

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 09-066
	)	DIA NOS. 10DOCRE005
Matthew A. Ashburn,	)	
Salesperson (S42531)	)	
	)	FINDINGS OF FACT,
RKH Investments	)	CONCLUSIONS OF LAW,
110 S.E. Grant	)	DECISION AND ORDER
Ankeny IA 50021	)	

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**STATEMENT OF THE CASE**

On March 11<sup>th</sup> 2010, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Matthew A. Ashburn (Respondent). The Statement of Charges alleged that Respondent engaged in practices which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1)&(6)(2009) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(5)&(6) by the following:

- a. Failing to comply with the mandatory errors and omissions insurance requirement.

A prehearing conference was held by telephone on May 13, 2010.

The hearing was held on May 19, 2010 at 9:00 a.m. Respondent Matthew A. Ashburn appeared and was represented by Attorney Stephen Terrill. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, Public Member, Chairperson; Judy Stevens, Broker; Dick Robert, Broker; Patricia Daniels, Salesperson; and James O'Neill, public member. Administrative Law Judge John M. Priester assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2009).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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; Respondent's Appearance and Answer; testimony of the witnesses; and the following exhibits:

Respondent Ex. B:	Letter from Kristina Hutson, Broker, to Jeff Evans (4/14/09);
Respondent Ex. C:	Letter from Kristina Hutson, Broker, to the Commission (9/8/09);
Respondent Ex. D:	Letter from Matthew Ottaway, Brand Manager MMI Business Brokers, LLC dba Sunbelt Business Advisors Network (9/8/09);
State Exhibit 1:	Notice of Hearing and Statement of Charges (3/11/10);
State Exhibit 2:	Answer of Respondent (4/5/10);
State Exhibit 3:	Investigative Narrative re: 09-066, Jeff Evans;
State Exhibit 4:	Notice of Selection for Errors and Omissions Insurance Audit (4/7/09);
State Exhibit 5:	Certificate of Coverage: Rice Insurance Services Company, LLC;
State Exhibit 6:	Cover Note Evidencing Professional Liability Insurance: AIG;
State Exhibit 7:	Licensing Information re: Matthew A. Ashburn, Salesperson;
State Exhibit 8:	Relevant Statutes and Administrative Rules.

### FINDINGS OF FACT

1. Respondent is a licensed Salesperson in Ankeny, Iowa. Respondent's Iowa real estate salesperson license (S42531) was first issued on April 29, 2002 and is in full force and effect through December 31, 2010. Respondent works as a salesperson at RKH Investments, Inc. in Ankeny, Iowa and acts as a business broker. (Testimony of Respondent; State Exhibit 1)

2. The Respondent's license was selected for a random audit on April 7, 2009, to verify that the Respondent had Errors and Omissions Insurance as required by Iowa

law. The Appellant did not have Errors and Omissions Insurance. (Testimony of Jeff Evans, State Ex. 4)

3. The Respondent presented evidence that his employment is strictly limited to the buying and selling of businesses. Thus, while he was not covered by Errors and Omissions Insurance issued by Rice Insurance Services from January 1, 2009 to March 26, 2009, he was covered by an insurance policy issued by AIG Insurance that was supplied by the broker. The AIG Insurance policy contained an Errors and Omissions provision that the Respondent believed should satisfy Iowa law. (Testimony of Respondent, State Ex. 5, 6, Respondent Ex. B, C)

4. The AIG Insurance policy was in effect from April 15, 2008 to April 15, 2009. The policy provides Errors and Omissions coverage for Errors and Omissions for "professional services." The policy defines "professional services" as:

Item 6. Professional services means solely those services identified below that are performed by you for others for compensation:

(1) Business brokerage services for others for a fee.

(State Ex. 6-26)

5. The Respondent obtained Errors and Omissions Insurance from Rice Insurance once he discovered that his policy had lapsed. The insurance policy was made retroactive to cover the Respondent from January 1, 2009. (Testimony of Respondent, State Ex. 5)

## CONCLUSIONS OF LAW

### *I. The Violation*

#### *A. Applicable Law*

Each real estate broker is required by statute to maintain errors and omissions insurance coverage. Iowa Code section 543B.47(1)(2009)

The Commission may impose a civil penalty if a violation of its governing statutes or rules are found. 193E IAC 18.14(5)

Iowa Code section 543B.29(3)(2009) provides, in relevant part:

**543B.29 Revocation or suspension.**

1. A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

c. ...engaging in...practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

i. Noncompliance with insurance requirements under section 543B.47.

Iowa law provides that “[f]ailure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for . . . the suspension or revocation of a license.” Iowa Code § 543B.47(6).

That code section requires that as a condition of licensure all real estate licensees “carry errors and omissions insurance covering all activities contemplated under this chapter.” Iowa Code § 543B.47. “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.” 193E IAC 19.6(5)

**B. Discussion**

The Respondent admits that he was not covered by Errors and Omissions insurance from January 1, 2009 to March 26, 2009 through Rice Insurance. The Appellant believes that the insurance policy obtained by the Broker in his office through AIG Insurance properly provided the Errors and Omissions coverage required by Iowa law. The Appellant’s argument is that since the business provides only brokerage services, then that is all that must be covered by Errors and Omissions insurance.

The Respondent’s argument is found to be incorrect. Iowa Code section 543B.47 clearly requires that insurance must be carried for “all activities contemplated under this chapter.” Salespersons must have Errors and Omissions Insurance coverage for all activities that a real estate salesperson can perform under Iowa Code chapter 543B.

While the functions that a licensed salesperson can perform may be divided up for specialization (business brokerage versus residential home sales) and marketing

purposes, the salesperson is licensed and authorized to perform all acts described in Iowa Code chapter 543B. Likewise, a salesperson is not able to purchase Errors and Omissions Insurance coverage for just the areas of real estate they will be performing. The salesperson must purchase Errors and Omissions insurance for all area that may be performed.

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to maintain Errors and Omissions Insurance in compliance with Iowa Code sections 543B.47(1)(2009). The Errors and Omissions Insurance coverage that the Respondent held only covered actions relating to business brokerage services. This does not satisfy the requirements of Iowa Code section 543B.47.

There was a period of time, from January 1, 2009 to March 26, 2009, where the Respondent was not covered by Errors and Omissions Insurance. The insurance policy he purchased on March 26, 2009 was made retroactive; however there was a period where the coverage was interrupted. This violates Iowa law.

## *II. Sanction*

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the violation and the potential for harm to the public. 193E IAC 18.14(6). The Commission has consistently imposed civil penalties of \$1000 for licensees who fail to have Errors and Omissions Insurance in place.

## **ORDER**


IT IS THEREFORE ORDERED that the Respondent Matthew A. Ashburn, Salesperson License (S42531), shall pay a civil penalty to the Commission in the amount of \$1000. Payments on the civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 09-107.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

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Dated this 24<sup>th</sup> day of June, 2010.

  
Laurie L. Dawley, Chairperson  
Iowa Real Estate Commission

cc: Matthew A. Ashburn  
RKH Investments, Inc.  
110 S.E. Grant  
Ankeny IA 50021 (CERTIFIED)

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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.