

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NOS. 10-478, A09-017,
)	10-376, 10-542, 11-094
Katherine A. Brock)	DIA NO. 11REC011
Broker (B09281))	
)	FINDINGS OF FACT,
Albia Realty Company)	CONCLUSIONS OF LAW,
114 S. Main Street)	DECISION AND ORDER
Albia, Iowa 52531-2014)	
)	
Respondent)	

On July 15, 2011, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Katherine A. Brock (Respondent). The Statement of Charges alleged the following four counts:

Counts I and II: Failing to comply with the terms of settlement agreements and consent orders, in violation of Iowa Code sections 543B.29(1)(c), 543B.34(11), 272C.3(2)(a)(2011) and 193E IAC 18.2(1) & (3) and 18.14(5)(s).

Count III: Failing to fully cooperate with a licensee disciplinary investigation by failing to respond to a Commission inquiry within 14 calendar days, in violation of 543B.29(1), 543B.34(10)&(11)(2011) and 193E IAC 18.2(7).

Count IV: Engaging in a practice that is harmful and detrimental to the public by failing to timely provide proof of compliance with mandatory errors and omissions insurance requirements, in violation of 543B.29(1)(j), 543B.34(10), 543B.47(6)(2011) and 193E IAC 18.2(5), 18.4(5)(s), and 19.6(5) & (6).

A telephone prehearing conference was held on September 15, 2011. At that time, the state presented its Prehearing Conference Report and submitted its exhibits 1-9. The hearing procedures were explained to Respondent. The hearing was held on September 22, 2011 at 1:15 p.m. Respondent Katherine Brock appeared and was self-represented. Assistant Attorney General September Lau represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson and public member; Dick Robert, Broker; Gail Flagel, Broker; Judy Stevens, Broker; Susan J.

Sanders, Salesperson; Robert Broomfield, Salesperson; and Michael Telford, public member. Administrative Law Judge Margaret LaMarche assisted in conducting the hearing. The proceedings were recorded. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2011).

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 Katherine Brock; and State Exhibits 1-11.

FINDINGS OF FACT

1. The Commission initially issued Respondent broker license number B09281 on June 19, 1981, and she has practiced as a broker since that time. Respondent's license is in full force and effect until December 31, 2012. (Exhibit 2) Respondent's Realty Company currently employs one licensed salesperson and two secretaries. Business has been slower than usual, but Respondent reports that she currently has 15 or 16 property listings and 2 or 3 sales "in the mill." (Testimony of Respondent)

Count I- Failure to Comply With Settlement Agreement and Consent Order

2. On June 4, 2009, the Commission's trust account auditor reported to the Commission that Respondent would not permit review of her trust account records. (Exhibit 2; Testimony of Jeff Evans) On August 10, 2009, the Commission filed a Statement of Charges against Respondent alleging, in part, that she had cancelled two audit appointments and had never made her trust account records available for inspection. (Exhibit 3, Att. 1)

On April 16, 2010, Respondent signed an Informal Settlement Agreement and Consent Order to resolve this Statement of Charges. Pursuant to that Settlement Agreement and Consent Order, Respondent agreed to be reprimanded and further agreed to do the following:

- Pay a \$2500 civil penalty no later than 60 days after acceptance of the Order;

- Hire an Iowa licensed Certified Public Accountant (CPA) to audit and establish trust account records following Generally Accepted Accounting Principles. The CPA's audit report demonstrating Respondent's compliance with applicable accounting standards, Iowa law, and Commission trust account rules was due no later than 60 days after acceptance of the Order;
- Attend the Commission approved eight (8) hour course "Trust Accounts" within 12 months after acceptance of the Order. These hours are in addition to any continuing education required for license renewal.

The Commission accepted the Informal Settlement Agreement and Consent Order on April 22, 2010. (Exhibit 3)

On April 27, 2010, the Commission sent Respondent a copy of the signed Settlement Agreement and Consent Order and reminded her to keep the due dates in mind. Based on the terms of the order, the \$2500 civil penalty and the CPA audit report were due no later than June 22, 2010. The continuing education was required to be completed by April 22, 2011. (Testimony of Jeff Evans; Exhibit 3, Exhibit 10, p.6)

3. On June 22, 2010, Respondent's attorney sent a letter asking the Commission to extend the deadline for the CPA audit report to July 16, 2010. Respondent's attorney reported that Respondent had scheduled an appointment with the CPA for July 6, 2010. (Exhibit 10, p. 5) The record does not indicate that the Commission provided a written response to this request.

