

**BEFORE THE IOWA REAL ESTATE COMMISSION
1920 SE HULSIZER
ANKENY, IOWA**

IN RE:)	
)	
)	CASE NUMBER A05-011
LINDA L. FISHER)	
Broker (B18801))	STATEMENT
)	OF
Buy A Home, Inc.)	CHARGES
dba RE/MAX Real Estate Center)	
1606 South Duff)	
Ames, IA 50010)	
)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (2005).

Licenses issued by the Commission are subject to the laws of the state of Iowa and to the administrative rules of the Commission.

Linda L. Fisher was at all material times, during the following events, a licensed Broker Officer and designated broker in charge of Buy A Home, Inc. dba RE/MAX Real Estate Center, in Ames, Iowa. Her license, number B18801 was issued February 17, 1983, and is in full force and effect through 12-31-2006.

COUNT I

The Respondent is charged with engaging in numerous practices involving her trust account which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), and 543B.34(7) (2005) and 193E--IAC sections 13.1(6), 13.1(6)(a)(3) and 18.14(5)(e) by the following:

- a. Failing to perform monthly reconciliations in a timely manner.
- b. Showing an overage in the individual ledgers resulting in commingling of funds in the amount of \$2,921.96.
- c. Failing to maintain individual ledger sheets for Broker's Equity and Interest.

A05-011
Fisher


CIRCUMSTANCES OF THE COMPLAINT

1. On or about June 15, 2005, Auditor Jeff Evans conducted an audit of the Respondent's trust account and records.
2. The auditor found that monthly reconciliations are not being performed on a timely basis.
3. The audit found the following violations:
 - a. failure to conduct a written monthly reconciliation of the individual ledgers, general ledger and bank records to assure balance; and
 - b. individual ledgers were \$2,921.96 more than the reconciled bank balance and the running balance of the journal, resulting in a shortage on the bank side.
4. Auditor found that broker does not have separate individual ledger sheets accounting for Broker's Equity and Interest.

FINDING OF PROBABLE CAUSE

On September 9, 2005, the Iowa Real Estate Commission found probable cause to file this Statement of Charges and to order that a hearing be set in this case.

Executed this ND 2ND day of FEBRUARY, 2006.


Roger L. Hansen, Executive Officer
Iowa Real Estate Commission

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. A05-011
)	DIA NOS. 06DOCRE002
LINDA L. FISHER)	
Broker (B18801))	
)	FINDINGS OF FACT,
Buy A Home, Inc.)	CONCLUSIONS OF LAW,
d/b/a RE/MAX Real Estate Center)	DECISION AND ORDER
1606 South Duff)	
Ames, IA 50010)	

On September 9, 2005, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Linda L. Fisher (Respondent). The Statement of Charges alleged that Respondent engaged in practices involving her trust account which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(3), 543B.34(7)(2005) and 193E IAC 13.1(6), 13.1(6)(a)(3) and 18.14(5)"e" by the following:

- a. Failing to provide monthly reconciliations in a timely manner.
- b. Showing an overage in the individual ledgers resulting in commingling of funds in the amount of \$2,921.96.
- c. Failing to maintain individual ledger sheets for Broker's Equity and Interest.

A prehearing conference was held by telephone on April 7, 2006. The hearing was held on April 13, 2006 at 9:30 a.m. Respondent Linda L. Fisher appeared and was represented by attorney Craig Hastings. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; Dan Berry, Broker; Lori Diehl, Salesperson; Laurie Dawley and James O'Neill, public members. Administrative Law Judge Margaret LaMarche assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2005).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2005), 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; Respondent's Prehearing Conference Report; testimony of the witnesses; and the following exhibits:

- State Exhibit 1: Statement of Charges, Notice of Hearing, Proof of Service and Hearing Acknowledgement
- State Exhibit 2: Answer
- State Exhibit 3: Respondent Licensing Information
- State Exhibit 4: Audit Narrative
- State Exhibit 5: Trust Account Examination Deficiency Report, 6/15/05
- State Exhibit 6: Respondent's Updated Trust Account Reconciliation & Records, May & June 2005
- State Exhibit 7: Relevant Statutes and Administrative Rules

- Respondent Exhibit A: Respondent Bank Account Reconciliations, January 2004-December 2005
- Respondent Exhibit B: Real Estate Trust Account Manual, July 1995
- Respondent Exhibit C: Summary Table for Exhibit A

