

State of Iowa  
Before the Iowa Real Estate Commission

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In the Matter of:	)	Case No. 10-456
	)	DIA No. 10DOCRE015
Robert K. Miell,	)	
Broker No. B05597	)	
	)	
Iowa County Jail	)	
960 Franklyn Avenue	)	<b>Findings of Fact, Conclusions</b>
Marengo, Iowa 52301	)	<b>of Law, and Order</b>

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This matter concerns a notice of hearing and statement of charges filed on December 28, 2010. The matter was held before the Iowa Real Estate Commission (the Commission) on January 21, 2011. The following board members were present: James O’Neill, Dan Berry, Judy Stevens, and Dick Robert. Jeffrey Farrell, an administrative law judge, assisted the commission. The hearing was closed to the public pursuant to the request of the licensee.<sup>1</sup>

John Lundquist, an assistant attorney general, represented the public interest. The State’s exhibits 1-8 were admitted into the record. The State called Jeff Evans as a witness. Robert Miell represented himself. Respondent testified at the hearing.

After hearing the evidence, the Commission moved into closed session to consider a decision. The Commission returned to closed session and directed the administrative law judge to draft a decision consistent with its deliberations.

**FINDINGS OF FACT**

Respondent Robert Miell has been a licensed real estate broker in Iowa since 1978. On November 11, 2007, the United States filed an indictment charging Respondent with a number of crimes. The indictment was amended and ultimately resulted in a third superseding indictment that was filed on October 21, 2008. The third superseding indictment charged Respondent with 23 separate crimes: Counts 1 through 18 concerned mail fraud, Counts 19 through 21 concerned perjury, Counts 22 through 23 concerned filing false tax returns. (Exhibits 3, 6; Evans testimony).

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<sup>1</sup> See Iowa Code section 272C.6(1).

More specifically, Counts 1 through 6 of the indictment alleged that Respondent defrauded an insurance company by falsely reporting he had paid for roof repairs on hail-damaged properties. Counts 7 through 20 alleged Respondent defrauded tenants of rental properties by falsely reporting damages to rental property for the purpose of retaining damage deposits. Count 19 alleged perjury during a deposition in a civil lawsuit by the insurance company referred to in Counts 1 through 6. Counts 20 and 21 alleged perjury during the trial of the lawsuit filed by the insurance company. Counts 22 and 23 alleged that Respondent failed to report the income received from the insurance company on tax returns. (Exhibit 3).

On January 3, 2009, Respondent pled guilty to Counts 1 through 20. The prosecution dismissed count 21. Respondent proceeded to trial on Counts 22 and 23. On January 9, 2009, a jury reached a verdict finding Respondent guilty on both counts. On September 27, 2010, the Court sentenced Respondent to concurrent sentences of 240 months of imprisonment. (Exhibits 4-6).

On December 28, 2010, the Commission filed a statement of charges against Respondent. The Commission alleged two counts: 1) being convicted of crimes involving obtaining money under false pretenses, theft, or other similar offenses, or offenses involving moral turpitude; and 2) failing to notify the Commission of a conviction of a reportable criminal offense within ten days. At hearing, the State's attorney voluntarily dismissed count 2. (Exhibit 2).

At hearing, Respondent denied culpability for all of the criminal offenses.<sup>2</sup> He claimed that he was coerced by his attorneys to enter his guilty plea on Counts 1-20. Respondent claimed that he attempted to withdraw his plea on January 5, 2010. The Court's sentencing order shows that Respondent filed a motion to withdraw his plea on March 11, 2010. The Court denied that motion on May 10, 2010. Respondent referred to his federal trial on Counts 22 and 23 as a "mock trial" similar to the trial given to Jesus Christ. He proclaimed innocence of all charges. He acknowledged that the Commission was obligated to take action based on the convictions, but argued that the Commission should suspend his license pending resolution of his appeal to the federal court of appeals. (Respondent testimony).

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<sup>2</sup> Respondent's failure to accept responsibility is consistent with the findings of the federal court which, in discussing whether to employ variances in his sentence, cited Respondent's "exceptional denial of responsibility." (Exhibit 6, p. 98).

### CONCLUSIONS OF LAW

The Iowa Real Estate Commission was created to monitor and regulate the real estate profession in the State of Iowa.<sup>3</sup> The Commission regulates the profession, in part, by granting and imposing discipline on the licenses of real estate brokers.<sup>4</sup>

The Commission is authorized to revoke or suspend a license to practice when a broker has been convicted of an offense classified as a felony, or an offense involving obtaining money under false pretenses, theft, conspiracy to defraud, or other similar offense, or any offense involving moral turpitude.<sup>5</sup> The Commission may adopt rules to carry out and administer the provisions of its governing statute.<sup>6</sup> The regulations define “moral turpitude,” in part, as “conduct that is contrary to justice, honesty and good morals.”<sup>7</sup>

Respondent’s convictions clearly fit within the class of offenses that are prohibited by the statute. Counts 1 through 18 concern acts to obtain money through fraud and fraudulent pretenses and representations. The perjury and false tax return convictions are crimes involving moral turpitude, as they directly implicate Respondent’s honesty and good morals. Any of the 22 counts for which Respondent was convicted would individually serve as a basis to take action against his license. The 22 counts together constitute overwhelming evidence of failure to abide by the standards governing real estate brokers.

### SANCTION

The Commission may impose a variety of sanctions, including license revocation, suspension, or probation, or requiring professional education, civil penalties, or issuing a citation and warning.<sup>8</sup> Respondent argued that a license suspension would be appropriate pending the appeal of his convictions. The Commission disagrees. The State’s evidence shows a course of conduct that took place over a lengthy period of time and involved a number of victims. The conduct resulted in a federal prosecution of 23 separate criminal counts. The government obtained convictions on all but one of those counts. The Court sentenced Respondent to 240 months in prison, the statutory maximum under the federal sentencing guidelines. If there was ever a case that cried out for revocation, this is it.

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3 Iowa Code sections 543B.8, 543.18.

4 Iowa Code section 543B.15-20.

5 Iowa Code section 543B.29(1)(f), *incorporating by reference* section 543B.15(3)(a).

6 Iowa Code section 543B.9.

7 193E IAC 2.1.

8 Iowa Code section 272C.3(2).

In the event Respondent obtains a reversal of his convictions, he is free to file an application for reinstatement with the Commission. Additionally, Respondent can apply for reinstatement following his release from prison. The Commission will make a decision on any application for reinstatement based on the evidence presented at that time.

**ORDER**

The Iowa Real Estate Commission hereby revokes the real estate broker license of Robert K. Miell. The Commission also assesses Respondent a fee of \$75.00 for costs associated with conducting the disciplinary hearing.<sup>9</sup> In addition, the executive officer of the board may bill Mr. Miell for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Mr. Miell shall remit payment for these expenses within thirty days of receipt of the bill.

Dated this 17<sup>th</sup> day of February, 2011.



Board Member, Iowa Real Estate Commission

cc: AGO – John Lundquist  
Commerce – David Batts  
Respondent  
ALJ – Jeff Farrell

**Notice**

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act. 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.<sup>10</sup>

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<sup>9</sup> See Iowa Code section 272C.6(6).  
<sup>10</sup> 193 IAC 7.37.