

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. A05-010
	)	DIA NOS. 05DOCRE012
KAROL S. LEECH	)	
Broker (B31887)	)	
	)	FINDINGS OF FACT,
Real Estate Depot	)	CONCLUSIONS OF LAW,
214 S. Market Street	)	DECISION AND ORDER
Oskaloosa, IA 52577	)	

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On November 10, 2005, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Karol S. Leech (Respondent). The Statement of Charges alleged that Respondent engaged in practices involving her trust account which are harmful or detrimental to the public and failed to make records available to the Commission's auditor, in violation of Iowa Code sections 543B.29(3), 543B.34(7) and (8), 543B.46(4) and 193E IAC 13.1(6), 13.1(6)(a) & (b), 13.1(6)(a)(3), and 18.14(5)"e"(1), (2), and (3), by the following:

- a. failing to make trust records available for inspection when requested,
- b. failing to maintain adequate trust account records at all times,
- c. failing to perform monthly reconciliation of the general ledger with individual ledgers and bank records to ensure agreement, and
- d. failing to maintain the general ledger and individual ledgers to reflect current balances.

There was a telephone prehearing conference on December 9, 2005. The hearing was held on December 14, 2005 at 9:30 a.m. Respondent Karol Leech appeared and was self-represented. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; E. Karl Reichert, Broker; and James O'Neill, public member. 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; testimony of the witnesses; and the following exhibits:

State Exhibit 1: Statement of Charges, Notice of Hearing, Proof of Service  
State Exhibit 2: Answer  
State Exhibit 3: Respondents' Licensing Information  
State Exhibit 4: Audit Narrative  
State Exhibit 5: Trust Account Examination Deficiency Report, 4/28/05  
State Exhibit 6: Relevant Statutes and Administrative Rules

Respondent Exhibit A: Trust Account Records

#### FINDINGS OF FACT

1. Respondent is a Sole-Proprietor Broker in Oskaloosa, Iowa, d/b/a Real Estate Depot, which is a licensed trade name (T03914). Respondent's real estate broker license (B31887) was issued on June 12, 1998 and is in full force and effect through December 31, 2006. Respondent has had one prior disciplinary action, on July 14, 2005. (Testimony of Respondent; State Exhibits 1, 3)

2. The Commission employs Jeffrey Evans as a Trust Account Auditor. Sometime prior to conducting an audit, Evans mails brokers a questionnaire related to the trust account and brokerage related activities and asks them to return the completed questionnaire. The questionnaire is typically the only notice provided of an impending audit. Evans did not receive a completed questionnaire back from Respondent, although she admits that she received one in the mail and maintains that she returned it to the Commission. (Testimony of Jeff Evans; Respondent; State Exhibit 5-2, 5-3)

3. On April 27, 2005, Jeffrey Evans went to Respondent's place of business during regular business hours for the purpose of

auditing Respondent's trust account. Respondent's mother, who is a broker-associate in the real estate office, called Respondent and asked her to come to the office. When Respondent arrived, she provided Evans with her most recent bank statements, the general ledger, checkbook, deposit slips, and individual ledgers. The last transaction recorded in the trust records was dated March 5, 2005, nearly two months prior to the audit. Respondent told Evans that she had been on vacation from April 22, 2005 until April 27, 2005 and had not had time to update the books. (Testimony of Jeffrey Evans; Respondent; State Exhibit 4)

4. Evans told Respondent that the Commission's rule (193E IAC 131.6)) required trust account records to be updated daily. Respondent replied that it would only take her about an hour to update the books, and Evans agreed to return after lunch. When Evans returned to the real estate office, Respondent was still working on her trust account records. After waiting for nearly an hour, Evans told Respondent that he would return the following day and would expect the books to be ready to audit. (Testimony of Jeffrey Evans; Respondent; State Exhibit 4)

5. Evans returned to Respondent's office on April 28, 2005 in the early afternoon. At that time, Evans reviewed every document that Respondent gave him, including the general ledger, checkbook, individual ledgers, and bank statements. Evans immediately noted that Respondent's trust account records had no documentation of monthly bank reconciliation on a written worksheet, that the general ledger entries were not in chronological order with dates, and that the check numbers were not in sequential order.

