

State of Iowa  
Before the Iowa Real Estate Commission

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|------------------------|---|--------------------------------------|
| In the Matter of:      | ) | Case No. 12-048                      |
|                        | ) | DIA No. 12DOCRE004                   |
| SCOTT E. THOMAS, SR.,  | ) |                                      |
| Broker (B36888)        | ) |                                      |
|                        | ) |                                      |
| Associates Realty, LLC | ) |                                      |
| 922 Linden             | ) | <b>Findings of Fact, Conclusions</b> |
| Norwalk, IA 50211      | ) | <b>of Law, and Order</b>             |
|                        | ) |                                      |
| Respondent.            | ) |                                      |

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This matter concerns a Statement of Charges filed by the Iowa Real Estate Commission (the Commission) on May 10, 2012 alleging that Respondent Scott E. Thomas, Sr. made a false statement of material fact on a renewal application for a real estate broker's license or caused to be submitted or was a party to preparing or submitting a false renewal application for a real estate broker's license.

The matter came on for a contested case hearing before the Commission on July 19, 2012. The following board members were present: Judy Stevens, Broker, Chairperson, Susan Sanders, Salesperson, Vice-Chairperson, Carol Haines, Public Member, Gail Flagel, Broker, Michael L. Telford, Public Member, and John Goede, Broker. Kerry Anderson, an administrative law judge, assisted the commission.

Assistant Attorney General John Lundquist represented the State. The State's exhibits 1-13 were admitted into the record. Mr. Lundquist presented the testimony of Professional Licensing Investigator Jeff Evans.

Attorney Anita Olson represented Respondent Scott Thomas, Sr. Mr. Thomas testified on his own behalf.

**FINDINGS OF FACT**

Scott Thomas, Sr. was issued Broker license number B36888 on March 8, 2006. That license is currently active and is scheduled to expire on December 31, 2014. (Exhs. 1, 3; Evans testimony)

Thomas has a lengthy history before the Commission including ten previous disciplinary actions. Most recently, on July 29, 2010, Mr. Thomas signed an *Informal Settlement Agreement and Consent Order in a Disciplinary Case*. As a part of the settlement, in return for dismissal of one charge, Thomas agreed not to contest the following charges filed against him:

Engaging in a practice harmful or detrimental to the public and failing to diligently exercise reasonable skill and care in providing brokerage services to all parties in violation of Iowa Code sections 543B.29(1)(c), 543B.34, 543B.56 (2009) by failing to notify the Seller in a timely manner that a closing would not take place; and,

Filing to comply with the mandatory errors and omissions insurance requirement in violation of Iowa Code sections 543B.29(10)(c), 543B.47(1); 543B.47(6) (2009) and 193 IAC sections 18.2(5), 18.14(5)(s) and 19.6(6) and (7).

(Exhibit 10; Evans testimony)

Iowa law requires that licensed real estate brokers complete 36 hours of continuing education during each three-year renewal period. On December 30, 2011, Mr. Thomas completed an *Application for Renewal of Iowa Real Estate License* form on which he disclosed having completed the required 36 hours of continuing education. By his signature on the form, Mr. Thomas acknowledged that it was his responsibility to maintain the records necessary to verify his completion of the classes reported and that the information he supplied was true and correct. (Exh. 4; Evans testimony)

The form submitted by Mr. Thomas indicated that he had completed 24 of the required 36 hours of continuing education in a single day, December 30, 2011. This raised a red flag with Professional Licensure staff and, on January 19, 2012, Thomas was sent a letter notifying him that he had been selected for an audit of his compliance with the continuing education requirement. Thomas was asked to provide copies of his course completion certificates for the license term ending December 31, 2011 within thirty calendar days of the date of the letter. The letter was sent to Thomas by certified mail but was returned to the Commission on February 6, 2012 because Thomas failed to claim it. (Exh. 5; Evans testimony)

After the audit letter was returned, Investigator Evans e-mailed a copy of it to Thomas and his Broker-of Record, Ben Bryant, along with a letter dated February 14, 2012, addressed to Bryant notifying him that a preliminary investigation had been initiated against Thomas regarding the truth of the matters asserted on Thomas' renewal application and the Thomas' failure to comply with the audit letter. The letter explained that Thomas' license would be placed on inactive status thirty days from the date of February 10, 2012 unless verification of his compliance with continuing education requirements was received. (Exh. 6; Evans testimony)

On February 23, 2012, Thomas supplied a copy of an email from REcampus congratulating him on completing the Iowa 8-hour Law Update online course the previous day. Thomas did not send any other certificates of continuing education course completion and, on March 12, 2012, his broker license was placed on inactive status. (Exh. 7; Evans testimony)

On March 18, 2012, Thomas supplied certificates showing completion of the following continuing education courses:

| <u>Course Title</u>                 | <u>Hours</u> | <u>Completion Date</u> |
|-------------------------------------|--------------|------------------------|
| Buying Practices                    | 12           | February 1, 2012       |
| Iowa 8-hour Law Update              | 8            | February 22, 2012      |
| Fair Housing                        | 6            | February 26, 2012      |
| Foreclosures, Short Sales, REO      | 6            | March 5, 2012          |
| Sustainable Housing & Building Gr   | 6            | March 10, 2012         |
| Ethics in Today's Real Estate World | 6            | March 18, 2012         |

Based on provision of those certificates, Thomas' license was reactivated. However, as of the date of hearing, Thomas had not provided any proof that he took the courses he reported on his renewal application on the dates he certified. (Exh. 9; Evans testimony)

Scott Thomas, Sr. testified at hearing that 2011 was not a good year for him. Thomas struggled through a separation and divorce from his wife and underwent multiple hospitalizations and two surgeries. It was not until December 2011 that Thomas realized he needed to complete his continuing education requirements prior to the end of the year.

