

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

---

IN RE:	)	
	)	
EMIL J. WILLER	)	CASE NUMBER: 94-153
Broker (B03020)	)	
	)	STATEMENT OF CHARGES
330 Reed Street	)	
P O Box 25	)	
Akron, Iowa 51001	)	
	)	

---

The Iowa Real Estate Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B, and 272C (1993).

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

EMIL J. WILLER was at all material times during the following events, a licensed real estate sole-proprietor broker in Akron, Iowa. His license number is B03020.

COUNT I

The Respondent is charged with engaging in practice that is harmful or detrimental to the public by failing to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.47, 543B.29(3), (8), and (9), 543B.34(8) and (11) (1993) and Iowa Administrative Code Chapter 193E sections 2.15(7), 6.1, 6.2(1), 6.2(8), 4.40(4)(f) and 4.40(19).

COUNT II

The Respondent is charged with failing to provide information requested by the commission as a result of a complaint, in violation of Iowa Code sections 543B.34(8), (10) and (11) (1993).

COUNT III

The Respondent is charged with engaging in a practice harmful or detrimental to the public by failing, after notification, to deliver or mail by certified mail to the commission office, a license that has been involuntarily placed on inactive status, in violation of Iowa Code sections 543 B .29(3) and (6), 543B.34(1), (8), (10), and (11) (1993) and Iowa Administrative Code Chapter 193E sections 2.15(8), 4.40(1), 4.40(3)(b)1.20 and 1.27(7).

CIRCUMSTANCES OF THE COMPLAINT

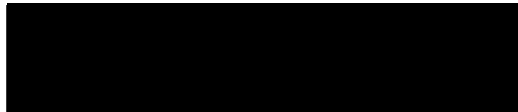
1. Commission records indicate that Respondent has not been in compliance with the errors and omissions insurance requirement since January 1, 1994.
2. Respondent failed to comply with the requirement and did not respond to computer generated letter providing lapse notification.
3. Respondent failed to comply and failed to respond to additional follow-up notifications from insurance coordinator.
4. On November 18, 1994, the Respondent signed for a certified letter from the commission dated November 16, 1994, requesting the return of his broker license, advising that his license is on inactive status, and requesting information relating to this complaint.
5. The Respondent has failed to comply with the insurance requirement, failed to return his broker license, and failed to provide information requested relating to this complaint.

94-153

FINDING OF PROBABLE CAUSE

On January 25, 1995 , 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 22<sup>ND</sup> day of FEBRUARY, 1995.



Roger L. Hansen  
Executive Secretary  
Iowa Real Estate Commission

cc: Pam Griebel, Assistant Attorney General  
Respondent

94-153

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

---

IN THE MATTER OF:	)	CASE NUMBER: 94-153
	)	DIA NUMBER: 95DOCRE003
EMIL J. WILLER,	)	
Broker, (B03020)	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
330 Reed Street	)	DECISION AND ORDER
PO Box 25	)	OF THE COMMISSION
Akron, Iowa 51001	)	

---

On February 22, 1995, the Iowa Real Estate Commission (Commission) found probable cause to file a statement of charges against Emil J. Willer (Respondent). The statement of charges alleged the following counts:

- (I) that the Respondent has engaged in a practice that is harmful or detrimental to the public by failing to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.47, 543B.29(3), (8), and (9), 543B.34(8) and (11) and Iowa Administrative Code chapter 193E, sections 2.15(7), 6.1, 6.2(1), 6.2(8), 4.40(4)(f) and 4.40(19).
- (II) that the Respondent failed to provide information requested by the Commission as a result of a complaint, in violation of Iowa Code sections 543B.34(8), (10) and (11), and
- (III) that the Respondent engaged in a practice harmful or detrimental to the public by failing, after notification, to deliver or mail to the commission office, a license that had been involuntarily placed on inactive status, in violation of Iowa Code sections 543B.29(3) and (6), 543B.34(1), (8), (10), and (11) and Iowa Administrative Code chapter 193E, sections 2.15(8), 4.40(1), 4.40(3)(b), 1.20 and 1.27(7).

A hearing was scheduled for April 12, 1995. The Respondent filed no answer to the statement of charges. The Respondent did not appear for the hearing. Assistant Attorney General Pam Griebel represented the public interest. The hearing was opened by Theresa Loffredo, who acted as chair for the hearing. Other Commission members present were Jerry Duggan, Russ Nading, Jack Knapp, and Evelyn Rank. Administrative Law Judge William Stansbery assisted with the conduct of the hearing. Testimony was taken from Commission staff members Donna Graves and Roger Hansen. Exhibits were received into evidence. The proceedings were recorded by a certified court reporter.