Respondent did not submit the CPA audit by July 16, 2010. On October 13, 2010, the Commission sent Respondent a letter reminding her that the \$2500 civil penalty and the CPA audit were both overdue. (Exhibit 10, p. 4) Respondent replied in writing on October 25, 2010 and enclosed a \$2500 check. In her letter, Respondent:

- Claimed that she sent an earlier check to the Commission and did not realize that it had not gone through her account;
- Stated that she had been out of town and ill numerous times and had not completely finished her records for the audit with her CPA. Respondent requested an extension to December 10.
- Stated that she planned to take her 8 hours (of continuing education) "in the near future."

(Exhibit 10, p. 3; Exhibit 2; Testimony of Jeff Evans; Respondent)

4. On January 20, 2011, the Commission notified Respondent, in writing, that it would allow her until May 15, 2011 to submit the CPA audit and to complete the 8 hour Real Estate Trust Account Class. The Commission informed Respondent that this was her final extension and that a hearing would be scheduled if she did not comply. Respondent acknowledged receipt of this letter in writing and wrote that it "will be completed by this deadline!" (Exhibit 10, pp. 1, 2)

5. As of the date of the hearing (September 22, 2011) Respondent had not submitted the CPA audit nor had she completed the 8 hour trust account class. Trust account audits are essential to ensure that real estate brokers are complying with all of the statutes and rules governing trust accounts and to ensure that all money belonging to members of the public is properly accounted for. (Testimony of Jeff Evans)

6. Respondent admits that she still has not completed the CPA audit and has not attended the 8 hour trust account. Respondent testified that she has gone through a difficult divorce after 50 years of marriage, and it has caused a big "upheaval" in her life. Respondent testified that she has suffered from severe depression as a result and has not been herself, physically or mentally, since the fall of 2007. She admits that she has let things slide with respect to her real estate business. She has been taking anti-depressants and has reached a point where she just wants to sleep.

Respondent's former CPA has retired and is not available to help her with this audit. Her new CPA has told her to bring in all of her trust account records and they would go through them together. Respondent admits that she still has been unable to gather and organize the records necessary for a CPA to perform the audit despite her good intentions to do so. It is unclear if this is due solely to Respondent's depression or if she lacks the necessary records for an audit to be performed. Respondent reports that she had to get an extension to file her 2010 income tax return because she did not have her tax records in order.

Respondent had signed up to attend the 8 hour trust account course on July 25, 2011. However, she did not attend the course because she serves on a judicial nominating committee, and the committee was meeting on that day to conduct interviews. Respondent signed up to take the same 8 hour trust account course on October 18, 2011. However, at hearing Respondent testified that she will not be attending the course on October 18th because she will be visiting her daughter in Connecticut. Respondent does not know when the 8 hour class will be offered again after October 2011. (Testimony of Respondent)

Count II-Failure to Comply With Settlement Agreement and Consent Order

7. On December 9, 2010, Respondent and the Commission entered into a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order to resolve charges that Respondent had failed to comply with the mandatory errors and omissions insurance requirement. Respondent agreed to pay a civil penalty of \$1,000 within 180 days of the Commission's acceptance of the Order. The \$1,000 civil penalty was due on or about June 9, 2011. However, Respondent did not pay the \$1,000 civil penalty until July 18, 2011, which was more than one month late. (Testimony of Jeff Evans; Exhibits 2, 4)

Count III-Failure to Respond to a Board Inquiry

8. On February 16, 2011, the Commission's investigator sent Respondent a letter, via regular mail, asking for her response to a complaint that had been filed with the Commission. When Respondent failed to reply to the first letter, the Commission's investigator sent a second letter, via certified mail, on April 19, 2011. Respondent signed the return receipt for the second letter on April 27, 2011 but did not reply to it. (Testimony of Jeff Evans; Exhibit 6)

9. Respondent acknowledges that she did not respond to the Commission's certified letter. She denies receiving the first letter, which she believes was intercepted by her ex-husband. Respondent admits receiving the certified letter. After receiving the Commission's certified letter, Respondent attempted to resolve the complaint directly with the complainant, but she did not respond to the Commission. (Testimony of Respondent)

