

FILED 10/1/2013 (Date)

REAL ESTATE

Signature, Executive Officer

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 12-319
)	DIA NOS. 13REC008
James E. Schueler)	
Broker (B31175000))	
)	FINDINGS OF FACT,
Hawkeye Heritage Real Estate)	CONCLUSIONS OF LAW,
209 East Locust)	DECISION AND ORDER
Maquoketa, IA 52060)	

On July 26, 2013, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against James E. Schueler (Respondent). The Statement of Charges alleged that Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1) and (6) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(5) & (6).

A telephone prehearing conference was held on August 29, 2013. The hearing was held on September 5, 2013. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent James Schueler appeared and was self-represented. The following Commission members presided at the hearing: Susan Sanders, Salesperson, Chairperson; Gail Flagel, Broker; John Goede, Broker; Dennis Stolk, Broker; Terry Duggan, Broker; Carol Haines and Michael Telford, public members. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2013) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013), to deliberate its decision. The Commission instructed the administrative law judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the state's Prehearing Conference Report; testimony of Jeff Evans and Respondent; and State Exhibits 1-9 (See Exhibit Index for description).

FINDINGS OF FACT

1. On January 4, 1996, the Commission issued Respondent Iowa real estate broker license B31175000, which is in full force and effect until December 31, 2015. At all times relevant to this Decision and Order, Respondent was a licensed real estate broker sole proprietor operating as Hawkeye Heritage Real Estate in Maquoketa, Iowa. (State Exhibit 3; Prehearing Conference Report; Respondent, Jeff Evans testimony)
2. On September 22, 2011, Respondent and the Commission entered into a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case. The Settlement Agreement resolved allegations that Respondent was unable to provide proof of maintaining mandatory errors and omissions insurance when he was audited by the Commission in April 2011. By entering into the Settlement Agreement, Respondent agreed to pay a \$1000 civil penalty within 180 calendar days. Respondent further agreed to fully and promptly comply with all of the Commission's statutes, rules and orders in the future. (State Exhibit 8; Jeff Evans testimony)
3. Respondent was again selected for a random audit to verify his compliance with the mandatory errors and omissions insurance requirement in 2012. The Commission sent Respondent an audit notice on July 23, 2012 and asked him to provide verification, within 20 calendar days, of his 2012 Real Estate Errors and Omissions insurance. (State Exhibits 4, 5; Jeff Evans testimony)
4. In response to the audit, Respondent provided a Certificate of Coverage from Rice Insurance Services Company, LLC (RISC) for errors and omissions insurance that he obtained for the period from August 10, 2012 to January 1, 2013. The Certificate of Coverage includes the following statement:

The policy referenced above is a CLAIMS MADE AND REPORTED POLICY. A Claim must be reported in writing to the Company as soon as possible after the Claim is first made but in no event more than ninety (90) days after the insured became aware of such

Claim. The Claim must be made and reported during the policy period or during the Extended Reporting Period in order to qualify for coverage. A Claim is a written demand for money or services received by the insured or service of lawsuit or institution of arbitration or mediation proceedings against the Insured, seeking Damages and alleging a negligent act, error or omission in the performance of Professional Services. It is essential, to protect the Insured's Interests and to assure that coverage conditions are not violated, that Claims be properly reported. Immediate action is required by the real estate licensee and/or broker.