94-153

After deliberating in closed session, the Commission directed the administrative law judge to prepare its Findings of Fact, Conclusions of Law, and Decision and Order.

#### THE RECORD

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

- State Exhibit A: Certified mail return receipt related to delivery of notice of hearing
- State Exhibit B: Letter from Roger Hansen to the Respondent, dated 11/16/94
- State Exhibit C: Certified mail return receipt related to Roger Hansen's letter of 11/16/94
- State Exhibit D: Computer printout with information about the Respondent's license
- State Exhibit E: Documents from the South Dakota Real Estate Commission concerning the Respondent's South Dakota real estate broker's license

#### FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Commission has licensed the Respondent as a real estate broker with license number B03020.
2. Before January 1, 1994, the Respondent was covered by an individual policy for errors and omissions insurance. The Respondent's errors and omissions insurance lapsed on January 1, 1994.
3. The Respondent did not respond to a computer-generated notice regarding the lapse in insurance coverage.
4. The Respondent did not respond to notifications from an insurance coordinator on the staff of the Commission.
5. On November 16, 1994, the executive secretary for the Commission sent the Respondent a letter, by certified mail, concerning the Respondent's failure to maintain errors and omissions insurance and the Respondent's failure to respond to prior notices. The letter stated that the Commission had opened a complaint case on the Respondent. The letter informed the

Respondent that the Respondent's license had been involuntarily placed on inactive status since February 2, 1994, and that the Respondent had been prohibited from engaging in any practice which required a license. The letter requested that the Respondent forward his broker's license to the Commission's office and informed the Respondent that a failure to return the license would be a violation of a rule of the Commission. The letter requested that the Respondent provide a list of real estate transactions that he had been involved in since January 1, 1994, and requested an explanation of why the Respondent had not complied with the errors and omissions insurance requirement and why the Respondent had not responded to prior notices. The letter was received by the Respondent on November 18, 1994. The Respondent did not respond to that letter.

6. On February 22, 1995, the Commission sent to the Respondent a notice of the hearing that was scheduled for April 12, 1995. A certified mail return receipt shows that the notice was received by the Respondent on February 28, 1995.

7. On March 23, 1995, the Respondent provided proof to the Commission staff that his errors and omissions insurance had been reinstated.

8. From January 1, 1994, when the errors and omissions insurance lapsed, until March 23, 1995, the Respondent made no communication to the Commission or the Commission staff.

#### CONCLUSIONS OF LAW

1. Iowa Code chapter 543B (1995) regulates real estate brokers and real estate salespeople. Section 543B.1 requires that a person be licensed before acting as a real estate broker or a real estate salesperson. Section 543B.8 provides for a five-person real estate commission. Section 543B.9 gives the real estate commission authority to adopt rules to administer chapter 543B. Sections 543B.29 and 543B.34 set out grounds for suspension or revocation of a license. Section 543B.35 provides for a hearing before discipline is imposed.

2. Iowa Code section 543B.35 and 193E Iowa Administrative Code (IAC) 4.16 require that the notice of hearing be personally served on the licensee or that notice be sent by certified mail, return receipt requested.

In this case, notice of hearing was sent by certified mail. The certified mail return receipt shows that the notice was received by the Respondent. The notice of hearing satisfied the requirements of the statute and the rule.

3. Iowa Code section 543B.47(1) requires that the Commission adopt rules that require that all active licensees carry errors and omissions insurance. The introductory paragraph of 193E IAC 6.1 reads as follows:

**Insurance requirement -- general.** As a condition of licensure under Iowa Code chapter 543B, all real estate licensees shall submit evidence of compliance with the mandatory errors and omissions insurance requirement.

193E IAC 6.1(5) provides that a licensee may obtain errors and omissions coverage on a group policy basis through an insurance carrier approved by the Commission. 193 IAC 6.2 allows a licensee to obtain errors and omissions insurance independently of the group coverage.

193E IAC 2.15(7) and 6.2(8) require a licensee with individual coverage to notify the Commission of changes in insurance status.

The Respondent violated the rules on errors and omissions insurance by failing to maintain coverage and failing to notify the Commission of his lapse in coverage.

4. 193E IAC 2.15(8) requires a licensee to deliver or mail the license to the Commission's office within 72 hours of notification that the license is inactive.

The Respondent violated this rule by failing to return his license to the Commission within 72 hours of receipt of the November 16, 1994, letter from the executive secretary.

5. Iowa Code section 543B.29 reads, in part, as follows:

A license to practice the profession of real estate broker or 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.

• • •

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

9. Noncompliance with insurance requirements under section 543B.47. . . .

The Respondent's failure to maintain errors and omissions insurance coverage and failure to return his license to the Commission was a practice which was harmful or detrimental to the public. His license may be revoked or suspended under section 543B.29(3).

