

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:

CASE NO. 07-061
OIA NOS. 08DOCRE009

VICTORIA S. SWANSON
Salesperson (S57222)

HORSTMAN REAL ESTATE
2505 Wedgewood Road
Des Moines, IA 50317

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On May 22, 2008, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Victoria S. Swanson (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(3)&(9), 543B.47(1)&(6) (2007) and 193E IAC 18.2(5), 8.14(5) (s), and 19.6(6)&(7) by the following:

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

A prehearing conference was held by telephone on June 20, 2008. The hearing was held on June 26th 2008 at 9:30 a.m. Respondent Victoria S. Swanson appeared. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Judy Stevens, Broker; Dan Berry, Broker; Lori Diehl, 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) (2007) .

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5 (1) (f) (2007), 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:

- State Exhibit 1: Licensing Information re: Victoria S. Swanson, Salesperson;
- State Exhibit 2: Notice of Hearing (5/22/2008);
- State Exhibit 3: Request for Hearing (5/25/2007);
- State Exhibit 4: Complaint (Case No. 07-061);
- State Exhibit 5: Investigation Report Case No. 07-061, David Batts (3/9/2007);
- State Exhibit 6: Statement, Sandy Malek (3/7/2007);
- State Exhibit 7: Statement, Victoria S. Swanson (3/9/2007);
- State Exhibit 8: Reinstatement Request Form, Victoria S. Swanson (3/9/2007);
- State Exhibit 9: Certificates of Coverage re: Victoria S. Swanson;
- State Exhibit 10: Relevant Statutes and Administrative Rules.

FINDINGS OF FACT

1. Respondent is a licensed Salesperson in Des Moines, Iowa. Respondent's Iowa real estate salesperson license (S57222) was first issued on March 1, 2006 and is in full force and effect through December 31, 2008. Respondent is employed at Horstman Real Estate. (Testimony of Respondent; State Exhibit 1, 2)

2. When the Respondent was first licensed, she received her Errors and Omissions Insurance through Rice Insurance. Her insurance policy was in effect from February 21, 2006 to January 1, 2007. The Respondent did not receive a renewal statement from Rice Insurance for this Errors and Omissions policy. Her policy expired on January 1, 2007 and was not renewed (Testimony of Respondent; State Exhibit 9)

3. When the Respondent's one year anniversary of licensing was approaching she looked through her checkbook and realized that she had not written a check to Rice Insurance for her Errors and Omissions Insurance. In the first week of March 2007 the Respondent called the Real Estate Commission to receive information on her insurance company so she could contact the company to make her payment. The Respondent immediately filled out a reinstatement form and sent in her payment. On March 14, 2007, Rice Insurance issued an Errors and Omissions Policy to

the Respondent that was back-dated to January 1, 2007. (Testimony of Respondent; State Exhibits 7,9)

4. Because of the Respondent's self-reporting, the Commission investigated the Respondent's file and determined that the Respondent was without Errors and Omissions Insurance from January 1, 2007 to March 14, 2007. The Commission filed a complaint based upon this violation. (State Exhibit 5)

CONCLUSIONS OF LAW

I. The Violation

A. Applicable Law

Each real estate salesperson is required by statute to maintain errors and omissions insurance coverage. Iowa Code section 543B.47 (1) (2007)

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) (2005) provides, in relevant part:

543B.29 Revocation or suspension.

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:

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

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

B. Discussion

The Respondent admits that she was in violation of the Commission's rules and statutes when she failed to renew her Errors and Omissions Insurance policy on January 1, 2007. The Appellant explained that this was truly a fluke and was a result of her being a new agent. Safeguards have been put in place to insure that this will never happen again.

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 5438.47 (1) (2007).

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.

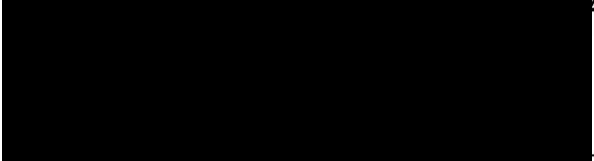
The Respondent is a new salesperson who self-reported this violation to the Commission. The Commission is very sympathetic to the Respondent's situation, however, the failure to have Errors and Omissions Insurance in place puts the public at risk. For this reason, the Commission believes that the violation is adequately addressed by a civil penalty of \$1000.

ORDER

IT IS THEREFORE ORDERED that the Respondent Victoria S. Swanson, Salesperson License (S57222), shall pay a civil penalty to the Commission in the amount of \$1000 no later than thirty (30) calendar days after the issuance of this Decision and Order. The civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 07-061.

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 24 day of July, 2008.


James Hughes, Chairperson
Iowa Real Estate Commission

cc: Victoria S. Swanson

1414 Mattern Avenue
Des Moines IA 50316 (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.