

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 07-044
)	DIA NOS. 08DOCRE008
ROBERT H. VAN HORN)	
Broker (B02852))	
)	FINDINGS OF FACT,
VAN HORN REAL ESTATE)	CONCLUSIONS OF LAW,
21094 Velvet)	DECISION AND ORDER
Glidden, IA 50144-3802)	

On May 22, 2008, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Robert H. Van Horn (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(9), 543B.47(1)&(6), 543B.62(3) (b) (2007) and 193 IAC 7.11, 18.2(5), 8.14(5) (m), and 19.6(6)&(7) by the following:

- a. Allowing salespersons employed by the Respondent to practice real estate in the state of Iowa without complying 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 10:30 a.m. Respondent Robert H. Van Horn 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: Robert H. Van Horn, Broker;
- State Exhibit 2: Notice of Hearing (5/22/2008);
- State Exhibit 3: Request for Hearing (3/17/2007);
- State Exhibit 4: Complaint (Case No. 07-044);
- State Exhibit 5: Licensing Information re: Susan E. Freml, Salesperson;
- State Exhibit 6: Licensing Information re: Larry A. Irwin, Salesperson;
- State Exhibit 7: Licensing Information re: Gary L. Spencer, Salesperson;
- State Exhibit 8: Licensing Information re: David J. McNamara, Salesperson;
- State Exhibit 9: Licensing Information re: Kayla S. Thielen, Salesperson;
- State Exhibit 10: Licensing Information re: Branden Blair, Salesperson;
- State Exhibit 11: Letter of Robert H. Van Horn (10/30/2006);
- State Exhibit 12: Letter of Larry A. Irwin (10/26/2006);
- State Exhibit 13: Letter of Gary L. Spencer (10/26/2006);
- State Exhibit 14: Letter of David J. McNamara (10/24/2006);
- State Exhibit 15: Letter of Branden Blair (11/10/2006);
- State Exhibit 16: Relevant Statutes and Administrative Rules.

FINDINGS OF FACT

1. Respondent is a licensed Broker in Glidden, Iowa. Respondent's Iowa real estate broker license (B02852) was first issued on February 11, 1954 and is in full force and effect through December 31, 2009. Respondent is owns and oversees Van Horn Real Estate. (Testimony of Respondent; State Exhibit 1, 2)
2. For fifty years the Respondent has been a broker. He worked at the First Bank & Trust, Co. in Glidden until it was sold and he was out of a job. The Respondent had always obtained a bond through the bank that covered his agents. After his termination from the bank the Respondent sought a bond to cover his agents. He provided his agents' names and numbers to the insurance company. The bond that the insurance company

provided, however, only covered the Respondent for Errors and Omissions. (Testimony of Respondent; State Exhibit 3)

3. The six licenses that are under the supervision of the Respondent were sent random audit requests for their mandatory errors and omissions insurance. The agents could not provide proof of coverage for the 2006 policy period. At this time it was discovered that the Respondent was the only person covered by the bond. (Testimony of Respondent, State Exhibits 11-15)

4. There was a period when the six agents working under the Respondent's supervision were acting without any Errors and Omissions Insurance. (Testimony of Respondent, State Exhibits 11-15)

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) . A broker is responsible for supervising each salesperson or broker associate employed by the broker. 543B.62 (3) (b) .

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 he was in violation of the Commission's rules and statutes when he failed to have Errors and Omissions Insurance for his agents. The Appellant explained that when he purchased his bond from Rice Insurance he told them the names of all his agents so that the agents too could be covered by the bond. This was not done as only the Respondent was covered by the bond.

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to supervise his agents to insure that they maintain Errors and Omissions Insurance in compliance with Iowa Code sections 543B.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 did not do this intentionally. Yet it is his responsibility to supervise his agents. Supervision entails insuring that the agents are covered by Errors and Omissions Insurance. The six agents working under the Respondent did not have Errors and Omissions Insurance for the 2006 policy period.

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 Robert H. Van Horn, Broker License (B02852), 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. 07-044.

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: Robert H. Van Horn
21094 Velvet Street
Glidden IA 50144-3802 (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.