

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

FILED

August 12, 2021

(Date)

JAC

Board / Commission

M. E.

Signature, Executive Officer

IN RE:	)	
	)	CASE NUMBERS: 19-203, 20-135, 20-136
Thomas Kelzer	)	
Broker (B45037000)	)	INFORMAL SETTLEMENT
	)	AGREEMENT AND CONSENT
River Run Realty LLC	)	ORDER IN A DISCIPLINARY CASE
4617 Camelot Dr.	)	
Dubuque, IA 52002	)	
	)	
RESPONDENT	)	

The Iowa Real Estate Commission (Commission) and **Thomas Kelzer** (Respondent) enter into this Informal Settlement Agreement and Consent Order in a Disciplinary Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4) (2021).

1. The Commission issued the Respondent real estate broker license number B45037000 on March 14, 2007. At all times relevant to this matter, the Respondent served both as the designated broker in charge and a licensed real estate broker officer of River Run Realty, LLC, license number F06083000, located in Dubuque, Iowa.

2. The Commission has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 543B (2021). Licenses issued by the Commission are subject to the laws of the State of Iowa and to the administrative rules of the Commission.

**SETTLEMENT AGREEMENT**

3. On June 25, 2021, the Commission issued a Statement of Charges against the Respondent. A true and accurate copy of said Statement of Charges is attached to this Order as Exhibit 1. The Respondent admits to each and every allegation recited in Count I and Count II found in the attached Statement of Charges. This case shall constitute two violations for purposes of Iowa Code section 543B.29(4) (2021).

4. The Respondent acknowledges that he has a right to a hearing before the Commission on the merits of the charges. By freely and voluntarily entering into this Order, the Respondent waives his right to a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.

5. The Respondent agrees that the State's attorney and/or Commission staff may present this Order to the Commission and may have ex parte communications with the Commission while presenting it. Respondent waives any right of notice of this meeting or any right that the Respondent might have to participate in the discussion of this Order among the Commission, the Commission staff and the State's attorney.

6. 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. This Order shall be part of the permanent record of the Respondent and shall be considered by the Commission in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations of the laws and rules governing the practice of real estate by the Respondent.

7. Failure to comply with the terms of this Order shall be prima facie evidence of a violation of Iowa Code sections 543B.29(1)(d), 543B.34(1) and 272C.3(2)(a) (2021) and shall be grounds for further disciplinary action. However, no action may be taken against the Respondent for violations of this Order without a hearing, or waiver of hearing.

8. This Order is not binding on the Commission until it has been formally approved by a majority of the Commission members.

(a) In the event that this Order is rejected by the Commission it shall be of no force or effect to either party and it shall not be admissible for any purpose in further proceedings in this matter.

(b) If the Commission approves this Order, it shall fully dispose of all issues in this case.

9. Upon acceptance by both the Commission and Respondent, this Informal Settlement Agreement and Consent Order shall be a public record available for inspection and copying in its entirety in accordance with the requirements of Iowa Code chapter 22 (2021).

### **CONSENT ORDER**

#### **IT IS THEREFORE ORDERED:**

10. REPRIMAND. Pursuant to 193E Iowa Administrative Code section 18.14(1)(j), the Respondent is reprimanded.

11. CIVIL PENALTY. As sanction for Count I (Case No. 19-203) and Count II (Case No. 20-135) of the hearing complaint, the Respondent shall pay a civil penalty to the Commission in the amount of two thousand dollars (\$2,000.00) on or before October 29, 2021. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing

Case Numbers 19-203, 20-135. Failure to timely remit the civil penalty shall be grounds for the immediate suspension or revocation of the Respondent's real estate broker license.

12. 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.

13. DISMISSAL. In consideration of the Respondent's timely correction of both his individual and his real estate broker firm's failure to maintain uninterrupted errors and omission insurance coverage, the Commission hereby dismisses Count III (Case No. 20-136) of the hearing complaint.

**WHEREFORE**, the terms of this Informal Settlement Agreement and Consent Order is agreed to by the Iowa Real Estate Commission and the Respondent.

**FOR THE RESPONDENT:**

Voluntarily agreed to and accepted by **Thomas Kelzer** on this 26<sup>th</sup> day of July, 2021.

Tom Kelzer  
By: **THOMAS KELZER**, Respondent

State of Iowa

County of Des Moines

Signed and sworn to before me on this 26<sup>th</sup> day of July, 2021, by:



D. Flint Drake  
Notary Public, State of Iowa  
Printed Name: D. Flint Drake  
My Commission Expires: 9-20-2021

**FOR THE COMMISSION:**

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 12<sup>th</sup> day of August, 2021.

