

FILED October 1, 2020 (Date)
JREL
Board / Commission
M. L.
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION
200 EAST GRAND, SUITE 350
DES MOINES, IOWA 50309

IN RE:)
) CASE NUMBER: 20-128
Kelly J. Heaberlin)
) CEASE AND DESIST ORDER
523 E 10th Street S.) BY CONSENT AGREEMENT
Newton, IA 50208)
)
RESPONDENT)

The Iowa Real Estate Commission (Commission) and **Kelly J. Heaberlin** (Respondent), enter into this Cease and Desist Order by Consent Agreement (Agreement), pursuant to Iowa Code section 543B.34 (2020) and 193E Iowa Administrative Code section 21.9.

1. The parties acknowledge the following:

- (A) The Respondent does not possess an Iowa real estate license issued by the Commission pursuant to Iowa Code chapter 543B. In the absence of an Iowa real estate license, the Respondent is prohibited from practicing real estate in the state of Iowa unless otherwise exempted by law. See Iowa Code §§ 543B.1, 543B.7.
- (B) Iowa Code section 543B.3 provides that a real estate broker includes anyone who “[l]ists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease” and/or “[a]ssists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.” Property management for others for a fee therefore constitutes the practice of real estate for which a license is required by Iowa law.
- (C) The Commission is authorized by statute to commence legal proceedings to secure compliance with the licensing requirements of Iowa Code chapter 543B and shall impose civil penalties against those persons found to have engaged in the unlicensed practice of real estate. See Iowa Code §§ 543B.34, 543B.44, 543B.49.

- (D) The Commission received a complaint in June of 2020, alleging that the Respondent was engaged in acts contained in the definition of a real estate broker as set in Iowa Code § 543B.3 for multi-family residential properties in Newton, Iowa. The Commission's investigation revealed that the Respondent was engaged in acts contained in the definition of a real estate broker as set in Iowa Code § 543B.3 for multiple multi-family residential properties in Newton, Iowa. Furthermore, the Commission's investigation revealed that the Respondent was actively engaged in performing real estate property management duties for a fee. The Respondent's activities in doing so were not exempt from Iowa Code chapter 543B's licensure requirements. See Iowa Code §§ 543B.1, 543B.7. The Respondent does not contest that she engaged in activities that required an Iowa real estate license.
- (E) The Commission has jurisdiction over those actions by unlicensed persons that fall within the prohibitions described in Iowa Code section 543B.34(3), including those acts constituting dealing in real estate performed by the Respondent described above. Upon a finding that the Respondent practiced real estate without a license, the Commission is required by Iowa law to issue both a cease and desist order and a civil penalty against the Respondent. See Iowa Code § 543B.34(3).
- (F) Rather than engage in the formal administrative process described in 193E Administrative Code chapter 21, the parties find that an informal resolution of this matter is appropriate.

2. The Respondent voluntarily submits this Agreement to the Commission for its consideration. By entering into this Agreement, the Respondent acknowledges and voluntarily waives her right to adjudicate the merits of the violation detailed above in subparagraph 1-D through the commencement of a contested case proceeding before the Commission, and all rights attendant to a contested case proceeding including the right to seek judicial review of the Commission's actions.

3. The Commission has authority to seek an injunction in district court and/or to initiate a process to impose further civil penalties against the Respondent pursuant to Iowa Code sections 543B.34, 543B.44 and 543B.49 in the event the Respondent commits future violations of Iowa Code chapter 543B and/or violates this Agreement. This Agreement may be considered by the Commission in determining the nature and severity of any additional sanction to be imposed upon the Respondent for any future violations of the laws and rules governing the practice of real estate in the state of Iowa. Additionally, a violation of Iowa Code section

543B.34 is a simple misdemeanor, pursuant to Iowa Code section 543B.43.

4. This Agreement is not binding on the Iowa Real Estate Commission until it has been formally approved. If the Commission fails to approve this Agreement, it shall be of no force or effect on either party.

5. This Agreement shall be a public record available for inspection and copying in its entirety in accordance with the requirements of Iowa Code chapter 22.

CONSENT AGREEMENT

IT IS THEREFORE AGREED:

6. **CEASE AND DESIST.** The Respondent shall cease and desist from any future violation of Iowa Code chapter 543B.

7. **CIVIL PENALTY.** In recognition of the violation detailed above in subparagraph 1-D, the Respondent voluntarily agrees to pay to the Commission a civil monetary penalty in the amount of four thousand dollars (\$4,000.00). The Respondent shall pay this civil penalty to the Commission no later than twelve (12) months after acceptance of this Cease and Desist Order by Consent Agreement by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 20-128.

8. **FUTURE COMPLIANCE.** The Respondent 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 including, but not limited to, Iowa Code section 543B.1.

WHEREFORE, the terms of this Cease and Desist Order by Consent Agreement are agreed to and accepted by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:

Voluntarily agreed to and accepted by **Kelly J. Heaberlin** on this 21st day of September, 2020.

Kelly J. Heaberlin
By: **KELLY J. HEABERLIN**, Respondent

State of Iowa

County of Polk

Signed and sworn to before me on this 24th day of September, 2020, by:

Geraldine Bennett
Notary Public, State of Iowa
Printed Name: Geraldine Bennett
My Commission Expires: 5/13/2022

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this
1st day of October, 2020.

T. M. Duggan
TERRANCE M. DUGGAN, Chair
Iowa Real Estate Commission