

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:

CASE NO. 10-186

Gary M. Davis  
Broker (B03995)

Five Star GMAC Real Estate  
6533 Blondo Street  
Omaha, Nebraska 68104

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER**

RESPONDENT

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On January 5, 2011, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Gary M. Davis, licensed real estate broker, and Five Star GMAC Real Estate, (Respondent). The Statement of Charges alleged that Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1), 543B.47(6)(2009) and 193E IAC 18.2(5), 18.14(5)(s), and 19.6(5)&(6).

The hearing was held on November 17, 2011 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent Gary M. Davis appeared pro se by telephone. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson and public member; Gail Flagel, Broker member; Judy Stevens, Broker member; Dick Robert, Broker member; Susan Sanders, Salesperson; and Mike Telford, public member. Administrative Law Judge Robert H. Wheeler assisted the Commission in conducting the hearing. A certified court reporter, Kelli Mulcahy, recorded the proceedings. The hearing was open to the public at Respondent's election, pursuant to Iowa Code section 272C.6(1)(2011). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), 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 Notice of Hearing and Statement of Charges, the state's Prehearing Conference Report, the testimony of Jeff Evans and State Exhibits 1-7 (See Exhibit Index for description).

## FINDINGS OF FACT

1. On April 21, 1976, the Commission issued Iowa real estate broker license B03995 to Respondent Davis. Respondent's broker license has been in effect continuously since that time. Respondent's broker license is currently in full force and effect until January 1, 2012. Mr. Davis is the managing broker of the Respondent firm, Five Star GMAC Real Estate. The Commission issued Iowa real estate license F04938 to the Respondent firm on January 28, 2005. The Respondent firm's real estate license is currently in full force and effect until December 31, 2013. (Exhibit 2; Jeff Evans testimony)
2. On January 5, 2010, the Commission sent the Respondent firm a notice of its selection for audit and asked the firm to provide verification of errors and omissions insurance coverage within twenty calendar days. Neither the firm nor Mr. Davis responded to this letter. (Exhibit 4; Jeff Evans testimony)
3. On March 3, 2010, the Commission sent the Respondent firm a second notice of its selection for audit via certified mail and asked the firm to provide verification of errors and omissions insurance coverage within twenty calendar days. (Exhibit 5; Jeff Evans testimony).
4. Respondent Davis replied to the Commission's letter by fax on April 13, 2010 and provided a certificate of insurance as verification of errors and omissions insurance coverage the Respondent firm for the time period effective April 1, 2010. Respondent obtained the insurance on April 12, 2010 after receiving the Commission's audit notice. Respondent admitted that the firm did not have errors and omissions insurance coverage for the time period from January 1, 2010 through April 1, 2010. (Exhibits 5, 6; Jeff Evans, Respondent, testimony).
5. Respondent Davis testified that he did not understand the requirement for the firm to carry errors and omissions insurance when each individual broker maintains such insurance. Respondent Davis questioned the random nature of the audit and

speculated that the commission might be singling out Nebraska firms for scrutiny.  
(Respondent testimony)

#### CONCLUSIONS OF LAW

The legislature has directed the Commission to adopt rules requiring all real estate licensees, except those who hold inactive licenses, to carry errors and omissions insurance coverage for all activities contemplated by Iowa Code chapter 543B. The Commission's rules must require licensees to submit evidence of compliance with the insurance requirement within twenty calendar days of the Commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.<sup>1</sup> Failure of a licensee to carry the errors and omissions insurance required by Iowa Code section 543B.47, or to timely submit proof of coverage upon Commission request, shall be grounds for the denial of an application to renew a license or for the suspension or revocation of a license.<sup>2</sup>

By rule, the Commission is authorized to initiate disciplinary action against an active licensee for failure to maintain adequate insurance coverage or for failure to submit proof of insurance within twenty days of the Commission's request.<sup>3</sup>

The preponderance of the evidence established that Respondent firm failed to maintain the mandatory errors and omissions insurance from January 1, 2010 until April 1, 2010, even though the firm's license remained active during this time. Respondent's failure to maintain errors and omissions insurance is a violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5) and 19.6(6). The errors and omissions insurance requirement is for the protection of the public. Absent extraordinary mitigating circumstances, the Commission has imposed a \$1000 civil penalty for a licensee's failure to maintain the required errors and omissions insurance.

Respondent has not shown any extraordinary circumstance that merits a deviation from the Commission's established precedent. Respondent Davis bore responsibility to maintain Five Star GMAC Real Estate's errors and omissions insurance. The firm's error and omission insurance coverage lapsed, and the Respondent failed to comply with the applicable law.

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<sup>1</sup> Iowa Code section 543B.47(1)(2009).

<sup>2</sup> Iowa Code section 543B.47(6)(2009).

<sup>3</sup> 193E IAC 18.2(5), 19.6(6).

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondents Gary Davis and Five Star GMAC Real Estate shall pay a civil penalty of \$1,000 for failure to maintain errors and omissions insurance from January 1, 2010 through April 1, 2010, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1), 543B.47(6)(2009) and 193E IAC 18.2(5), 18.14(5)(s), and 19.6(5) & (6). Respondent shall pay the \$1000 civil penalty within thirty (30) days of receipt of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing, within thirty (30) days of receipt of this decision.

Dated this 12 day of DEC, 2011.



Laurie L. Dawley, Chair  
Iowa Real Estate Commission

cc: Gary M. Davis [CERTIFIED]  
John Lundquist, Assistant Attorney General (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.