

DEPARTMENT OF COMMERCE
PROFESSIONAL LICENSING DIVISION
1918 S.E. HULSIZER AVENUE
ANKENY, IOWA

IOWA REAL ESTATE COMMISSION)	
Complainant)	CASE NUMBER 89-019
vs.)	
WILLIAM L. SIRES)	FINDINGS OF FACT,
(B23212))	CONCLUSIONS OF LAW,
Broker-Respondent)	DECISION AND ORDER

On November 21, 1989 the Iowa Real Estate Commission (hereinafter Commission) filed a complaint against William L. Sires, a licensed Iowa real estate broker (hereinafter Respondent). The complaint alleged specific acts and alleged these acts constituted a violation of Iowa Code Sections 117.29(1), 117.29(5) and 117.34(11).

On March 22, 1990 the Commission conducted a hearing to determine whether disciplinary action should be imposed against the Iowa real estate license of the Respondent.

The proceedings were conducted by Jenny J. Flaherty, Administrative Law Judge, Department of Inspections and Appeals and heard by Commissioners Joe Ann Lutz, Jerry Duggan, Marlys Nielsen and Robert Christensen. The Iowa Real Estate Commission was represented by John Parmeter, Assistant Attorney General. The Respondent appeared at the hearing pro se. A full presentation of facts was made by both parties. The Administrative Law Judge was instructed by the Commission to prepare the Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

The Iowa Real Estate Commission finds as follows:

1. The Iowa Real Estate Commission has jurisdiction of this matter under Iowa Code chapter 17A, 117, and 258A (1989) as well as the administrative rules found in chapter 193E of the Iowa Administrative Code.
2. The Respondent has been at all times relevant to the matters contained herein licensed as an Iowa real estate broker.
3. The Respondent entered a plea of guilty to the charge of fraudulent practice in the second degree in Iowa District Court for Black Hawk County on October 21, 1988 (case number D7X013761,

a class D felony); the Respondent submitted a false claim for restitution to an insurance company.

4. The Respondent submitted an application for an Iowa real estate broker license signed on January 26, 1986 and notarized on April 17, 1986; the license was issued on April 18, 1986.

5. Question No. 14 on the application for license asks the applicant if "you have ever been convicted of any criminal offense or are there any criminal charges now pending against you (other than minor traffic violations)? The Respondent answered "N" (for "no") to this question.

6. Court records in Iowa District Court for Black Hawk County show that the Respondent was found guilty of assault on January 7, 1982 from an incident on or about May 30, 1981. (Case number SA13381).

7. Court records in Iowa District Court for Black Hawk County show that the Respondent plead guilty to OWI on January 15, 1982 from an incident on or about October 27, 1981. (Case number SA14416).

8. Court records in Iowa District Court for Black Hawk County show that the Respondent was arrested for an incident on or about March 13, 1986 for solicitation, a class D felony (case number D7X007094). The Respondent was found guilty on March 31, 1987.

9. The Respondent testified that he erred by not reviewing his application and carelessly omitting the court information but that he has not harmed the public; the state did not dispute the Respondent's statement of careless omission or lack of harm to the public.

CONCLUSIONS OF LAW

Iowa Code Section 117.29 (1989) states:

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:

1. Fraud in procuring a license . . .
5. Conviction of a felony related to the profession or occupation of the licensee or conviction of a felony that would affect the licensee's ability to practice the profession of real estate broker and salesperson. A copy of the record of conviction or plea of guilty is conclusive evidence.

Iowa Code Section 117.34 (1989) states:

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 the department of inspections and appeals 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:

11. Any other conduct, whether of the same or different character from that hereinbefore specified, or demonstrates such bad faith, improper, fraudulent, or dishonest dealings as would have disqualified the licensee from securing a license under this chapter. (emphasis added).

There is no dispute that the Respondent submitted an application for an Iowa real estate broker license and failed to disclose an assault charge and conviction, an OWI charge conviction, and a solicitation charge. The Respondent admitted that, due to personal problems, he failed to review the application. He admitted he is at fault for not including the aforementioned court records but the omission of this information has not resulted in direct harm to the public.

The Commission finds that falsifying an application is a serious offense and does not condone the Respondent's omission of this information, whether intentional or unintentional, as acceptable conduct becoming that of a real estate licensee. The omission of court information resulted in the Respondent fraudulently obtaining a real estate license.

It is recognized that the Respondent has possessed a real estate broker license since 1986.

By failing to disclose criminal convictions on an application for an Iowa real estate broker license, the Commission finds that the Respondent violated Iowa Code Sections 117.29(1) and 117.34.

Although the Respondent was found guilty of submitting a false insurance claim, there has been no showing as to how this has impacted on the Respondent's ability to practice as a licensed Iowa real estate broker. The Commission finds the Respondent is not in violation of Iowa Code Section 117.29(5).

DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Commission finds that the Respondent violated Iowa Code Sections 117.29(1) and 117.34.

It is therefore ORDERED by the Iowa Real Estate Commission that the Iowa real estate broker license of the Respondent be SUSPENDED for one (1) year, effective on the date of this decision, for failure to disclose criminal convictions on the April 1986 application for an Iowa real estate broker license.

Executed this 17th day of May, 1990.

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E. JOE ANN LUTZ, CHAIR
Iowa Real Estate Commission

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JENNY J. FLAHERTY
Administrative Law Judge

Issued this 30th day of May, 1990.

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K. MARIE THAYER
Administrator
Professional Licensing Division

JJF/jmm

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on May 30, 1990

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