

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 09-010
)	DIA NOS. 09DOCRE018
Donald L. Brown, Jr.)	
Broker (B09317))	
)	FINDINGS OF FACT,
Mid-American Referral Company)	CONCLUSIONS OF LAW,
1501 50 th Street, Ste. 350)	DECISION AND ORDER
West Des Moines, Iowa 50266)	

On October 20, 2009, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Donald L. Brown, Jr. (Respondent). The Statement of Charges alleged that Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1) and (6)(2007 & 2009) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(6).

A telephone prehearing conference was held on November 13, 2009. The hearing was held on November 19, 2009 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent Donald L. Brown, Jr. appeared and was self-represented. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson and public member; Dan Berry, Broker; Judy Stevens, Broker-Associate; Dick Robert, Broker; Lori Diehl, Salesperson; and James O'Neill, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2009). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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, testimony of the witnesses, State Exhibits 1-8 (See Exhibit Index for description) and Respondent Exhibit

A (Time Line; Durable Power of Attorney for Health Care Decisions; General Power of Attorney; Letter (2/19/08) from Iowa Health; Errors and Omissions Insurance Enrollment Form , received 12/29/08 and check dated 12/22/08.)

FINDINGS OF FACT

1. The Commission issued Respondent an Iowa real estate broker license B09317 on January 28, 1983. Respondent's broker license is in full force and effect until December 31, 2009. (State Exhibit 2; Testimony of Jeff Evans) Respondent was initially licensed by the Commission as a real estate salesperson in 1973. (Testimony of Respondent).
2. Respondent has consistently maintained the mandatory errors and omissions insurance coverage as required by the Commission until January 1, 2008. Prior to November 20, 2007, Respondent's broker license was associated with Coldwell Banker-Mid America Group Realtors. On November 20, 2007, Respondent's association was transferred to Mid-American Referral Company, although his license remained on active status. (Testimony of Jeff Evans; State Exhibit 2)
3. In November 2008, Respondent was selected for a random audit to verify his compliance with the required errors and omissions insurance coverage for 2008. The Commission sent Respondent a notice of his selection for audit on November 21, 2008 and asked him to provide verification of his insurance coverage within twenty calendar days. Respondent did not reply to this letter. (Testimony of Jeff Evans; State Exhibit 4)
4. On January 13, 2009, the Commission sent a second letter to Respondent, again asking him to provide verification of his 2008 errors and omissions insurance coverage. (Testimony of Jeff Evans; State Exhibit 5)
5. Respondent replied to the Commission's second letter and provided verification of his errors and omissions insurance coverage for the period from December 1, 2008 through January 1, 2009. The Certificate of Coverage issued by Respondent's insurance company is dated January 19, 2009. Respondent did not have errors and omissions insurance coverage for the period from January 1, 2008 through November 30, 2008. (Testimony of Jeff Evans; State Exhibit 6). Respondent also provided verification of his 2009 errors and omissions insurance coverage, which is effective from January 1, 2009 through January 1, 2010. The Certificate of Coverage issued by Respondent's insurance company is dated January 12, 2009. (Testimony of Jeff Evans; State Exhibit 7)

6. Although his broker license remained active, Respondent was physically unable to work as a real estate broker from August 8, 2007 through December 1, 2008, due to a serious life threatening illness. At hearing, Respondent provided a time line and documentation of his illness:

- April 16, 2007: Respondent was hospitalized and diagnosed with end stage liver disease.
- August 8, 2007: Respondent was unable to conduct day to day business and gave family members his power of attorney. Respondent spent nearly a year either in the hospital or bedridden at home.
- February 19, 2008: Respondent was placed on the active waiting list for a liver transplant at the University of Nebraska Medial Center.
- April 20, 2008: Respondent drove an automobile for the first time since his diagnosis. Through physical therapy and weekly nurse visits he went from being wheelchair bound to using a walker and then a cane.
- September 1, 2008: Respondent had emergency surgery for a ruptured stomach.

(Testimony of Respondent; Respondent Exhibit A)

7. Respondent eventually returned to work on a limited basis on December 1, 2008. Prior to receiving the Board's notice, Respondent did not realize that his errors and omissions insurance had not been renewed in 2008. Respondent was also under the mistaken belief that his license became inactive when it was transferred to Mid-American Referral. Respondent was uncertain if his family members received a bill for his insurance premium during his illness. In late December 2008, Respondent contacted his errors and omissions insurance company and asked if he could pay the premium for all of 2008 and obtain retroactive coverage. The insurance company advised Respondent that he should prorate the premium and pay only for the period of time after he returned to work as a real estate broker. Respondent followed the advice of the insurance company and prorated his premium payment. On December 22, 2009, Respondent completed and signed the enrollment form for his 2009 errors and omissions insurance and sent a check for the full amount of his 2009 premium plus the prorated portion of his 2008 premium to cover December 2008. The insurance company received his application on December 29, 2008. (Testimony of Respondent; Respondent Exhibit A)

CONCLUSIONS OF LAW

The legislature has directed the Commission to adopt rules requiring all real estate licensees, except those who hold inactive licenses, to carry errors and omissions insurance coverage for all activities contemplated by Iowa Code chapter 543B. The rules shall require licensees to submit evidence of compliance with the insurance requirement within twenty calendar days of the Commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.¹ Failure of a licensee to carry the errors and omissions insurance required by Iowa Code section 543B.47, or to timely submit proof of coverage upon Commission request, shall be grounds for the denial of an application to renew a license or for the suspension or revocation of a license.²

By rule, the Commission is authorized to initiate disciplinary action against an active licensee for failure to maintain adequate insurance coverage or for failure to submit proof of insurance to the Commission within twenty days of their request.³

The preponderance of the evidence established that Respondent failed to maintain the mandatory errors and omissions coverage for calendar year 2008 while his broker license remained active, in violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5) and 19.6(6). Nevertheless, there are extraordinary mitigating circumstances in this case that justify departure from the Commission's past practice of imposing a \$1000 civil penalty for this violation. Respondent was physically incapacitated with life-threatening illness throughout the last half of 2007 and the first eleven months of 2008. He was unable to work, and it was unclear if he would survive. He executed powers of attorney so that his family members could handle business matters and make decisions for him. However, it is likely that Respondent's family members were focused on his illness and recovery and did not realize the importance of maintaining the errors and omission insurance when Respondent was unable to work as a broker. Respondent reinstated his errors and omissions insurance when he returned to work on a limited basis in December 2008, and he has errors and omissions insurance for calendar year 2009.

¹ Iowa Code section 543B.47(1)(2007, 2009).


² Iowa Code section 543B.47(6)(2007, 2009).

³ 193E IAC 18.2(5), 19.6(6).

DECISION AND ORDER

IT IS THEREFORE ORDERED that due to the substantial and extraordinary mitigating circumstances outlined in this decision, no disciplinary sanction will be imposed for Respondent's failure to comply with the mandatory errors and omissions insurance coverage in calendar year 2008.

Dated this 25th day of February, 2010.


Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Donald Brown, Jr. [CERTIFIED]
John Lundquist, Assistant Attorney General (LOCAL)

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.