Count IV- Failure to Comply With the Error & Omissions Insurance Requirement

10. On February 17, 2011, the Commission sent Respondent an audit request asking her to produce proof of her mandatory errors and omissions insurance coverage for 2011. On March 20, 2011, Respondent provided a Certificate of Coverage of Errors and Omissions Insurance from Rice Insurance Services Company, L.L.C. The policy period for the Certificate of Coverage was from 01/01/2011 to 01/01/2012. However, the date of issuance for the certificate of coverage was March 1, 2011. (Exhibits 5, 8; Testimony of Jeff Evans)

Respondent did not have uninterrupted errors and omissions insurance for 2011 because the certificate of coverage was not issued until March 1, 2011. The errors and

omissions insurance is a claims-made policy. If someone had filed a claim against Respondent in January or February 2011, after the prior policy expired and before the new certificate was issued, then Rice Insurance would not have covered that claim. (Exhibits 5, 11; Testimony of Jeff Evans)

Respondent testified that she was short on funds when it was time to renew her errors and omissions insurance for 2011. She recalled that she had been able to obtain retroactive coverage from Rice Insurance in 2010 when she was late in renewing her policy. Respondent decided to postpone renewing her policy based on her assumption that could still obtain retroactive insurance even if she paid the premium late. (Testimony of Respondent)

CONCLUSIONS OF LAW

Count I-Failure to Comply

A license to practice the profession of real estate broker and salesperson may be revoked or suspended for professional incompetency¹ or for 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.² A licensing board may also revoke or suspend a license, either until further order of the board or for a specified period, upon failure of the licensee to comply with a decision of the board imposing licensee discipline.³ The administrative rules specifically authorize the Commission to initiate disciplinary action and to impose civil penalties for failure to comply with an order of the Commission imposing discipline.⁴

The preponderance of the evidence established that Respondent violated Iowa Code section 543B.29(1)(c), 543B.34(11), 272C.3(2)(a)(2011), and 193E IAC 18.2(3) and 18.14(5)(s) when she failed to comply with the terms of the Informal Settlement Agreement approved by the Commission on April 22, 2009. Respondent failed to submit a trust account audit report completed by a CPA and failed to attend the 8 hour trust account course as required by the Informal Settlement Agreement. The Commission extended the initial deadline to May 15, 2011, and Respondent still did not comply. A competent real estate broker would have complied with the terms of an

¹ Iowa Code section 543B.29(1)(c)(2011).

² Iowa Code section 543B.34(11) (2011).

³ Iowa Code section 272C.3(2)(a)(2011).

⁴ 193E IAC 18.2(3), 18.14(5)(s).

Informal Settlement and Consent Order, especially one that addresses essential trust account matters.

The Commission's first and foremost responsibility is to protect the public. The statutes and rules governing trust accounts are essential to ensure that brokers properly account for all money belonging to members of the public. Brokers must maintain up-to-date records of their trust accounts and must promptly provide the records for audit upon request. Despite repeated requests, Respondent has failed to provide the Commission with any reliable information concerning her broker's trust account. Respondent claims that she has been physically and mentally unable to gather, organize and submit her records for audit. However, she continues to accept new listings and to engage in the practice of real estate as a broker. This situation cannot be allowed to continue any longer. The Commission is sympathetic to Respondent's personal difficulties, but it has been more than generous in granting Respondent's extensions of time to comply. Respondent's request for additional time to comply with the CPA audit requirement must be denied.

Respondent claims that she has made it a priority to attend the 8 hour trust accounts course required by the Informal Settlement Agreement. However, her actions are inconsistent with this claim. Several deadlines to attend the course have passed, and Respondent still does not have a plan in place to complete the course. Respondent cancelled her enrollment in one course because she felt that her participation on a citizen committee was more important. She now plans to cancel her enrollment in the course scheduled for October 18, 2011 in order to visit her daughter out of state. The Commission is not willing to allow Respondent to continue to practice as a broker in this state before this important educational requirement has been completed.

Count II-Failure to Comply

The preponderance of the evidence also established that Respondent violated Iowa Code section 272C.3(2)(a)(2011), and 193E IAC 18.2(3) and 18.14(5)(s) when she failed to comply with the terms of the Informal Settlement Agreement approved by the Commission on December 9, 2010. Respondent agreed to pay a \$1000 civil penalty in resolution of a Statement of Charges alleging that she failed to provide proof of her errors and omissions insurance coverage for 2010. The \$1000 civil penalty was due by June 9, 2011, but Respondent did not pay it until July 18, 2011.