Dennis L. Stolk  
**DENNIS L. STOLK**, Chair  
Iowa Real Estate Commission

FILED June 25, 2021 (Date)

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

JKL  
Board / Commission  
JKL  
Signature, Executive Officer

IN RE:	)	
	)	CASE NUMBERS: 19-203, 20-135, 20-136
Thomas Kelzer	)	
Broker (B45037000)	)	NOTICE OF HEARING AND
	)	STATEMENT OF CHARGES
River Run Realty LLC	)	
4617 Camelot Dr.	)	
Dubuque, IA 52002	)	
	)	
RESPONDENT	)	

The Iowa Real Estate Commission (Commission) and **Thomas Kelzer** (Respondent) enter into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case (Order) pursuant to Iowa Code Sections 17A.10(1) and 272C.3(4) (2021).

The Commission issued Thomas Kelzer ("Respondent") real estate broker license number B45037000 on March 14, 2007. Respondent's license is current and in full force and effect through December 31, 2021. At all times relevant to this matter, the Respondent served both as the designated broker in charge and a licensed real estate broker officer of River Run Realty, LLC, license number F06083000, located in Dubuque, Iowa.

**NOTICE OF HEARING**

1. **HEARING.** A contested case hearing will be held concerning the below-stated disciplinary charges before the Iowa Real Estate Commission on the 12<sup>th</sup> day of **August, 2021**, at **1:30 o'clock PM**, at 200 East Grand Ave, Suite 350, Des Moines, Iowa.

2. **ACKNOWLEDGMENT.** The Commission requests that you file a statement to acknowledge receipt of the notice of hearing within 10 days of the date you are served with this Notice.

3. **ANSWER.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Administrative Code 7.9.

4. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the 5<sup>th</sup> day of **August, 2021** at **1:30 o'clock PM** before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALI"). You are responsible for notifying the Commission office of the telephone number at which you or your counsel can be reached.

Commission rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.

5. **PRESIDING OFFICER.** The full Commission shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(1). The Commission may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

6. **HEARING PROCEDURES.** Commission rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally and be represented by counsel at your own expense. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

7. **DEFAULT.** If you fail to appear at hearing, the Commission may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

8. **STATE'S COUNSEL.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Commission, with copies mailed to:

John R. Lundquist  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Phone: 515-281-3658  
John.Lundquist@iowa.gov

9. **RESPONDENT'S COUNSEL.** Copies of all pleadings filed with the Commission shall also be provided to Respondent's counsel of record:

NONE

10. **SETTLEMENT.** The procedural rules governing the Commission's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General John R. Lundquist.

**11. COMMUNICATIONS.** You may not contact Commission members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing and Statement of Charges. Commission members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Commission office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General John R. Lundquist at 515-281-3658, or the Commission's Executive Officer at 515-725-9026, or Fax 515-725-9032.

**12. ADA NOTICE.** If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call or e-mail the Commission's Executive Officer at 515-725-9026. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

### STATEMENT OF CHARGES

#### COUNT I (CASE NO. 19-203)

13. Respondent is charged with engaging in a practice harmful or detrimental to the public and/or failing to diligently exercise reasonable skill and care in providing brokerage services to all parties to a transaction by failing to properly effectuate the terms of an executed purchase agreement and failing to deposit earnest payments received by the broker in an Iowa real estate trust account in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46, 543B.56(1)(b) (2019). See 193E Iowa Administrative Code sections 12.3(1)(a), 12.3(1)(b), 13.1, 13.1(1), 18.14(5)(f)(10).

#### CIRCUMSTANCES

14. Respondent was assigned as the designated broker in charge of real estate brokerage firm River Run Realty, LLC at all times relevant to this matter. As the designated broker in charge of the real estate brokerage firm, the Respondent is responsible for ensuring compliance with all applicable rules and regulations governing the firm's operations in the state of Iowa.

15. On October 7 – 8, 2019, an offsite examination of the Respondent's Iowa real estate trust account and transaction records was conducted by the Commission auditor (auditor).

16. In a random sampling of transaction files, the auditor discovered two (2) real estate transactions for properties located in Dubuque, Iowa, in which the earnest money deposit was deposited into the Nelson Law Office Trust Account. At the time, the Respondent did not maintain an Iowa real estate trust account in a bank, savings association or credit union for the deposit of earnest money.

