragraph 12.
- d. Failing to timely deposit earnest money received from Shari Jenson and/or failing to remit said earnest money to the Splichals as described above in Paragraph 13.
- e. Failing to timely deposit earnest money received from Shari Jenson and/or failing to remit the full amount of said earnest money to the Splichals as described above in Paragraph 14.
- f. Failing to keep separate and/or commingling earnest money received from Shari Jenson and belonging to the Splichals as described above in Paragraph 14.

- g. Failing to timely deposit earnest money received from Dale Jensen and/or failing to keep separate and/or commingling earnest money received from Dale Jensen and belonging to the Soules as described above in Paragraph 17.
 - h. Failing to timely deposit earnest money received from Jonathan Heller and/or failing to remit said earnest money to the Reys as described above in Paragraph 23.
 - i. Failing to timely deposit earnest money received from Jonathan Heller and/or failing to timely remit said earnest money to the Reys as described above in Paragraph 24.
 - j. Failing to account for money coming into her possession belonging to others with respect to irrigation payments for the Reys' property as described above in Paragraph 24.
 - k. Failing to timely deposit earnest money received from Leonard Campbell and/or failing to timely remit said earnest money to the Nelsons as described above in Paragraph 29.
 - l. Failing to account for money coming into her possession belonging to others and/or commingling funds belonging to the Hoffs with respect to funds received for utility charges incurred at the Hoffs' property as described above in Paragraph 35.
- (IV). Jane Hartman Heimboach by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(20) (it is an unfair trade practice for a licensee to fail to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.), NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.), 299 NAC 5-003.18(failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited seller's agent for the property; the prospective purchaser's limited buyer's agent; or the dual agent of the seller and the prospective purchaser.), in one or more of the following particulars:
- a. Failing to deliver to the Splichals a written copy of the offer made on behalf of Jim Darling as described above in Paragraph 9.
 - b. Failing to deliver to the Splichals a written copy of the offer and/or purchase agreement with respect to Raul Dominguez as described above in Paragraph 10.

- c. Failing to deliver to the Splichals a copy of the offer and/or purchase agreement with respect to Laura Conner which included a signature for Laura Conner as described above in Paragraph 11.
 - d. Failing to deliver to the Splichals a copy of the offer and/or purchase agreement with respect to Roger and Marsha Moran which included a signature for Roger Moran as described above in Paragraph 12.
 - e. Failing to deliver to the Splichals a written copy of the offer and/or purchase agreement with respect to Shari Jensen as described above in Paragraph 13.
 - f. Failing to deliver to the Soules a written copy of the offer or offers to purchase with respect to offers made on behalf of John Dunlap as described above in Paragraph 16.
 - g. Failing to deliver to the Nelsons a written copy of the purchase agreement with respect to Leonard Campbell as described above in Paragraph 29.
 - h. Failing to deliver to the Hoffs a written copy of the offer and/or purchase agreement with respect to an unnamed Buyer from Minatare, Nebraska, as described above in Paragraph 34.
 - i. Failing to deliver to the Hoffs a written copy of the offer and/or purchase agreement which contained the first names of the Buyers, Mr. and Mrs. Aldean, as described above in Paragraph 35.
- (V). Jane Hartman Heimboach by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(22) (it is an unfair trade practice for a licensee to make any substantial misrepresentations.), in one or more of the following particulars:
- a. Advising the Splichals that Laura Conner made an offer on their home as described above in Paragraphs 7 and 11.
 - b. Advising the Splichals that Gordon and Sally Clark made an offer on their home as described above in Paragraph 8.
 - c. Advising the Splichals that Jim Darling made an offer on their home as described above in Paragraph 9.
 - d. Advising the Splichals that Raul Dominguez made an offer on their home as described above in Paragraph 10.
 - e. Advising the Splichals that Roger and Marsha Moran made an offer on their home as described above in Paragraph 12.

