

FILED 6-11-2014 (Date)
Real Estate Commission

BEFORE THE IOWA REAL ESTATE COMMISSION

IN RE:)
Glen C. Nelson) Case No. 12-107 Signature, Executive Officer
Salesperson (S21337)) DIA No. 13REC002
Property Connection Real Estate)
510 Poplar Street) **FINDINGS OF FACT,**
Atlantic, IA 50022) **CONCLUSIONS OF LAW,**
Respondent.) **DECISION AND ORDER**

On February 5, 2013, the Iowa Real Estate Commission filed a Notice of Hearing and Statement of Charges against Nelson, charging him with failing to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543.47(1), 543B.47(6) and 193 IAC 18.2(5), 18.14(5)s, 19.6(5), and 19.6(6).

A prehearing conference was held on April 24, 2014. The hearing before the Commission was held on May 1, 2014. Assistant Attorney General John Lundquist represented the state of Iowa. Jeff Evans testified on behalf of the state of Iowa. Glen Nelson was self-represented and testified. Janet Nelson and Dennis Phillips testified on Nelson's behalf. The following Commission members presided at the hearing: Terry Duggan, Chair and Broker; John Goede, Broker; Carol Haines, Public Member; and Dennis Stolk, Public Member. Administrative Law Judge Heather Palmer assisted the Commission in conducting the hearing. A certified court reporter recorded the proceeding. The hearing was held closed to the public at Nelson's request. After testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)f, 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 Evans, Nelson, Mrs. Nelson, and Phillips, and Exhibits 1 through 9.

FINDINGS OF FACT

Nelson first obtained a salesperson license on June 5, 1983. Nelson placed his license on inactive status in December 2010. On August 23, 2011, Nelson activated his license. Nelson's salesperson license remains active and will expire on December 31, 2015. Nelson is assigned to Phillips, a licensed broker.

Licensed salespersons are required to have errors and omission insurance.¹ The Commission has its staff randomly perform audits throughout the year to determine compliance with this requirement. On February 21, 2012, the Commission sent Nelson a random audit request for his 2012 real estate errors and omissions insurance coverage.

The Commission received information that Nelson purchased errors and omissions insurance from Rice Insurance Services Company, LLC on February 28, 2012, for the policy period January 1, 2012 through January 1, 2013. Rice Insurance is the group provider for the state of Iowa that offers errors and omissions insurance to salespersons. Licensed salespersons are not required to contract with Rice Insurance and may procure insurance from other insurers.

Mrs. Nelson completes the bookwork for her husband. The Nelsons believed they had paid the premium for Nelson's errors and omissions insurance for the period of January 1, 2012 through January 1, 2013. After receiving the audit letter, Nelson realized he had not paid the premium for his errors and omissions insurance, and promptly corrected the error.

Rice Insurance backdated Nelson's policy to January 1, 2012. While Rice Insurance backdated the policy, Cindy Rice Grisson from Rice Insurance informed the Commission's staff if a claim had been filed against Nelson for action or inaction between January 1, 2012, and February 27, 2012, it is possible the claim would not be covered by the policy. Evans testified if a claim is not covered, the public could be harmed.

The Commission filed a Notice of Hearing and Statement of Charges against Nelson, charging him with failing to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543.47(1), 543B.47(6) and 193 IAC 18.2(5), 18.14(5)s, 19.6(5), and 19.6(6).

CONCLUSIONS OF LAW

Salespersons must be licensed to sell real estate in Iowa.² All active licensed salespersons are required to have errors and omissions insurance.³ A licensed salesperson is required to carry errors and omissions insurance "on an uninterrupted basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice."⁴ The failure to carry adequate coverage is evidence of a violation of Iowa Code sections 543.47(1) and 543B.47(6).⁵ The Commission may conduct compliance audits on a random basis.⁶ The Commission conducted a random audit of Nelson's compliance in February 2012.

¹ Iowa Code § 543B.47; 193E IAC 19.2.

² Iowa Code § 543B.1.

³ *Id.* 543B.47; 193E IAC 19.2.

⁴ 193E IAC at 19.6(5).

⁵ *Id.* at 19.6(6).

⁶ Iowa Code § 543B.47(1).

Nelson did not acquire errors and omissions insurance for the period of January 1, 2012 through January 1, 2013, until February 28, 2012, after he received an audit letter from the Commission. Nelson contends the coverage was backdated to January 1, 2012, so the public could not be harmed by his actions. Commission staff contacted Rice Insurance and Rice Insurance reported coverage may not be available for Nelson's actions and inactions from January 1, 2012 through February 27, 2012. The state of Iowa has proven Nelson violated Iowa Code sections 543.47(1), 543B.47(6) and 193 IAC 18.2(5), 18.14(5)s, 19.6(5), and 19.6(6), by failing to have errors and omissions coverage from January 1, 2012 through February 27, 2012.

The Commission may discipline a licensee for failing to have errors and omissions insurance.⁷ When the Commission concludes a licensee has violated the statutes and rules governing licensed salespersons, the Commission has the authority to impose a variety of disciplinary actions, including revoking or suspending a license, nonrenewing a license, imposing probation, requiring additional continuing education, reexamination, imposing a monitoring or supervision arrangement, issuing a reprimand, ordering a physical or mental examination, or imposing a civil penalty.⁸ The governing statute expressly allows the Commission to impose a civil penalty of up to \$2,500.⁹ When considering licensee discipline, the Commission considers the seriousness of the violation, the number of prior violations, any remedial action taken by the licensee, and the impact of the activity upon the public.¹⁰

The state of Iowa requested the Commission impose a \$1,000 civil penalty against Nelson. Nelson contends he should not have to pay the civil penalty because he did not intentionally fail to procure insurance for 2012. This is Nelson's first violation. While there is no evidence the public was harmed, the public could have been harmed by failing to maintain uninterrupted errors and omissions insurance. A civil penalty of \$1,000 is consistent with the Commission's past practice for similar violations.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Nelson shall pay a \$1,000 civil penalty for failing to maintain uninterrupted errors and omissions insurance. Nelson shall pay the civil penalty within 20 days of the date of this Decision and Order.

Dated this 11th day of ^{June} ~~May~~, 2014.


Terry Duggan, Chair
Iowa Real Estate Commission

⁷ *Id.* § 543B.47(6); 193E IAC 18.2(5).

⁸ 193E IAC 18.14(1)

⁹ Iowa Code § 543B.48.

¹⁰ 193E IAC 18.14(2).

Any party may seek judicial review of the Commission's decision in accordance with the terms of Iowa Code chapter 17A.¹¹ If a party does not file a timely application for rehearing, a judicial review petition must be filed in the district court within 30 days after issuance of the Commission's final decision.¹²

cc: Glen Nelson
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¹¹ 193 IAC 7.37.

¹² *Id.* 7.37(1).