

CIRCUMSTANCES

4. Respondent was assigned as the designated broker in charge of real estate brokerage Real Estate Specialist, Inc. 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.

5. On September 22, 2022 an offsite examination of the Respondent's Iowa real estate transaction files was conducted by the Commission auditor (auditor).

6. In a random sampling of transaction files, the auditor discovered twenty five (25) real estate transactions for properties located in Iowa, in which the respective purchase agreements stated that the earnest money would be deposited into the listing broker's (Real Estate Specialist, Inc.) 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.

7. In reviewing the aforementioned real estate transaction files for the subject properties, the auditor discovered that the executed purchase agreements nonetheless provided that the earnest money was to be held in trust by listing broker (Real Estate Specialist, Inc.), not with Southeast Iowa Escrow Company trust account. By depositing the earnest money funds into Southeast Iowa Escrow Company 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.

SETTLEMENT AGREEMENT

8. Without admission of wrongdoing or guilt, the Respondent does not contest the allegations stated in the Statement of Charges. This case shall constitute one violation for purposes of Iowa Code section 543B.29 (4) (2022).

9. Respondent acknowledges that he has a right to receive notice of the above-stated charges and to request 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 notice and a hearing and all attendant rights, including the right to seek judicial review. This Order constitutes discipline against the Respondent, and is the final agency order in this contested case pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4.

10. 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.

11. This Order shall be part of the permanent record of 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.

12. 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) (2022) 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.

13. This Order is not binding on the Iowa Real Estate 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.

14. Upon acceptance by both the Commission and Respondent, this Combined Statement of Charges, Informal Settlement 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 (2022).

CONSENT ORDER

IT IS THEREFORE ORDERED:

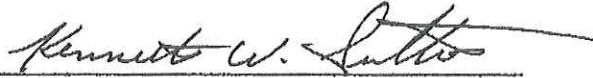
15. **CIVIL PENALTY**. Respondent shall pay a civil penalty to the Commission in the amount of five hundred dollars (\$500.00) no later than six (6) months after acceptance of this Order by the Commission. The civil penalty must come under a cover letter addressed to the Commission's Executive Officer, referencing Case Number 22-265.

16. **FUTURE COMPLIANCE**. The Respondent also 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.

WHEREFORE, the terms of this Combined Statement of Charges, Informal Settlement Agreement and Consent Order are agreed to and accepted by the Iowa Real Estate Commission and the Respondent.

FOR THE RESPONDENT:

Voluntarily agreed to and accepted by **Kenneth W. Sutton** on this 23rd day of March, 2023.

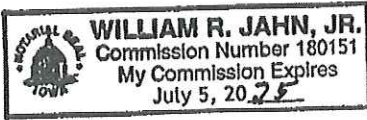



By: **KENNETH W. SUTTON**, Respondent

State of Iowa

County of Des Moines

Signed and sworn to before me on this 23rd day of March, 2023, by:





Notary Public, State of _____
Printed Name: _____
My Commission Expires: _____

FOR THE COMMISSION:

Voluntarily agreed to and accepted by the **IOWA REAL ESTATE COMMISSION** on this 4 day of April, 2023.



JAMES M.H. CLINGMAN, Chair
Iowa Real Estate Commission