

**BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA**

IN THE MATTER OF:)	CASE NO. A04-089
)	DIA NO. 05DOCRE001
JOSEPH J. SPARTZ)	
Broker (B02649))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
RESPONDENT)	DECISION AND ORDER

On February 2, 2005, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Joseph J. Spartz (Respondent). The Statement of Charges alleged that the Respondent engaged in practices involving his 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), 543B.46(4)(2003) and 193E IAC 13.1(6), 13.5, and 18.14(5)"e"(1), (2), and (3), by:

- a. failing to maintain adequate trust account records at all times, and
- b. failing to maintain the general ledger and individual ledgers to reflect current balances.

A Notice of Hearing scheduled a telephonic prehearing conference for April 8, 2005. The parties agreed to reschedule the telephonic prehearing conference to April 6, 2005 at 1:50 p.m.

The hearing was held on April 14, 2005 at 9:30 a.m. The Respondent, Joseph J. Spartz, appeared and was self-represented. Assistant Attorney General Pamela Griebel represented the state of Iowa. The following Commission members presided at hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; Patty Daniels, Salesperson; Laurie Dawley and James O'Neill, public members. Administrative Law Judge Margaret LaMarche assisted the Board 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; State Exhibits 1-6 and Respondent Exhibit A.

FINDINGS OF FACT

1. The Respondent is a Sole-Proprietor Broker in Osage, Iowa. His real estate broker license (B02649) was issued on September 26, 1968 and is in full force and effect through December 31, 2006. As of October 25, 2004, the Commission's records show five salespersons actively licensed and assigned to the Respondent as broker. (Testimony of Respondent; State Exhibits 1, 4)

2. The Commission employs Jeffrey Evans as a Trust Account Auditor. Jeffrey Evans has completed approximately 200 trust account audits for the Commission over the last two years. Eighty to ninety percent of the audits are unannounced. Sometime prior to conducting an audit, Evans mails the broker a questionnaire asking several questions related to the trust account and brokerage related activities, including the number of transactions the broker handled in the past year and the account balance in the broker's trust account. The questionnaire is typically the only notice provided of an impending audit.

On July 12, 2004, Jeffrey Evans went to the Respondent's place of business during regular business hours for the purpose of auditing the Respondent's trust account. Evans had completed two other audits in Osage, Iowa that day. From reviewing the Respondent's completed questionnaire, Evans knew that the Respondent had completed only 7-8 real estate transactions in the prior twelve months and had a trust account balance of approximately \$1000.

The Respondent's real estate business shares the same building as his spouse's jewelry store. The Respondent was present and working in a back office when Jeffrey Evans arrived. Evans identified himself and told the Respondent that he was there to audit his trust account records. The Respondent did not challenge Evans' authority to conduct an audit but was upset that Evans did not provide him prior notice of the audit. The

Respondent told Evans that his trust account records were not ready, and he did not have time for the audit. The Respondent did not give Evans any other explanation for his refusal to allow the audit.

Evans told the Respondent that it did not matter if the records were not up-to-date; if the Respondent just put him in a back corner with the records he could work through them and reconcile the account. The Respondent refused to let Jeffrey Evans audit his trust account records. This was the first time a broker had ever refused Evans' request to audit trust account records. Evans told the Respondent that he would report his refusal to the Commission. (Testimony of Jeffrey Evans; Respondent; State Exhibit 2)

3. In October 2004, the Respondent sent two letters to the Commission attempting to explain the refused audit. The Respondent told the Commission that when the auditor arrived, he had people waiting for him at his house, and he did not have the last months' entries in the records. The Respondent further explained that two cataracts prevented him from reading small print and maintaining his trust account records. The Respondent reported he would soon have surgeries on the cataracts. The Respondent claimed that the auditor did not give him a chance to explain, but the Commission believes that the auditor gave the Respondent ample opportunity to explain.

In his second letter, the Respondent reported that his first cataract surgery was successful, and his second cataract surgery was scheduled for November 10, 2004. The Respondent volunteered to bring his trust account records to Des Moines for an audit. (Testimony of Respondent; State Exhibit 3)

4. In November 2004, the Respondent brought his trust account records to an informal discussion with the Commission. Evans was present and reviewed the Respondent's trust account records. Evans helped the Respondent set up individual ledgers for broker's equity, broker's interest, and one transaction. The remainder of the records were in order, and Evans was able to reconcile the trust account. Evans could have accomplished the same thing on July 14, 2004, if the Respondent had only permitted Evans to audit the records. (Testimony of Jeffrey Evans; Respondent)

5. The Respondent admits that his trust account records were at least two months behind in July 2004. The Respondent also

admits that he refused to allow the audit on July 14, 2004.
(Testimony of Respondent)

6. Due to a history of health problems, the Respondent has completed relatively few real estate transactions in the past ten years. At the time of the refused audit, the Respondent had three salespersons licensed under his broker's license, but all were part-time and had very few transactions. Recently, one of the three salespersons passed away, and the Respondent has added two additional newly licensed salespersons. (Testimony of Respondent)

7. On March 3, 2005, the Respondent completed the eight-hour pre-broker course entitled "Iowa Real Estate Trust Accounts." (Testimony of Respondent; State Exhibit A)

CONCLUSIONS OF LAW

I. The Violations

A. Applicable Law

Iowa Code section 543B.29(3) and (10)(2003) 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 unethical conduct or 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)(2003) 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.