The Respondent's failure to maintain errors and omissions insurance coverage after receiving notices about the lack of coverage was a willful violation of the statutory requirement of insurance coverage. His license may be revoked or suspended under section 543B.29(8).

The Respondent's license may be revoked or suspended under section 543B.29(9) for noncompliance with the insurance requirements of section 543B.47.

6. Iowa Code section 543B.34 provides in relevant part:

**543.34 Investigations by commission**

The real estate commission . . . may suspend or revoke a license issued under this chapter at any time . . . 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 interests of the public.

• • •

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter. . . .

The Respondent's failure to maintain errors and omissions insurance coverage, his failure to respond to notices and requests for information from the Commission, and his failure to return his license to the Commission made him incompetent to act as a real estate broker in such a manner as to safeguard the interests of the public. His license may be suspended or revoked under section 543B.34(8).

The Respondent's failure to provide information to the Commission in response to the November 16, 1994, letter from the executive director is a basis for suspension or revocation under section 543B.34(10).

7. The Commission concludes that allegations in Count I of the Statement of Charges have been substantiated, in that the Respondent's failure to maintain errors and omissions insurance was a violation of Iowa Code sections 543B.47, 543B.29(3), 543B.29(8), 543B.29(9) and 543B.34(8), and was also a violation of 193E IAC 2.15(7), 6.1, and 6.2(8).

8. The Commission concludes that allegations in Count II of the Statement of Charges have been substantiated, in that the Respondent's failure to provide information to the Commission violated Iowa Code sections 543B.34(8) and 543.34(10).



9. The Commission concludes that allegations in Count III of the Statement of Charges have been substantiated, in that the Respondent's failure to return his license was a violation of Iowa Code sections 543B.29(3) and 543B.34(8), and was also a violation of 193E IAC 2.15(8).

10. 193E IAC 4.2 reads as follows:

**Method of Discipline.** The Iowa Real Estate Commission has authority to impose, after proper procedures have been initiated and followed, the following disciplinary penalties:

1. Revocation of license.
2. Suspension of license until further order of the commission or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of the commission or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require or order a physical or mental examination.
8. Issue citation, warning or reprimand.
9. Impose civil penalties not to exceed \$1,000.
10. Such other sanctions allowed by law as may be appropriate, or any combination of the above penalties as the commission may choose.

193E IAC 4.3 reads as follows:

**Discretion of Commission.** The following factors are among those which may be considered by the commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.
7. The impact of a particular activity upon the public.

193E IAC 2.13(1) allows the Commission to set a reinstatement fee of not less than \$25 nor more than \$1,000.

193 IAC 4.41 allows the assessment of hearing costs of up to \$75. It also allows the assessment of other costs, including the costs of preparation of any transcript.

DECISION AND ORDER

The Respondent's failure to maintain errors and omissions insurance is a very serious violation. Those with whom he had dealings as a real estate broker when he was not covered by insurance could have suffered harm, and perhaps did suffer harm, resulting from the lapse of insurance coverage.

The Respondent's failure to respond to inquiries from the Commission and his failure to return his license are also very serious violations. The integrity of the licensing system requires that the licensee respond to inquiries and follow directives from the Commission.

The Respondent's belated proof of reinstatement of the insurance does little to mitigate the seriousness of the violations. Those who were unprotected by insurance before the reinstatement remain unprotected. The belated proof of reinstatement does not excuse the Respondent's failure to respond to the Commission's inquiries and directives.

After considering the factors set out at 193E IAC 4.3, the Commission finds that a severe penalty should be imposed.

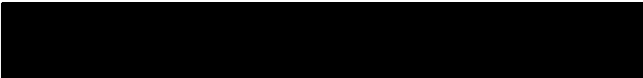
IT IS THEREFORE THE ORDER OF THE IOWA REAL ESTATE COMMISSION that the real estate broker license of Emil J. Miller, No. B03020, is hereby REVOKED, effective upon service of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent shall, immediately upon receipt of this Decision and Order, return his license to the Commission's office.

IT IS FURTHER ORDERED, pursuant to 193E IAC 2.13(1)"c"(5), that if the Respondent applies for reinstatement of his license and reinstatement is granted by the Commission, then he shall be required to pay a reinstatement fee of \$1000.00.

IT IS FURTHER ORDERED, pursuant to 193E IAC 4.41, that the Respondent shall pay \$75.00 for costs associated with conducting the disciplinary hearing, within thirty (30) days of the date of this Decision and Order. In addition, the Executive Secretary shall bill the Respondent for any transcript costs associated with this hearing, and the Respondent shall remit payment within thirty (30) days of receipt of the bill.

Issued this 1st day of June, 1995.

  
Theresa Loffredo  
Vice-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.