FINDINGS OF FACT

1. Respondent is a licensed Broker Officer and designated broker in charge of Buy A Home, Inc. d/b/a RE/MAX Real Estate Center in Ames, Iowa. Respondent's real estate broker license (B18801) was issued February 17, 1983 and is in full force and effect through December 31, 2006. (Testimony of Respondent; State Exhibits 1, 3)

2. The Commission has employed Jeffrey Evans as a Trust Account Auditor for 2½ years. In that time, Evans has performed approximately 350-400 audits. Sometime prior to conducting an audit, Evans sends out a questionnaire concerning the broker's trust account and brokerage related activities and asks the broker to return the completed questionnaire. Audits are unannounced and the questionnaire is typically the only notice provided of an impending audit. On January 26, 2005, Evans

received a completed questionnaire back from Respondent, which indicated that Respondent handled a total of 416 real estate closings in the previous 12 months. (Testimony of Jeffrey Evans; State Exhibit 5-3)

3. On June 15, 2005, Jeffrey Evans arrived at Respondent's office during regular business hours to audit Respondent's trust account. Respondent told Evans that she and her staff were extremely busy and it was not a convenient time for the audit. May and June are always busy months in the real estate business and one of Respondent's closers had been gone for three weeks due to surgery. Evans told Respondent that if the trust account records were in "pretty good shape" he should be able to complete his audit with little assistance from staff. (Testimony of Jeffrey Evans; Respondent; Sharon Anderson; State Exhibit 4)

4. Sharon Anderson is Respondent's chief closer and bookkeeper. Anderson uses two computer software systems to maintain Respondent's trust account records: RE/MAX Office 2000 (hereinafter, O2K) and QuickBooks. The individual ledgers are created and maintained using O2K and the general ledger (journal) is on QuickBooks. Earnest money checks are deposited in the bank the same day they are received. Sharon Anderson is responsible for posting the checks to individual ledgers on O2K. Each night, Anderson performs a computer backup, which pulls all of the information from the O2K software program into the general ledger on QuickBooks. This takes approximately 15-20 minutes and is the only time during the day that the general ledger is updated to reflect the information added that day to the individual ledgers. Anderson uses another software program, Excel, to perform monthly reconciliation of the general ledger, individual ledgers, and the monthly bank statement. Respondent reviews a computer printout of the monthly reconciliation to verify that the trust account is balancing. (Testimony of Sharon Anderson; Respondent)

5. Sharon Anderson provided Evans with Respondent's trust account records, including a computer printout of the general ledger from QuickBooks and bank statements. Evans attempted to reconcile Respondent's trust account records using the numbers and information provided by Anderson. After working with the records for a long time, Evans was able to reconcile the general ledger to the reconciled bank balance but found a significant variance in the individual ledgers. Evans noted the following deficiencies in Respondent's trust account records during his audit on June 15, 2005:

a. Twenty-seven (27) earnest money checks were received from clients between May 13, 2005 and June 13, 2005 and had been deposited in the bank but had not been recorded in the general ledger. These unrecorded earnest money deposits totaled \$19,050.00. Evans added up the 27 deposit slips in order to update the journal balance reflected in QuickBooks. (State Exhibit 5-9)

b. The monthly reconciliations for April and May were not completed in a timely manner. The April reconciliation was not completed until June 9, 2005. The May reconciliation had not been completed as of the time of the audit.

c. The individual ledgers had a total that was \$2,921.96 more than the totals in the general ledger and the reconciled bank balance. This indicated a \$2,921.96 shortage in the trust account.

(Testimony of Jeffrey Evans; State Exhibit 4)

6. Jeffrey Evans prepared a Trust Account Examination Deficiency Report detailing the following findings:

- Monthly reconciliations were not being performed on a timely basis;
- The individual ledgers could not be reconciled to the general ledger (journal) and reconciled bank balance leaving a \$2,921.96 shortage on the bank side;
- The books did not have an up-to-date journal balance because it did not reflect \$19,050 worth of deposits that had been made over the past month.
- Individual ledgers were not up to date because individual ledgers had not been created in a timely manner for \$19,050 in earnest deposits;
- Broker did not have ledgers sheets separately accounting for Broker's Equity and interest.