Iowa Code section 543B.46(4)(2003) 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)

B. Discussion

The preponderance of the evidence established that the Respondent engaged in a practice that is harmful or detrimental to the public by failing to make his trust account records available for audit by the Commission's auditor and by failing to maintain adequate and up-to-date trust account records. The Respondent violated Iowa Code sections 543B.29(3) and 543B.34(7) (2003) and 193E IAC 13.1(6) and 13.5.

The Respondent admits that he refused the audit of his trust account records on July 14, 2004. This is an extremely serious violation, which raises significant public protection and public policy concerns. The overriding purpose of chapter 543B and its delegation of authority to the commission is remedial in nature and intended to protect the public interest. Milholin v. Vorhies, 320 N.W.2d 552, 554 (Iowa 1982). 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 fully cooperate with the Commission's auditor.

II. Sanction

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the violation and its reflection upon the Respondent's ethical standards and professional conduct. The Commission also took into account the following mitigating factors: this is a first violation in a long career; the Respondent handled a relatively small number of transactions as a broker; and the Respondent's voluntary completion of additional continuing education specific to trust accounts. 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 stayed one-year suspension with terms and conditions of probation, which will allow ongoing monitoring of the Respondent's trust account.

ORDER

IT IS THEREFORE ORDERED that the Respondent's Broker License (B02649) is hereby **SUSPENDED** for a period of one (1) year, effective immediately upon issuance of this decision. **IT IS FURTHER ORDERED** that the one-year suspension is **IMMEDIATELY STAYED**, and the Respondent's broker license is placed on **PROBATION** for a period of one year, subject to the following terms and conditions:

1. The Respondent shall send a written report to the Commission's auditor by the tenth day of every month during the period of probation, listing every real estate transaction completed by the Respondent or his licensed salespersons in the prior month. The Respondent shall also report if there were no transactions in the prior month.

For each month where real estate transaction(s) are reported, the Respondent shall also provide copies of all relevant trust account records for the auditor's review. The records shall include individual and general ledgers and monthly reconciliation.

2. The Respondent shall complete the Commission approved eight-hour broker pre-license course entitled "Real Estate Office Organization" and shall submit the certificate of completion to the Commission office. The course must be

completion to the Commission office. The course must be completed and verification must be received before the expiration of the one-year period of probation. This course **may** be used for continuing education required for his license renewal. The Respondent **may not use** the "Iowa Real Estate Trust Accounts" Course that he completed in March 2005 (Exhibit A) for any real estate continuing education required for his license renewal.

3. If it is determined that the Respondent has failed to fully comply with the conditions of probation, the Commission may vacate the stay and impose the one-year license suspension. Upon successful completion of the one-year probationary period, the 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 the 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 26th day of MAY, 2005.


James E. Hughes, Chairperson
Iowa Real Estate Commission

cc: Joseph J. Spartz
528 Main Street
Osage, Iowa 50461 (CERTIFIED)

Pamela Griebel
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.

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

IN RE:)	
)	
)	CASE NUMBER: A04-089
JOSEPH J. SPARTZ)	
Broker (B02649))	STATEMENT
)	OF
528 Main Street)	CHARGES
OSAGE, IA 50461)	
)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (2003).

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

JOSEPH J. SPARTZ was at all material times during the following events, a Sole-Proprietor Broker in Osage, Iowa. His license, number B02649 was issued September 26, 1968, and is in full force and effect until December 31, 2006.

COUNT I

The Respondent is charged with engaging in practices involving his trust account which are harmful or detrimental to the public and failing to make records available to the Commission's auditor, in violation of Iowa Code sections 543B.29(3) (practice harmful or detrimental to the public), 543B.29(10), 543B.34(7), and 543B.46(4) (2003) and 193E--IAC sections), 13.1(6), 13.5(543B), and 18.14(5)(e)(1), (2) & (3), by the following:

- a. failing to maintain adequate trust account records at all times, .
- b. failing to maintain the general ledger and individual ledgers to reflect current balances.

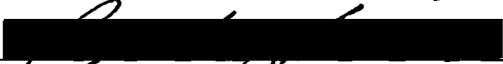
CIRCUMSTANCES OF THE COMPLAINT

1. On or about July 12, 2004, Auditor Jeff Evans attempted to conduct a trust account and compliance audit at the Respondent's regular place of business.
2. Respondent refused to make the records available for examination.
3. Respondent informed the auditor that he did not have time and that the books were not ready for an audit.

FINDING OF PROBABLE CAUSE

On September 16, 2004 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 2ND day of FEBRUARY, 2005.



Roger L. Hansen, Executive Officer
Iowa Real Estate Commission

Department of Commerce
Professional Licensing and Regulation Division
FILED 2/3/2005 (Date)
REAL ESTATE
Board/Commission
Roger L. Hansen
Signature, Executive Officer