

BEFORE THE IOWA REAL ESTATE COMMISSION

IN THE MATTER OF:)	CASE NO. 12-169
)	DIA NO. 12REC006
BRUCE A. BERGEN,)	
Applicant-Salesperson)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
APPLICANT)	DECISION AND ORDER

On May 31, 2012, the Iowa Real Estate Commission (Commission) notified Bruce A. Bergen (Applicant) that it had voted to deny his application for a real estate salesperson license. Mr. Bergen filed a timely request for hearing. A prehearing conference was held on October 11, 2012.

The appeal hearing was held on October 18, 2012 at 1:30 p.m. Assistant Attorney General John Lundquist represented the state of Iowa. Bruce Bergen appeared and was self-represented. The following Commission members presided at the hearing: Judy Stevens, Broker, Chairperson; Gail Flagel, Broker; Terry Duggan, Broker; John Goede, Broker; Michael Telford and Carol Haines, public members. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public, pursuant to 193 IAC 7.39(3). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), 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, the testimony of Jeff Evans and Bruce Bergen, State Exhibits 1-8 (See Exhibit Index for description), and Applicant Exhibit A.

FINDINGS OF FACT

1. On April 16, 2012, Bruce A. Bergen submitted an application for an Iowa real estate salesperson license. Mr. Bergen answered "yes" to question 9c on the application, which asks:

Have you ever had any other type of professional license revoked in any other state? If yes, attach a complete and detailed explanation of each revocation including the date of revocation, the type of license, the state in which the revocation occurred, and the grounds upon which the license was revoked.

Mr. Bergen attached a letter explaining that his Iowa insurance license was suspended¹ in September 2010. (Exhibit 2; Jeff Evans testimony)

2. Bruce Bergen was initially licensed as an Iowa insurance producer in 1989, and he owned an insurance agency for approximately twenty years. In September 2009, one of Mr. Bergen's insurance customers filed a complaint against him with the Iowa Insurance Division. The Insurance Division filed a Statement of Charges against Mr. Bergen, following an investigation. A hearing was held before an administrative law judge (ALJ) with the Iowa Department of Inspections and Appeals (DIA). Mr. Bergen appeared for that hearing and presented testimony.

On September 1, 2010, the ALJ issued a Proposed Decision that revoked Bruce Bergen's license as an insurance producer. The Proposed Decision made the following pertinent findings and conclusions:

- Mr. Bergen repeatedly failed to respond to communications from the Insurance Division concerning the September 2009 complaint, in violation of Iowa Code section 522B.11(1)*p*. The Proposed Decision notes that Mr. Bergen had previously been charged and sanctioned for his failure to respond to another Insurance Division investigation in 2008.
- Mr. Bergen engaged in unfair trade practices, in violation of Iowa Code section 507B.3. In April 2009, Mr. Bergen accepted \$557 from a customer for the purchase of insurance for her home, automobile, and rental properties. Mr. Bergen told the customer that these funds had been paid to LeMars Insurance for

¹ In fact, Mr. Bergen's license was revoked, not suspended.

the customer's policy. However, LeMars did not receive any payments from Mr. Bergen on behalf of this customer until September 1, 2009 and did not receive the full payment of \$557 until September 22, 2009. LeMars eventually issued a policy to the customer that had an effective date of June 2, 2009. LeMars had no record that temporary insurance cards were ever issued to this customer. Mr. Bergen contended that the customer did have insurance coverage from April 13, 2009 through June 2, 2009, but he failed to produce any documentary evidence at hearing to support this contention.

- Mr. Bergen improperly withheld funds received in the course of his insurance business, in violation of Iowa Code section 522B.11(1)d, when he held the customer's funds for over four months while LeMars was seeking to collect the funds from the customer.
- Mr. Bergen intentionally misrepresented to the customer that she had insurance coverage starting in April 2009, in violation of Iowa Code section 522B.11(1)e.
- Mr. Bergen engaged in dishonest practices and financial irresponsibility with respect to the customer's coverage, the premium payments made by her, and the payments made to LeMars.

Mr. Bergen appealed the ALJ's Proposed Decision to the Insurance Commissioner. An in-person appeal hearing was scheduled for October 5, 2010, but Mr. Bergen failed to appear for the hearing. On November 2, 2010, a designee of the Iowa Insurance Commissioner issued a Default Order Dismissing Appeal and Making Proposed Decision Final. Mr. Bergen's license as an insurance producer was revoked. (Exhibits 2, 3; Jeff Evans).

3. Commission investigator Jeff Evans was assigned to investigate Bruce Bergen's salesperson application and to obtain the relevant documents from the Iowa Insurance Division. Like the Iowa Insurance Division, the Commission has a rule that requires all licensees to fully cooperate with Commission investigations and to respond to Commission inquiries.² Although Mr. Bergen failed to fully cooperate with the Insurance Division's investigation, he did fully cooperate with Mr. Evans' investigation of his application. (Jeff Evans testimony)

² See Iowa Code section 543B.34(7); 193E IAC 18.2(7).