Evans attempted to perform the "three way tie", i.e. reconciling the individual ledgers to the general ledger to the bank balance, but was unable to do so with the records provided by Respondent. The total of the individual ledgers was \$865.00 less than the journal total, and the bank balance was \$1,080.70 less than the journal total. When Evans performs the reconciliation, he takes out the outstanding checks and any checks written since the last bank statement. If any check is voided, it should be indicated as void on the ledger. Evans does not count any checks that are indicated as void and asks brokers for copies of any voided check. Evans printed a copy of his findings and reviewed it with Respondent item by item. Both Evans and Respondent signed and dated the Trust Account Examination Summary Report. (Testimony of Jeff Evans; Respondent; State Exhibit 5-1, 5-4)

6. In her Answer to the Statement of Charges, Respondent claims that the auditor "missed" several items during his audit. However, the \$1,000 deposit that Respondent claims was missed by the auditor was made on March 21, 2005, was not "in transit," and was already reflected in the bank balance that the auditor was working from. Respondent claimed that the auditor incorrectly counted two checks that had been voided. However, no voided checks were reflected on the records examined by Evans on April 28, 2005. The trust records that Respondent submitted at the time of the hearing are different from the records that she provided to Evans at the time of the audit. (Answer; Testimony of Respondent; Respondent Exhibit A; Testimony of Jeff Evans)

#### CONCLUSIONS OF LAW

##### I. *The Violations*

###### A. *Applicable Law*

Iowa Code section 543B.29(3) and (10)(2005) provide, 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.

...

10. Noncompliance with trust account requirements under section 543B.46.

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.

8. Being unworthy or incompetent to act as a real estate broker...in such manner as to safeguard the interests of the public.

Iowa Code section 543B.46(4) (2005) provides, in relevant part:

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and 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 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.

193E IAC 13.1(6) provides, in relevant 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.

...

193E IAC 13.5 provides, in relevant part:

**193E-13.5(543B) File record keeping.** Every broker shall retain for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; and correspondence relating to each real estate transaction that the broker has handled and each property managed. **The records shall be made available for inspection by the commission, staff, and its authorized representatives at all times during usual business hours at the broker's regular place of business...**

(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.

B. Discussion

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to have her updated trust account records available for audit and by failing to maintain adequate and up-to-date trust account records, in compliance with Iowa Code

sections 543B.29(3) and 543B.34(7) and (8) (2005) and 193E IAC 13.1(6) and 13.5.

Respondent did not have all of her trust account records available for audit when the Commissioner's auditor arrived on April 27, 2005. This was not a case of being a few days behind in record keeping. The last entry in Respondent's general ledger was March 5, 2005, nearly two months prior to the auditor's visit and more than six weeks prior to Respondent's vacation. Real estate brokers have essential statutory and fiduciary obligations to maintain proper books and records, to properly account for the public's money, and to submit to audits. Given the number of real estate brokers in the state and the Commission's limited resources, it is imperative for all brokers to have their trust account records up-to-date and ready for audit.

In addition, when the auditor returned to Respondent's office to conduct the audit the following day, Respondent's general ledger was not in chronological order. The Respondent did not provide a monthly reconciliation of the general ledger balance, with the bank balance, and with the individual ledger accounts on a written worksheet. Respondent's unconventional record keeping made the audit process extremely difficult. The auditor was unable to reconcile the general ledger, individual ledgers, and the bank statements with the records provided by Respondent. The total of the individual ledgers were \$865.00 less than the journal total, and the reconciled bank total was \$1,080.70 less than the journal total. It was Respondent's responsibility to provide the auditor with all records necessary to the audit.

Respondent could not explain the audit discrepancies and her attempts to explain her trust account record keeping only added to the confusion and raised additional questions about the propriety of her trust account practices. While the Commission does not believe that Respondent intended to deceive anyone, her record keeping practices fall far short of the requirements set out in the Commission's statutes and rules.

## *II. Sanction*

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the trust account violations and their impact on the public. This is not the first disciplinary action taken against Respondent's license. 193E IAC 18.14(2). The Commission determined that the violations in this case could be

adequately addressed and the public could be protected by a one-year period of probation, subject to specific terms and conditions tailored to correct the deficiencies in Respondent's trust account record keeping.

ORDER

IT IS THEREFORE ORDERED that Respondent's Broker License (B31887) is hereby placed on PROBATION for a period of one year, subject to the following terms and conditions:

1. Respondent shall hire an Iowa licensed Certified Public Accountant (CPA), at Respondent's expense, to audit and to establish trust account records following Generally Accepted Accounting Principles. When completed, a copy of the trust account records shall be promptly submitted to the Commission. The CPA's audit report demonstrating Respondent's compliance with applicable standards, Iowa law, and Commission trust account rules must be submitted to the Commission within ninety (90) days of the issuance of this Decision and Order.

2. Respondent 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. A05-010. These hours shall be in addition to any real estate continuing education required by law for license renewal.

3. Respondent shall pay a civil penalty to the Commission in the amount of \$1,000 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. A05-010.


4. Upon successful completion of the one-year probationary period, Respondent's broker license will be restored without restrictions.

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 <sup>12<sup>th</sup></sup> day of January , 2006.

  
James E. Hughes, Chairperson  
Iowa Real Estate Commission

cc: Karol S. Leech  
Real Estate Depot  
214 S. Market Street  
Oskaloosa, IA 52577 (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.