Both Jeffrey Evans and Respondent signed the Trust Account Examination Deficiency Report on June 15, 2005. Respondent told Evans that Sharon Anderson would update and correct the trust account records by the following day. (Testimony of Jeffrey Evans; Respondent; State Exhibit 5-1 to 5-2)

7. Sharon Anderson worked that evening to update the trust account records, including the individual ledgers and the

general ledger, and to address the deficiencies noted in the auditor's report. On June 16, 2005, Sharon Anderson faxed Evans the updated trust account records with the monthly reconciliation for May 2005. The monthly reconciliation prepared by Anderson showed the same total dollar amount (\$72,490.45) in the general ledger, individual ledgers, and the reconciled bank statement, thereby demonstrating the necessary "3-way tie." Anderson also created a separate individual ledger for Broker's Equity. (Testimony of Jeffrey Evans; Respondent; Sharon Anderson; State Exhibit 6)

8. At the hearing, Respondent submitted printouts of her trust account monthly reconciliations from January 2004 through December 2005. The date in the lower right hand corner of each printout is when the particular reconciliation was performed. Sharon Anderson's best recollection was that the trust account bank statement usually arrived between the 6th and the 10th of each month, although the actual date of receipt for each statement is unknown.¹ Based on the assumption that the monthly bank statement was received between the 6th and the 10th of the month, Respondent estimates that the monthly reconciliation for May 2005 was prepared between 29 and 33 days after it was received. Anderson admits that she occasionally fell behind in her record keeping and had two months of reconciliations to perform at the same time. Since Evan's audit on June 15, 2005, Anderson has performed the monthly reconciliations in a timely manner. (Testimony of Sharon Anderson; Respondent Exhibits A, C)

CONCLUSIONS OF LAW

I. The Violations

A. Applicable Law

Each real estate broker is required by statute to maintain a common trust account in a bank, savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons. Iowa Code section 543B.46(1)(2005) In addition, brokers shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to

¹ However, the bank statement must have been received prior to the 6th of the month at least some of the time, since Anderson was able to complete the monthly reconciliation for October 2004, January 2005, July 2005, and September 2005, prior to the 6th day of the following month. (Respondent Exhibit A)

exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges related to the trust account. Iowa Code section 543B.46(4)(2005).

The legislature has specifically authorized the Commission to adopt rules to ensure implementation of Iowa Code section 543B.46. Iowa Code section 543B.46(8)(2005). Pursuant to this authority, the Commission has adopted the following relevant rules:

193E IAC 13.1(6) provides, in part:

13.1(6) Each broker required to maintain a trust account shall maintain *at all times* a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order *all* receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal of each trust account must include the date, name of the depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for *monthly* reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, *which records all receipts and disbursements of the transaction and clearly separates the transaction from all others.* The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

...

(emphasis supplied)

193E IAC 18.14(5) provides, in relevant part:

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations for which a civil penalty may be imposed:

...

e. Maintaining inadequate transaction records such as:

- (1) Failing to maintain a general ledger.
- (2) Failing to maintain individual account ledgers.
- (3) Failing to retain records on file.

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.

Iowa Code section 543B.34(7) (2005) provides, in relevant part:

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or other duly authorized representative or designee to investigate the actions of any real estate broker...and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee...is found guilty of any of the following:

...

7. Failing, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belongs to others.

B. Discussion

Real estate brokers have essential statutory and fiduciary duties to maintain proper trust account books and records, to properly account for the public's money, and to submit to

audits. Unless proper accounting procedures are utilized in a timely manner, it is impossible to ensure and verify that brokers are fulfilling their obligation to protect and preserve client moneys that they hold in trust and that they are not commingling trust funds. As the licensed broker, Respondent is legally and ethically responsible to timely account for all trust account funds that she receives and that she disburses.

When Jeffrey Evans performed his audit on June 15, 2005, Respondent's trust account records were not up to date and could not show the required three-way tie between the reconciled bank account, the general ledger, and the individual ledgers. Respondent had deposited twenty-seven earnest money checks in the bank between May 13, 2005 and June 13, 2005, but none of these deposits had been recorded in individual ledgers in the O2K software system and therefore the deposits would not be reflected in the general ledger total on QuickBooks, even if the daily computer backup had been performed while the auditor waited. The Commission's rules and generally accepted accounting principles required Respondent to make these entries at the time of the bank deposits to ensure that the clients' money was properly credited and accounted for and to ensure that the trust account records would balance. 193E IAC 13.1(6); 193E IAC 18.14(5)(e).

This was not a case of the broker making ledger entries a day or two after the money was received and deposited; Respondent was substantially delinquent in making these entries. Although the individual and general ledgers were not up to date, auditor Evans took all of the records provided by Respondent, added the twenty-seven unrecorded earnest money deposits to create an up to date general ledger balance, and attempted to complete his audit by balancing the general ledger, the individual ledgers, and the reconciled bank statement. After making these adjustments for the unrecorded deposits, Evans found that Respondent's general ledger agreed with the reconciled bank statement but Respondent's individual ledgers had an overage of \$2,921.96. This either indicated that the trust account was short by more than \$2900 and Respondent did not have sufficient funds in the trust account to cover all obligations or else it indicated error(s) had been made in the bookkeeping entries.

In addition, Respondent did not have an individual ledger to separately account for her personal funds in the trust account, as required by 193E IAC 13.1(1)(c). While it is important for the broker to separately account for her personal funds in the trust account, the Commission agrees that a Statement of Charges

would not have been filed if this had been the only deficiency found by the auditor.

The evening of the audit, Sharon Anderson worked late and brought Respondent's trust account records up to date. Anderson also created an individual ledger for broker's equity. After updating the trust account records, Anderson was able to perform the monthly reconciliation for May 2005 and was able to balance the individual ledgers, the general ledger, and the reconciled bank balance. She faxed the monthly reconciliation and the ledgers to Jeff Evans the following day, June 16, 2005, but did not specifically explain how she accomplished the three-way tie or what, if any, errors she found in the previous entries. Evans accepted the documentation provided by Anderson as resolving the deficiencies in his audit report.

Respondent argues that the Commission's rules are unclear and do not establish a time limit on when the monthly reconciliation must be performed. The Commission is satisfied that its rules put Respondent on notice that reconciliation of the trust account is to be performed each month. 193E IAC 131.1(6)(a)(3)(The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement). The Real Estate Trust Account Manual (Respondent Exhibit B) is consistent with the published rule and advises brokers to perform the three-way reconciliation *each month*. In addition, the manual tells brokers that mistakes in posting are relatively easy to find *within* a one-month period. (Respondent Exhibit B, p.22, emphasis supplied)

Monthly reconciliation is essential to identify any inaccuracies or mistakes in the trust account record keeping and to protect client funds. While best practice is to perform the monthly reconciliation as soon as the bank statement is received, it is clearly a deficient trust accounting practice and a violation of Commission rule to reconcile two months' records at essentially the same time, as was done by Respondent in June 2005 and on several prior occasions (See Respondent Exhibit A).

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to maintain adequate and up-to-date trust account records, in compliance with Iowa Code sections 543B.29(3), 543B.34(7) (2005) and 193E IAC 13.1(6) and 18.14(5)(e). As of the date of the audit, Respondent had not performed the monthly reconciliation for May 2005 in a timely

manner, had an overage in the individual ledgers of more than \$2900 and therefore a presumed shortage of that same amount in the trust account, and had not maintained individual ledgers for broker's equity and for interest.

It is noted that Respondent's failure to enter the earnest money deposits in individual ledgers and the general ledger was not specifically described as a separate violation in the Circumstances provided in the Statement of Charges. However, 193E IAC 18.14(5)(e), which was cited as part of the legal authority for Count I, specifically provides for civil penalties for failure to maintain the general ledger and failure to maintain the individual account ledgers. Moreover, Respondent's failure to timely post the 27 earnest money deposits to the individual and general ledgers was an integral factor which contributed to the failure to timely perform the monthly reconciliation. The monthly reconciliation could not be performed properly if the ledgers were not up to date and did not accurately reflect all deposits.

II. Sanction

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the trust account violation and the potential for harm to the public, in light of the volume of business and large number of transactions handled by Respondent. The Commission did not consider Respondent's staff shortage in late May and June in mitigation of the sanction. If necessary, Respondent could and should have hired temporary staff to ensure that all statutory and fiduciary duties relating to the trust account were properly discharged. The Commission gave due consideration to the fact that this is Respondent's first violation and that she took prompt and apparently effective steps to correct the deficiencies noted by the auditor and to ensure that they will not recur. For these reasons, the Commission elected not to impose a period of probation or suspension on Respondent's broker license but felt that the violations could be adequately addressed by an educational requirement and a civil penalty.

ORDER

IT IS THEREFORE ORDERED that the Respondent Linda L. Fisher, Broker License (B18801), shall personally complete the eight-hour Commission approved broker pre-license education course "Iowa Real Estate Trust Accounts." The original certificate of

attendance must be submitted to the Commission office with a cover letter to the Commission's Executive Officer, referring to Case No. A05-011. These hours shall be in addition to any real estate continuing education required by law for license renewal and must be completed within six (6) months of the date of this Order.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Commission in the amount of \$2,500 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. A05-011.

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 ^{25th} day of ^{MAY}, 2006.


James Hughes, Chairperson
Iowa Real Estate Commission

cc: Craig R. Hastings
Hastings & Gartin, LLP
409 Duff, Box 1794
Ames, IA 50010 (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.