4. On May 17, 2012, Bruce Bergen met with the Commission's Investigative Committee. Following this meeting, the Commission voted to deny Mr. Bergen's salesperson application. In a letter dated May 31, 2012, Mr. Bergen was notified of the Commission's decision and of his right to request a formal hearing. Mr. Bergen appealed and requested a formal hearing before the Commission. (Jeff Evans testimony; Exhibits 5, 6)

5. At the Commission's hearing, Mr. Bergen denied that he ever intentionally withheld funds from his insurance customer or that he made any intentional misrepresentations concerning the customer's insurance coverage. Mr. Bergen testified that he had "binding authority" with all of the insurance companies that he worked with. This allowed him to bind the insurance company for a certain amount of time after he wrote the policy and provided insurance cards to the customer. Mr. Bergen testified that he immediately deposited the customer's funds in his trust account and that the insurance companies he worked with would usually automatically withdraw (sweep) those funds from the trust account after the policy was issued. Mr. Bergen testified that as soon as he found out that the customer's funds were still in his trust account, he sent the customer's money to the insurance company. Mr. Bergen provided no corroborating evidence to support his testimony.

When asked about the current status of his insurance license, Mr. Bergen responded that he recently had a meeting with an Insurance Division representative who told him that the Division may give him his insurance license back but would want to see positive changes first. Mr. Bergen was not given a timeframe for when he could reapply for his insurance license.

Mr. Bergen admitted that he failed to respond to the Insurance Division's communications and requests for information but testified that this occurred because he was suffering from anxiety and depression due to marital problems and excessively long work hours. Mr. Bergen further testified that anxiety and depression were also the reasons he failed to appear for his appeal hearing before the Insurance Commissioner's designee. He testified that he had not slept for two days prior to his hearing. On the day of the hearing, he started driving to Des Moines but had to turn around and return home after driving thirty minutes.

Mr. Bergen testified that his marital situation has now improved following counseling, and he has taken steps to address his declining health, depression, and anxiety. When asked what he has done to address these problems, Mr. Bergen reported that he had two back surgeries and a neck surgery, that he no longer works excessive hours, and

that he takes a very low dose of a medication, the name of which he could not recall. (Bruce Bergen testimony)

6. Bruce Bergen currently works as a consultant to small businesses and sells communications solutions for Mediacom. If he is granted a real estate salesperson license, Mr. Bergen intends to work with Gary and Melynda Wolter, who are associated with Iowa Realty in Marion, Iowa. The Wolters submitted an email verifying that Mr. Bergen would work under them to attain new clients and practice real estate under their supervision and guidance. The Wolters agreed to “handle all paperwork” for Mr. Bergen if he is licensed. (Bruce Bergen testimony; Exhibit A)

CONCLUSIONS OF LAW

An applicant for a real estate broker or salesperson license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction, may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.³ When considering the denial of a license, the Commission shall consider the nature of the offense; any aggravating or extenuating circumstances that are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant; and any other factors the commission deems relevant.⁴

The Iowa Insurance Division revoked Bruce Bergen’s license as an Iowa insurance producer, effective November 2, 2010. The violations that led to this revocation raise very serious concerns about Mr. Bergen’s ability to practice as a real estate salesperson in a competent and ethical manner, consistent with the public interest. Real estate salespersons are relied on by the public to properly handle client funds, to properly and effectively complete all required documentation related to real estate transactions, and to promptly respond to inquiries and concerns from their clients, from other licensed salespersons and brokers, and from the public. It is critical for licensees to promptly respond to any inquiry from the Commission and for licensees to fully cooperate with Commission investigations. Licensees are expected to fulfill these and other professional obligations regardless of any personal problems or pressures they may be experiencing.

³ Iowa Code section 543B.15(4)(2011).

⁴ Iowa Code section 543B.15(6)(2011).

In his testimony before the Commission, Mr. Bergen contended that some of the Insurance Division's findings were inaccurate. However, the Insurance Division is the appropriate forum for Mr. Bergen to make these arguments. Mr. Bergen had an opportunity to present evidence in his hearing before an ALJ and to appeal the ALJ's Proposed Decision to the Insurance Commissioner. Mr. Bergen failed to appear for his appeal hearing, and the revocation of his insurance producer license has become final. It would be inappropriate for the Commission to relitigate or second guess a final disciplinary action of another licensing authority.

It has been approximately two years since Mr. Bergen's insurance license was revoked. Mr. Bergen provided no evidence to show that he has been rehabilitated other than his testimony that his marital situation and his health issues have improved. The most persuasive evidence of rehabilitation would be if Mr. Bergen succeeded in persuading the Insurance Division to reinstate his license as an insurance producer. Absent evidence of reinstatement, the Commission must be persuaded that Mr. Bergen has fully addressed and corrected both the personal problems and the professional shortcomings that led to his license revocation.

Mr. Bergen appeared disorganized and unfocused at the time of the hearing. He admitted that he had forgotten the notes he had prepared for hearing. He was unable to recall the name of the medication that he is currently taking. The only evidence that Mr. Bergen offered into the record, apart from his own testimony, was a brief email from the realtors that he plans to work for if he is granted a license. Mr. Bergen waited until the day prior to hearing to request that email from the realtors.

Based on this record, the Commission was unable to conclude that Mr. Bergen has satisfactorily addressed and resolved the issues the led to the revocation of his license as an insurance producer. The Commission was not persuaded that Mr. Bergen is currently prepared to fulfill the professional and ethical obligations placed upon licensed real estate salespersons in the state of Iowa.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for licensure as a salesperson, filed by Bruce A. Bergen, is DENIED. Pursuant to Iowa Code section 543B.15(1), Mr. Bergen is not eligible to reapply for licensure for twelve months from the date of this Decision and Order.

Dated this 13th day of December, 2012.



Judy Stevens, Chair
Iowa Real Estate Commission

cc: Bruce A. Bergen
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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.