Thomas stated that he did sign up for the classes he reported on his application form and intended to complete them in one day. However, he discovered the classes were not as simple as he thought they would be and he was unable to complete them as planned although he tried his best to do so. Thomas testified that he mailed the application on December 31, 2011 and thought he would have the additional time to complete the classes before the application was received. Thomas admitted that he could have placed his license on inactive status when he realized he was not going to complete the necessary continuing education but stated he did not do so because he needed to work to pay his bills and he was afraid of the lawsuits that might result if he were unable to continue providing brokerage services.

Thomas testified at length to his belief that that the Commission was on a "witch hunt" as regards him. He offered his opinion that his business model as a flat fee broker was the reason behind the fact that he "always gets audited". Thomas took issue with some of the disciplinary actions previously taken against him and stated that he has always just agreed to pay the fine associated with the charges brought rather than incur the expense and inconvenience of going to hearing. Thomas stated that the Professional Licensure staff and the Commission have been "ganging up against" him. He stated he would never had entered into the July 2010 settlement agreement had he been aware the law provides for revocation of a broker license following three violations of Iowa Code section 543B.29 and/or 543B.34 within a five year period. He

claimed that neither his attorney nor Professional Licensure staff explained the "three strike" law to him before he agreed to settle the 2010 disciplinary proceeding against him. (Thomas testimony)

### **CONCLUSIONS OF LAW**

The Iowa Real Estate Commission was created to monitor and regulate the real estate profession in the State of Iowa.<sup>1</sup> In the discharge of that obligation, the Commission has adopted rules relating to continuing education requirements for individual real estate licenses. Those rules require that each licensee in active status complete a minimum of 36 hours of approved continuing education during each three-year license period, including an eight-hour law update, four hours of ethics and 24 hours of electives.<sup>2</sup> When a licensee applies to renew his or her license at the end of the three-year period, the licensee must certify that the number of hours of continuing education required to renew the license has been completed.<sup>3</sup> The Commission may verify the education claimed by a licensee by way of audit. It is the responsibility of the licensee to maintain the records necessary to verify the continuing education reported.<sup>4</sup>

A real estate broker's license may be revoked or suspended when the licensee is found to have made a false statement of material fact on an application for a real estate broker's license.<sup>5</sup> The filing of a false affirmation of the continuing education courses completed serves as *prima facie* evidence of an action warranting discipline.<sup>6</sup>

The evidence in this case is undisputed. On December 30, 2011 Scott Thomas, Sr. signed an *Application for Renewal of Iowa Real Estate License* in which he reported having completed 36 hours of continuing education on or before the end of the calendar year 2011. He submitted that application in an effort to renew his real estate broker license even though he knew the information he was providing was untrue.

Thomas' excuses for his misrepresentation are not persuasive. While the Commission is sympathetic to Thomas' health and personal circumstances during 2011, those circumstances simply do not justify providing false information on his license renewal application. Secondly, Thomas' assertion that it is his chosen business model that causes scrutiny from Professional Licensure staff is incorrect. It has been Thomas' business practices—not his business model—

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1 Iowa Code sections 543B.8, 543.18.

2 193E Iowa Administrative Code 16(4)(2).

3 *Id.* at 16(5).

4 *Id.* at 16(5)(1).

5 Iowa Code section 543B.29(1)(b).

6 193E Iowa Administrative Code 16.5(4).

that have raised concerns and resulted in discipline.

The evidence clearly shows that Thomas violated Iowa Code section 543B.29(1)(b) when he provided false continuing education information on his license renewal application

### **SANCTION**

The more important question in this case concerns the level of sanction. The legislature has mandated that a real estate broker's license shall be revoked if the licensee is found to have violated Iowa Code section 543B.29 and/or Iowa Code section 543B.34 three times within a five year period.<sup>7</sup>

In 2010, Thomas entered into a settlement agreement whereby he was found to have violated Iowa Code sections 543B.29 and 543B.34 by failing to notify a seller in a timely manner that a closing would not take place and section 543B.29 when he failed to comply with the requirement for errors and omissions insurance.

Thomas' testimony that he would not have entered into the 2010 settlement agreement had he been explained the "three strike rule" is without merit. As a licensee, he is charged with knowledge of licensure requirements. Additionally, it seems clear that the bargain reached in the settlement agreement was struck so that Thomas avoided application of the rule at that time.

Today, the Commission has determined that Thomas has violated Iowa Code section 543B.29 by knowingly providing false information on his license renewal application. Thomas has therefore committed three violations of section 543B.29 and/or 543B.34 within three years and the "three strike rule" is applicable. The revocation of Thomas' real estate broker license is mandatory.

### **ORDER**

The Iowa Real Estate Commission hereby revokes real estate broker license no. B36888 issued to Scott E. Thomas, Sr.

Mr. Thomas shall pay \$75.00 for fees associated with conducting the disciplinary hearing.<sup>8</sup> In addition, the executive officer of the board may bill Mr. Thomas for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Mr. Thomas shall remit payment for these expenses within thirty days of receipt of the bill.

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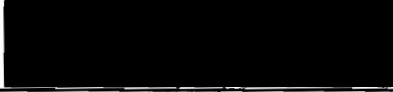
<sup>7</sup> Iowa Code section 543B.29(4).

<sup>8</sup> See Iowa Code section 272C.6(6).

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Dated this *6* day of *September*, 2012.



Judith E. Stevens, Chairperson  
Iowa Real Estate Commission

*for*

cc: AGO – John Lundquist  
Anita Olson  
Scott Thomas, Sr. (Certified)

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.