17. In reviewing the aforementioned real estate transaction file for the subject properties, the auditor discovered that the executed purchase agreement nonetheless provided that the earnest money was to be held in trust by the listing broker (River Run Realty, LLC), not with

Nelson Law Office Trust Account. By depositing the earnest money funds into the Nelson Law Office Trust Account, the Respondent failed to properly effectuate the terms of an executed purchase agreement and failed to deposit trust funds in an Iowa real estate trust account.

#### COUNT II (CASE NO. 20-135)

18. Respondent is charged with failing to comply with the mandatory errors and omissions insurance requirement for his Iowa real estate broker license in violation of Iowa Code sections 543B.29(1)(j), 543B.47(1), 543B.47(6) (2020) and 193E Iowa Administrative Code sections 18.2(5), 18.14(5)(s), 19.6(5), 19.6(6).

#### CIRCUMSTANCES

19. In February of 2020, the Respondent was sent a random audit by the Commission for compliance with the mandatory errors and omissions insurance requirement.

20. The Respondent failed to maintain uninterrupted errors and omission while he was actively licensed and could therefore not provide proof of insurance coverage to the Commission for the time period of January 1, 2020 to June 17, 2020.

#### COUNT III (CASE NO. 20-136)

21. The Respondent, as the designated broker, is charged with engaging in practices harmful or detrimental to the public by failing to comply with the mandatory errors and omissions insurance requirement for his licensed real estate brokerage firm in violation of Iowa Code sections 543B.29(1)(j), 543B.34, 543B.47(1), 543B.47(6) (2020) and 193E Iowa Administrative Code sections 18.2(5), 18.14(5)(s), 19.3(2), 19.3(9), 19.6(5), 19.6(6).

#### CIRCUMSTANCES

22. Respondent was assigned as the designated broker in charge of real estate brokerage firm River Run Realty, LLC at all times relevant to this matter. As the designated broker in charge of the real estate brokerage firm, the Respondent is responsible for ensuring compliance with all applicable rules and regulations governing the firm's operations in the state of Iowa.

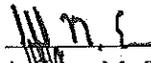
23. In June of 2020, the Respondent was sent a random audit by the Commission for his real estate brokerage firm's compliance with the mandatory errors and omissions insurance requirement.

24. The Respondent failed to maintain uninterrupted errors and omission for his real estate brokerage firm while actively licensed and could therefore not provide proof of insurance coverage to the Commission for the time period of January 1, 2020 to June 17, 2020.

NOTICE OF APPLICABILITY OF IOWA CODE SECTION 543B.29(4)

25. Should the above-stated charges in Case No. 19-203, Case No. 20-135, and Case No. 20-136 be sustained by the Commission, it would constitute the first, second, and third violations of Iowa Code section 543B.29 and/or Iowa Code section 543B.34 committed by the Respondent within a three-year period. The Iowa Code provides that: "A real estate broker's or salesperson's license shall be revoked following three violations of [Iowa Code section 543B.29] or [Iowa Code] section 543B.34 within a three-year period." Iowa Code § 543B.29(4) (2021).

**This Notice of Hearing and Statement of Charges is filed and issued on the 25<sup>th</sup> day of June, 2021.**



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Jeremy M. Evans, Executive Officer  
Iowa Real Estate Commission

Copies to:

Assistant Attorney General John Lundquist

Department of Inspections and Appeals, assigned Administrative Law Judge

**FILED** July 26, 2021 (Date)

I/REC

Board / Commission

J.M.E.  
Signature, Executive Officer

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NUMBERS: 19-203, 20-135, 20-136</b>
<b>Thomas Kelzer</b>	)	
<b>Broker (B45037000)</b>	)	<b>ORDER TO CANCEL</b>
	)	<b>FORMAL HEARING</b>
<b>River Run Realty LLC</b>	)	
<b>4617 Camelot Dr.</b>	)	
<b>Dubuque, IA 52002</b>	)	
	)	
<b>RESPONDENT</b>	)	

The offices of the Iowa Real Estate Commission [Commission] have received a signed settlement agreement from Respondent Thomas Kelzer [B45037000]. To permit the Commission an opportunity to review the settlement agreement at the next scheduled meeting, the formal hearing set in this matter is hereby cancelled and the matter will be rescheduled for a future date if deemed necessary.

Dated this 26<sup>th</sup> day of July 2021.

J.M.E.  
Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission