

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 10-121
)	DIA NO. 10DOCRE007
Matthew Burns)	
Salesperson (S45319))	
)	FINDINGS OF FACT,
Iowa Realty)	CONCLUSIONS OF LAW,
3501 Westown Parkway)	DECISION AND ORDER
West Des Moines, Iowa)	

On May 24, 2010, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Matthew Burns (Respondent). The Statement of Charges alleged that Respondent submitted or caused to be submitted, whether intentional or otherwise, incorrect information on a renewal application for a real estate salesperson license, in violation of Iowa Code sections 272C.10(1), 543B.15(5), 543B.29(1)(c), 543B.34(1) and (11)(2009) and 193E IAC 16.5(4).

A telephone prehearing conference was held on June 18, 2010. The hearing was held on June 24, 2010. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent appeared and was represented by attorney Joan Johnson. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson/ public member; Dan Berry, Broker; Judy Stevens, Broker-Associate; Dick Robert, Broker; Lori Diehl, Salesperson; Patty Daniels, 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, and State Exhibits 1-8 (See Exhibit Index for description)

FINDINGS OF FACT

The Commission initially issued real estate salesperson license number S45319 to Respondent Matthew Burns on September 16, 2004. On December 10, 2009, Respondent filed an on-line renewal application for the renewal period from January 1, 2007-December 31, 2009. On the application, Respondent attested that he had completed the 36 hours of continuing education required to renew his license. (Testimony of Jeff Evans; State Exhibit2)

The first page of the on-line renewal application expressly states that "any continuing education being reported must be completed in either 2007, 2008, or 2009 and *must be completed prior to submission for renewal.*" (State Exhibit 7-1, emphasis supplied) In addition, the second page of the renewal application states "**Record below only coursework you have COMPLETED from January 1, 2007-December 31, 2009.**" (State Exhibit 7-2, emphasis original)

On February 5, 2010, Respondent was notified that he had been selected for a random continuing education audit. Respondent was required to submit copies of his continuing education course completion certificates within thirty days. (Testimony of Jeff Evans; State Exhibit 5) Respondent complied with the audit and submitted his continuing education certificates. However, the certificates indicated that Respondent did not complete two of his continuing education courses, comprising 12 of his 36 reported hours, until December 18, 2009. This was eight days after Respondent filed his renewal application attesting that he had completed all of the required continuing education. (Testimony of Jeff Evans; State Exhibit 6)

At hearing, Respondent explained the following circumstances surrounding his renewal application. Respondent provides child care during the day while his wife works outside the home. Respondent and his wife had a new baby on December 8, 2009. Respondent registered to take his last two continuing education courses on December 17-18, 2009 because he knew that his wife would be home to care for the children while he attended the course. Respondent filled out his license renewal application on December 10, 2009, while his wife was still in the hospital, because he was afraid that he might forget to file it after they got home with the new baby. Respondent read the application but failed to recognize that he was not permitted to claim a continuing education course on his renewal application before completing the course. (Testimony of Respondent).

CONCLUSIONS OF LAW

The legislature has authorized licensing boards to specify by rule the minimum continuing education required as a condition for license renewal.¹ The Commission has established continuing education requirements for real estate brokers and salespersons at 193E IAC 16.4. All individual real estate licenses are issued for three-year terms and expire on December 31 of the third year.² As a requirement of license renewal in active status, each real estate licensee shall complete a minimum of 36 hours of approved programs, courses, or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license.³

The Commission's rules require applicants for license renewal to certify that the number of hours of continuing education required to renew was completed as required.⁴ The Commission will verify, by random audit, the continuing education claimed by a licensee.⁵ It is not acceptable for a licensee to complete the required continuing education after the fact.⁶ Filing a false affirmation is prima facie evidence of a violation of Iowa Code sections 543B.29(1) and(3).⁷

The Commission is authorized to revoke or suspend the license of a real estate broker or salesperson for:

- Fraud in procuring a license;⁸
- Knowingly making misleading, deceptive, untrue, or fraudulent statements in the practice of a profession;⁹
- Making a false statement of material fact on the application for a real estate broker's or salesperson's license or causing to be submitted any false application;¹⁰
- Making any substantial misrepresentation;¹¹ or

¹ Iowa Code section 272C.2(1),(2)(2009).

² 193E IAC 16.4(1).

³ 193E IAC 16.4(2).

⁴ 193E IAC 16.5..

⁵ 193E IAC 16.5(1).

⁶ 193E IAC 16.5(2).

⁷ 193E IAC 16.5(4).

⁸ Iowa Code section 272C.10(1)(2009).

⁹ Iowa Code section 543B.29(1)(c)(2009).

¹⁰ Iowa Code section 543B.15(5)(2009).

¹¹ Iowa Code section 543B.34(1)(2009).

- Engaging in any other conduct which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under Iowa Code chapter 543B.¹²

The preponderance of the evidence established that Respondent knowingly misrepresented his completed continuing education hours, in violation of Iowa Code section 543B.29(1)(c), 543B.34(1), 543B.15(5), and 193E IAC 16.5(4), when he renewed his license on December 10, 2009. Respondent claimed completion of 36 hours of continuing education even though he had only completed 24 hours of continuing education at the time. Although Respondent intended to complete the remaining 12 hours of continuing education prior to the expiration of his license, he knew that he had not yet attended the courses when he filed his application and claimed completion of the hours.

It is a licensee's responsibility to be familiar with the Commission's rules governing continuing education and to carefully review the on-line renewal application. Respondent knew that he had not yet completed all of the required continuing education hours when he filed his renewal application and should have known that it was improper to claim hours prior to attending the courses. The Commission has consistently imposed a civil penalty under these circumstances. However in determining the amount of the civil penalty, the Commission considered the fact that Respondent actually completed all 36 hours of the required continuing education within the renewal period as a significant mitigating factor.

DECISION AND ORDER


IT IS THEREFORE ORDERED that Respondent Matthew Burns shall pay a civil penalty of \$250.00 for misrepresenting his completed continuing education hours on a license renewal application, in violation of Iowa Code sections 543B.29(1)(c), 543B.34(1), 543B.15(5), and 193E IAC 16.5(4).

¹² Iowa Code section 543B.34(11)(2009).

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Dated this 21 day of July, 2010.


Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Joan Johnson, Iowa Realty Corporate Counsel
3501 Westown Parkway
West Des Moines, Iowa 50266 [CERTIFIED]

John Lundquist
Assistant Attorney General
Hoover State Office Building (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.