

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 09-053
)	DIA NOS. 09DOCRE022
Rita Mosher,)	
Salesperson (S43959))	
)	FINDINGS OF FACT,
Associated Brokers Realty)	CONCLUSIONS OF LAW,
122 Pierce Street)	DECISION AND ORDER
Sioux City, IA 51105)	

STATEMENT OF THE CASE

On December 3, 2009, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Rita Mosher (Respondent). The Statement of Charges alleged that Respondent engaged in practices which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1)&(6)(2009) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(5)&(6) by the following:

- a. Failing to comply with the mandatory errors and omissions insurance requirement.

A prehearing conference was held by telephone on May 13, 2010.

The hearing was held on May 19, 2010 at 1:30 p.m. Respondent Rita Mosher appeared. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, Public Member, Chairperson; Judy Stevens, Broker; Dick Robert, Broker; Patricia A. Daniels, Salesperson; and James O'Neill, public member. Administrative Law Judge John M. Priester assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public at the election of the Respondent, 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 the following exhibits:

Respondent Ex. A:	Email from Kelly Burge to Respondent (1/15/2010);
State Exhibit 1:	Notice of Hearing and Statement of Charges (12/3/09) Notice of Rescheduled Hearing (3/11/2010) Proof of Service (3/15/2010);
State Exhibit 2:	Licensing Information re: Rita Mosher, Salesperson;
State Exhibit 3:	Complaint and Investigative Narrative re: 09-053;
State Exhibit 4:	Certificate of Coverage: Rice Insurance Services Company, LLC;
State Exhibit 5:	Response of Licensee (4/6/2009);
State Exhibit 6:	E-mail Correspondence from Rice Insurance Services Company, LLC;
State Exhibit 7:	Relevant Statutes and Administrative Rules.

FINDINGS OF FACT

1. Respondent is a licensed Salesperson in Sioux City, Iowa. Respondent's Iowa real estate salesperson license (S43959) was first issued on July 18, 2003 and is in full force and effect through December 31, 2011. Respondent is employed at Century 21 Real Estate in Sioux City, Iowa. (Testimony of Respondent; State Exhibit 1, 2)
2. When the Respondent was employed with Caldwell Banker Real Estate she had Errors and Omissions Insurance through Rice Insurance. Her last insurance policy was in effect until January 1, 2009. The Respondent changed employment and was actively licensed under Stephanie Hageman, a sole proprietor in Akron, Iowa, from January 1, 2009 through March 19, 2009. (Testimony of Respondent; State Exhibit 1)
3. While the Respondent was licensed under Stephanie Hageman she did not have a current Errors and Omissions Insurance policy in effect. She also did not have any transactions from January 1, 2009 to March 19, 2009. (Testimony of Respondent; State Exhibit 1, Respondent Ex. A)
4. The Respondent voluntarily placed her license on Inactive Status on March 19, 2009. On March 30, 2009, the Respondent reactivated her salesperson license, providing proof of Errors and Omissions insurance coverage obtained on March 27, 2009. This policy was back-dated to January 1, 2010 to provide continuous coverage. The

Respondent was licensed under Century 21 Real Estate in Sioux City, Iowa. (Testimony of Respondent; State Exhibit 5)

5. The Commission investigated the Respondent's file and determined that the Respondent was without Errors and Omissions Insurance from January 1, 2009 to March 27, 2009. The Commission filed a complaint based upon this violation. (State Exhibits 1, 4-1)

6. The Respondent testified that she did not have any listings during the period she was without Errors and Omissions Insurance. Once she regained her Errors and Omissions Insurance the policy was back-dated to January 1, 2009, so there was no lapse in time for coverage. (Testimony of Respondent, State Exhibit 5-2)

CONCLUSIONS OF LAW

I. The Violation

A. Applicable Law

Each real estate broker is required by statute to maintain errors and omissions insurance coverage. Iowa Code section 543B.47(1)(2009)

The Commission may impose a civil penalty if a violation of its governing statutes or rules are found. 193E IAC 18.14(5)

Iowa Code section 543B.29(3)(2009) provides, in relevant part:

543B.29 Revocation or suspension.

1. A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

c. ...engaging in...practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

i. Noncompliance with insurance requirements under section 543B.47.

Iowa law provides that “[f]ailure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for . . . the suspension or revocation of a license.” Iowa Code § 543B.47(6).

That code section requires that as a condition of licensure all real estate licensees “carry errors and omissions insurance covering all activities contemplated under this chapter.” Iowa Code § 543B.47. “A licensee is required to carry insurance on an uninterrupted basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice.” 193E IAC 19.6(5)

B. Discussion

The Respondent admits that she was not covered by appropriate errors and omissions insurance from January 1, 2009 to March 27, 2009. The Appellant explained that she was not actively listing properties at this time. Additionally, she received a policy that retroactively covered the period she was without insurance.

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to maintain Errors and Omissions Insurance in compliance with Iowa Code sections 543B.47(1)(2009).

Even if the Respondent were not actively listing properties, as long as she holds an active license she is required to have errors and omissions insurance. The fact that she obtained a policy in late March that was made retroactive does not change the fact that she had an interrupted period where she was not covered by insurance as required by 193E IAC 19.6(5).

II. Sanction

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the violation and the potential for harm to the public. 193E IAC 18.14(6). The Commission has consistently imposed civil penalties of \$1000 for licensees who fail to have Errors and Omissions Insurance in place.

The Commission is sympathetic to the Respondent’s situation, however, the failure to have Errors and Omissions Insurance in place puts the public at risk. For this reason, the Commission believes that the violation is adequately addressed by a civil penalty of

\$1000. Because the Commission has sympathy for the Respondent, it will allow her to pay off the civil penalty over a six month period of time.

ORDER

IT IS THEREFORE ORDERED that the Respondent Rita Mosher, Salesperson License (S43959), shall pay a civil penalty to the Commission in the amount of \$1000. The Respondent shall be given 6 months from the issuance of this Decision and Order to pay the fine in full. Payments on the civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 09-053.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this ~~27~~ day of June, 2010.



Laurie L. Dawley, Chairperson
Iowa Real Estate Commission

cc: Rita Mosher
1222 Pierce Street
Sioux City IA 51105-1417 (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.