Respondent did not submit proof of errors and omissions insurance coverage for the period from January 1, 2012 to August 9, 2012. Because this was a claims made policy, there was a risk that the public would not be compensated if a claim was filed against Respondent during the eight months that he did not have errors or omissions insurance in force. (State Exhibit 6; Jeff Evans testimony)

5. In a letter to the Board submitted in September 2012 and in his testimony at hearing, Respondent admitted that he did not have errors and omissions insurance coverage for the period from January 1, 2012 to August 9, 2012. Respondent testified that he believed he had successfully renewed his errors and omissions insurance on-line with his credit card in December 2011. After receiving the audit notice, however, Respondent checked with RISC and with his credit card company and discovered that had not paid for the errors and omissions insurance. (Respondent testimony; State Exhibit 7)

Respondent testified that when he spoke to a RISC customer service representative, he was informed that their computer records showed that he attempted to purchase his insurance online, but his payment was rejected. Respondent did not ask for the name of the customer service representative, nor did he ask RISC to provide him with documentation of his unsuccessful attempt to purchase the insurance. (Respondent testimony)

Respondent also testified that the RISC customer service representative told him that RISC usually sends an email reminder in January to any of its customers who have not yet renewed their insurance coverage. If Respondent had received and responded to an email reminder, he likely would have been able to renew his errors and omissions insurance within the 30 day window that permits retroactive coverage. Respondent did not recall receiving any email reminder

from RISC in January. Respondent had a new email address, which he reportedly provided to RISC when he renewed his coverage in 2009 and in 2010. Respondent testified that he learned that RISC had not updated his records to reflect his new email address. (Respondent testimony; State Exhibit 7)

6. Respondent was working as a real estate broker in 2012. He testified that he had only one sale and one referral prior to obtaining errors and omissions insurance coverage in August 2012. (Testimony of Respondent)

CONCLUSIONS OF LAW

The legislature has directed the Commission to adopt rules requiring all real estate licensees, except those who hold inactive licenses, to carry errors and omissions insurance coverage for all activities contemplated by Iowa Code chapter 543B. The rules shall require licensees to submit evidence of compliance with the insurance requirement within twenty calendar days of the Commission's request.¹ Failure of a licensee to carry the errors and omissions insurance required by Iowa Code section 543B.47, or to timely submit proof of coverage upon Commission request, shall be grounds for the denial of an application to renew a license or for the suspension or revocation of a license.²

By rule, the Commission is authorized to initiate disciplinary action against an active licensee for failure to maintain adequate insurance coverage or for failure to submit proof of insurance to the Commission within twenty days of their request.³ A licensee is required to carry insurance on an *uninterrupted* basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice.⁴

The preponderance of the evidence established that Respondent failed to maintain uninterrupted errors and omissions insurance coverage for more than seven months in 2012, in violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5), 19.6(5) and 19.6(6). This failure created a very real risk to the public because the insurance company likely would have refused to pay any claims filed against Respondent between January 1 and August 9, 2012.

¹ Iowa Code section 543B.47(1)(2011).

² Iowa Code section 543B.47(6)(2011).

³ 193E IAC 18.2(5), 19.6(6).

⁴ 193E IAC 19.6(5).

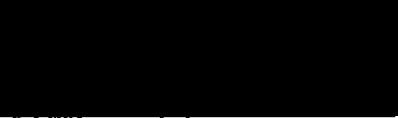
Absent compelling mitigating circumstances, the Commission has imposed a \$1000 civil penalty for a first violation of the errors and omissions insurance requirement, and a \$2000 civil penalty on those rare occasions when the same licensee has a subsequent violation. The Commission's consistent imposition of civil penalties on licensees who fail to maintain uninterrupted insurance serves as an important deterrent. Respondent has had two violations of the errors and omissions insurance requirement in a period of two years, and he failed to present verification of any compelling personal circumstances justifying a civil penalty of less than \$2000. The Commission was persuaded, however, to give Respondent additional time to pay the civil penalty.

ORDER

IT IS THEREFORE ORDERED, that for a second failure to maintain uninterrupted errors and omissions insurance, Respondent shall pay a civil penalty in the amount of two thousand dollars (\$2,000). Payment must be made within six (6) months of the issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing, within thirty (30) days of receipt of this decision.

Dated this 17 day of October, 2013.


Susan Sanders, Chairperson
Iowa Real Estate Commission

cc: John Lundquist, Assistant Attorney General (LOCAL)

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. If a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.