

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 SE HULSIZER
ANKENY, IOWA

IN RE:)	
)	
MALINDA J. REES (S37956))	CASE NUMBER: 97-113
Salesperson)	STATEMENT OF
)	CHARGES
2714 25 TH Street)	
Sprit Lake, Iowa 510360)	

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1997).

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

MALINDA J. REES was at all material times during the following events, a licensed real estate salesperson license number S37956, associated with Okoboji Realty, Milford, Iowa, Larry Peterson, Broker. MALINDA J. REES is currently an inactive salesperson and has been since September 29, 1997.

COUNT I

The Respondent pled guilty in the Iowa District Court in and for Dickinson County on August 10, 1998, to two counts of forgery, in violation of Iowa Code sections 543B.29(5), 543B.29(8) (Willful and repeated violations), 435B.34(8) (Being unworthy to act as a real estate salesperson in such a manner as to safeguard the interests of the public), and 543B.34(11) (Conduct which demonstrates improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license) (1997).

CIRCUMSTANCES OF THE COMPLAINT

1. The Respondent was at all material times a licensed real estate salesperson.
2. On August 10, 1998, in Dickinson County District Court, Criminal No. FECRO 11076, the Respondent plead to two counts of forgery, committed on or about June 16, 1997 and September 29, 1997, in violation of Iowa Code section 715A.2 (1997).
3. On August 10, 1998, a guilty judgement was entered and the Respondent was committed to the custody to the Director of the Division of Adult Corrections, State of Iowa, for a term not to exceed 5 years. The serving of the sentence was suspended and she was committed to the custody and supervision of the Director of the Third Judicial District Department of Correctional Services to remain on probation for 2 years.

FINDING OF PROBABLE CAUSE

On December 11, 1997, 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.

Dated this 15th day of DECEMBER, 1998.


Roger L. Hansen, Executive Secretary
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 S.E. HULSIZER
ANKENY, IOWA

IN RE:)	DIA NO. 99DOCRE - 1
)	CASE NO. 97-113
MALINDA J. REES (S37956))	
Salesperson)	FINDINGS OF FACT,
)	CONCLUSIONS OF
2714 25th Street)	DECISION AND ORDER
Spirit Lake, Iowa 501360)	

On December 15, 1998, the Iowa Real Estate Commission (hereinafter Commission) filed a Statement of Charges against Malinda J. Rees, a licensed Iowa real estate person (hereinafter Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code sections 543B.29(5), 543B.29(8), 543B.34(8), and 543.34(11). A Notice of Hearing set the hearing for January 28, 1999 at 1:30 p.m.

The hearing was held on January 28, 1999 at 1:30 p.m. The following members of the Commission were present and participated in making the decision: Theresa Loffredo, Mark Odden, and Terry Rogers. The State was represented by Ms. Pam Griebel, Assistant Attorney General. The Respondent did not appear and was not represented by counsel. Daniel R. Render, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided.

The hearing was recorded by a certified court reporter. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(1997). After hearing the testimony and examining the exhibits, the Commission convened in open session, pursuant to Iowa Code section 21.5(1)(f)(1997) to deliberate their decision. The administrative law judge was instructed to draft the Findings of Fact, Conclusions of Law, Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, testimony of the witnesses, and the following exhibits:

- State Exhibit A: Proof of Sheriff's Service, December 18, 1998
- State Exhibit B: Complaint, October 20, 1997
- State Exhibit C: Letter to Respondent, November 4, 1997
- State Exhibit D: Letter from County Attorney, August 12, 1998, attaching Judgement Entry against the Respondent, August 10, 1998

State Exhibit E: Printout on status

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 272C, and 543B, as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. The Respondent is a licensed real estate broker, license number S37956. She was at all material times a licensed real estate salesperson..

3. The Respondent pled guilty in the Iowa District Court in and for Dickinson County, Criminal No. FECRO 11076 on August 10, 1998 to two counts of forgery, committed on or about June 16, 1997 and September 29, 1997, in violation of Iowa Code section 715.2(1997).

4. On August 10, 1998, a guilty plea was entered and the Respondent was committed to the custody to the Director of the Division of Adult Corrections, State of Iowa, for a term not to exceed 5 years. The serving of the sentence was suspended and she was committed to the custody and supervision of the Director of the Third Judicial District Department of Correctional Services to remain on probation for 2 years.

5. Iowa Code section 543B.29(5) reads:

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:

. . . 5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

6. Iowa Code section 543B.29(8) reads:

. . . 8. Willful or repeated violations of the provisions of this Act. . .

7. Iowa Code section 543B.34(8)(11) reads:

Investigations by commission.

The real estate commission may upon its own motion and shall upon the 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 any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, 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 to be guilty of any of the following:

. . . 8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interest of the public. . . 11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

CONCLUSIONS OF LAW

FAILURE TO APPEAR

1. 193E IAC 4.16 provides in relevant part that a written notice of hearing, together with a statement of the charges, shall be mailed to the licensee at least 20 days before the hearing by certified mail, return receipt requested, to the last known business address of the licensee. The preponderance of the evidence established that the Respondent was properly served with the notice of hearing and statement of charges.

193E IAC 4.25 provides that if a respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the commission or administrative law judge may proceed to conduct the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if she were present. The Respondent failed to appear after proper notice, and she is bound by this decision of the Board to the same extent as if she had appeared.

DECISION AND ORDER

IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the broker license of MALINDA J. REES, No. S37956, is hereby REVOKED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to 193E IAC 2.13(1)"c"(5), that if the Respondent applies for reinstatement of her license and reinstatement is granted by the Board, that she shall be required to pay a reinstatement fee of \$1,000.00.

Issued this 22nd day of APRIL, 1999.


Terry Rogers
Chairperson
Iowa Real Estate Commission

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. 193E IAC 4.35.