Count III-Failure to Respond

The Commission is authorized to suspend or revoke a license if a licensee is found guilty of failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of Iowa Code chapter 543B.⁵ 193E IAC 18.2(7) provides that the commission may initiate disciplinary action against a licensee for failure to fully cooperate with a licensee disciplinary investigation, including failure to respond to a commission inquiry within 14 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the commission office.

The preponderance of the evidence established that Respondent violated Iowa Code section 543B.34(10) and 193E IAC 18.2(7) when she failed to reply to a certified letter from commission staff asking for her response to a complaint that had been filed with the commission. Respondent received the letter by certified mail on April 27, 2011 but did not respond to the commission or its staff.

Count IV-Failure to Provide Proof of Compliance With the Mandatory Errors and Omissions Insurance Requirement

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 Commission's rules must 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.⁶ 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.⁷

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 within twenty days of the Commission's request.⁸ A licensee is

⁵ Iowa Code section 543B.34(10).

⁶ Iowa Code section 543B.47(1)(2011).

⁷ Iowa Code section 543B.47(6)(2011).

⁸ 193E IAC 18.2(5), 19.6(6).

required to carry insurance on an uninterrupted basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice.⁹

The preponderance of the evidence established that Respondent failed to maintain uninterrupted errors and omissions (E & O) insurance from January 1, 2011 through February 28, 2011, even though her broker license remained active during this time. Respondent did not obtain her E & O insurance for 2011 until March 1, 2011, which was after she received the Commission's audit notice. Although she was eventually granted retroactive insurance coverage back to January 1, 2011, the insurance company would not have covered any claim filed against Respondent between January 1 and February 28, 2011. Although there is no evidence of any claim being filed during this two month time period, Respondent's clients were still placed at risk by Respondent's failure to timely renew her E & O insurance. If a claim had been filed during this two month period, the clients would not have been compensated by the insurance company.

Respondent's failure to maintain errors and omissions insurance is a violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5) and 19.6(5) & (6). The errors and omissions insurance requirement is for the protection of the public. The Commission has typically imposed a \$1,000 civil penalty for a first violation. However, a license suspension is warranted in this case in light of Respondent's failure to maintain uninterrupted E & O insurance in 2010, her failure to timely pay the \$1,000 penalty for that violation, and the other violations established in this record.

ORDER

IT IS THEREFORE ORDERED that Broker License B09281, issued to Respondent Katherine A. Brock, is hereby INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order. IT IS FURTHER ORDERED that Respondent shall not apply for reinstatement of her broker license until she has fully complied with the CPA Audit and the 8 hour trust account course requirements outlined in the April 22, 2010 Informal Settlement Agreement.

IT IS FURTHER ORDERED that in any application for reinstatement, the burden will be on Respondent to establish that:

- the basis for the indefinite suspension no longer exists;

⁹ 193E IAC 19.6(5).

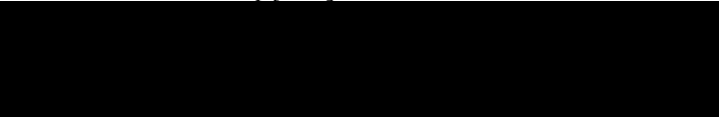
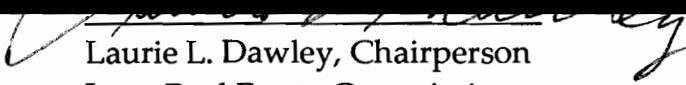
- she is mentally and physically ready and capable of resuming practice as a real estate broker in compliance with all applicable statutes and rules; and
- it is in the public interest for her license to be reinstated.

See 193 IAC 7.38.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. The \$75 hearing fee shall be paid within thirty (30) days of the date of this Decision and Order.

IT IS FURTHER ORDERED that Respondent shall fully comply with all of the notification procedures set forth in 193E IAC 7.3, a copy of which is attached to this Decision and Order. Strict compliance with these notification procedures shall be a condition for any application for reinstatement. 193E IAC 18.14(4).

Dated this ¹⁶ day of October, 2011.

Laurie L. Dawley, Chairperson
Iowa Real Estate Commission

cc: Katherine Brock, Respondent
September Lau, Assistant Attorney General

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.