- f. Advising the Splichals that Shari Jensen made an offer on their home as described above in Paragraphs 13 and 14.
 - g. Advising the Soules that John Dunlap made an offer on their home as described above in Paragraph 16.
 - h. Advising the Soules that Dale Jensen made an offer on their home as described above in Paragraph 17.
 - i. Advising the Reys that Jonathan Heller made an offer on their home as described above in Paragraphs 23 and 24.
 - j. Advising Jim Dunlap that the Mr. Rey was in the hospital and Mrs. Rey had dementia as described above in Paragraphs 25 and 26.
 - k. Advising the Nelsons that Leonard Campbell made an offer on their home as described above in Paragraphs 29 through 32.
 - l. Advising the Hoffs that a lady from Minatare, Nebraska, made an offer on their home as described above in Paragraph 34.
 - m. Advising the Hoffs that the Aldeans made an offer on their home as described above in Paragraph 35.
 - n. Advising the Hoffs that "Linda" made an offer on their home as described above in Paragraph 36.
- (VI). Jane Hartman Heimbouch by her actions set forth in Paragraphs 1 through 39 above, has violated NEB. REV. STAT. § 81-885.24(29) (it is an unfair trade practice for a licensee to demonstrate negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section.), by one or more of the following particulars:
- a. Failing to protect the interests of her principals as described in all of the above Paragraphs inclusive in this Complaint by:
 - i. Failing to truthfully and timely inform her principals of the status of transactions concerning their properties;
 - ii. Failing to competently complete paperwork; and
 - iii. Failing to document money received on behalf of her principals.
 - b. Failing to protect the interests of the public as described in all of the above Paragraphs inclusive in this Complaint by:

- i. Providing false information with respect to the sale or offering for sale of real estate; and
- ii. Failing to document and account for money she received with respect to the sale or offering for sale of real estate.

41. Respondent Jane Hartman Heimbouch does not contest the allegations as stated in Paragraphs 1 through 40 above. Heimbouch agrees with the actions of the Commission and accepts the penalty which shall be made part of her permanent record maintained in the office of the State Real Estate Commission of the State of Nebraska, and which shall be received into evidence in any subsequent proceeding against her, should one arise.

42. Respondent Jane Hartman Heimbouch has had prior disciplinary action taken against her Nebraska real estate salesperson's license.

43. The following disciplinary action is imposed upon the respondent Jane Hartman Heimbouch in the public interest and for the protection of public health, safety, and welfare:

ACCORDINGLY, IT IS ORDERED, AS FOLLOWS:

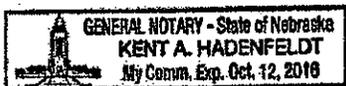
A. The Nebraska real estate salesperson's license of Respondent Jane Hartman Heimbouch is hereby permanently revoked.

Dated this 13th day of June, 2014.

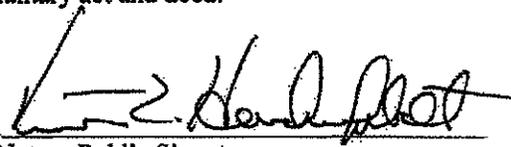

Jane Hartman Heimbouch

STATE OF NEBRASKA)
) vs.
COUNTY OF SCOTTS BLUFF)

Now on this 13th day of June, 2014, before me, a duly appointed and qualified Notary Public, personally appeared Jane Hartman Heimbouch, known to me to be the same and identical person who signed the above and foregoing Stipulation and Consent Order and acknowledges the execution thereof to be his voluntary act and deed.



Notary Seal


Notary Public Signature

Complaint No. 2014-013

Accepted and approved this ____ day of _____, 2014.

STATE OF NEBRASKA, *ex rel.*, STATE
REAL ESTATE COMMISSION OF THE
STATE OF NEBRASKA

By: _____
John A Gale, Chairperson

Attest By:

Greg Lemon, Director