

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 10-418
)	DIA NOS. 11REC003
Ardith E. Miller)	
Broker (B23318))	
)	FINDINGS OF FACT,
Wild Kingdom Financial Services)	CONCLUSIONS OF LAW,
304 Gilbert)	DECISION AND ORDER
Charles City, Iowa 50616)	

On March 17, 2011, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Ardith Miller (Respondent). The Statement of Charges alleged that Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1) and (6) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(5) & (6).

A telephone prehearing conference was held on May 18, 2011. The hearing was held on May 26, 2011. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent Ardith E. Miller was represented by attorney Judith O'Donohue. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson and public member; Dick Robert, Broker; Gail Flagel, Broker; Judy Stevens, Broker; Robert Broomfield, Salesperson; Susan J. Sanders, Salesperson; and Michael Telford, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2011). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), 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 Jeff Evans and Ardith Miller; and State Exhibits 1-9 (See Exhibit Index for description).

FINDINGS OF FACT

1. The Commission issued Respondent Iowa real estate broker license B23318 on January 1, 1996, and it is in full force and effect until December 31, 2013. (State Exhibit 3) Respondent was initially licensed by the Commission as a real estate salesperson in 1983. (Testimony of Respondent).

2. Prior to January 1, 2010, Respondent consistently maintained the mandatory errors and omissions (E & O) insurance required by state statute and administrative rules. Respondent customarily renews her policy and pays the annual premium in December. In November or December 2009, Respondent received the notice to renew her E & O policy by January 1, 2010, but she forgot to pay the premium. When the Commission asked Respondent if there why she did not pay it on time, Respondent responded that her husband had been ill and spent six weeks in Rochester. (Testimony of Respondent)

3. In late January 2010, Respondent became aware that she had failed to pay the 2010 premium for her E & O insurance policy. Respondent contacted her insurer, Rice Insurance Services Company, LLC (Rice) and paid the premium on January 25, 2010. Rice issued Respondent a Certificate of Coverage for Real Estate Licensee's Errors & Omissions Insurance for the period from January 1, 2010 to January 1, 2011.

The Certificate of Coverage includes the following statement:

The policy referenced above is a CLAIMS MADE AND REPORTED POLICY. A Claim must be reported in writing to the Company as soon as possible after the Claim is first made but in no event more than ninety (90) days after the insured became aware of such Claim. The Claim must be made and reported during the policy period or during the Extended Reporting Period in order to qualify for coverage. A Claim is written demand for money or services received by the insured or service of lawsuit or institution of

arbitration or mediation proceedings against the Insured, seeking Damages and alleging a negligent act, error or omission in the performance of Professional Services.

(Testimony of Jeff Evans; Respondent; State Exhibit 6)

4. In August 2010, Respondent was selected for a random audit to verify her compliance with the required errors and omissions insurance coverage for 2010. The Commission sent Respondent an audit notice on August 20, 2010 and asked her to provide verification of insurance coverage within twenty calendar days. On September 13, 2010, Respondent provided her 2010 Certificate of Insurance Coverage to the Commission. (Testimony of Jeff Evans; State Exhibits 5, 6)

5. In an email dated September 14, 2010, Rice verified that Respondent purchased her 2010 E & O insurance online on January 25, 2010. Board investigator Jeff Evans has spoken to Rice's CEO on several occasions. In these conversations the CEO has verified that if a claim had been filed against Respondent between January 1 and January 24, 2010, prior to her payment of the premium, it would not have been covered. After the premium was paid and no claim had been filed, Respondent was provided E & O insurance coverage retroactive to January 1, 2010. Mr. Evans has seen forms provided by Rice which remind its insureds to always pay premiums on time to avoid an interruption in coverage and avoid uncovered claims. (Testimony of Jeff Evans; State Exhibit 7)

6. Respondent was working as a real estate broker throughout January 2010. (Testimony of Respondent)

7. Absent extraordinary personal circumstances, the Commission has consistently imposed a \$1000 civil penalty on licensees who fail to maintain uninterrupted E & O insurance coverage. (Testimony of Jeff Evans)

CONCLUSIONS OF LAW

The legislature has directed the Commission to adopt rules requiring all real estate licensees, except those who hold inactive licenses, to carry errors and omissions insurance coverage for all activities contemplated by Iowa Code chapter 543B. The rules shall require licensees to submit evidence of compliance with the insurance requirement within twenty calendar days of the

Commission's request.¹ Failure of a licensee to carry the errors and omissions insurance required by Iowa Code section 543B.47, or to timely submit proof of coverage upon Commission request, shall be grounds for the denial of an application to renew a license or for the suspension or revocation of a license.²

By rule, the Commission is authorized to initiate disciplinary action against an active licensee for failure to maintain adequate insurance coverage or for failure to submit proof of insurance to the Commission within twenty days of their request.³ A licensee is required to carry insurance on an *uninterrupted* basis and may not avoid discipline simply by acquiring insurance after receipt of an audit notice.⁴

The preponderance of the evidence established that Respondent failed to maintain uninterrupted errors and omissions insurance coverage for 24 days in January 2010, in violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5) and 19.6(5) and (6). It is true that Respondent discovered this oversight on her own, paid her premium on January 25, 2010, and then received a certificate of coverage for the period from January 1, 2010 until January 1, 2011. However, the public was still placed at risk by Respondent's actions. The preponderance of the evidence in this record established that the insurance company would have denied any claim filed against Respondent between January 1 and January 24, 2010, prior to her payment of the premium.

Respondent's attorney argued that the insurance company would have been legally obligated to cover any claim filed between January 1 and January 24, so long as Respondent paid her premium during the month of January, even if the claim was filed before the premium was paid. However, Respondent did not submit any evidence to support this argument, and the argument was refuted by Jeff Evans' credible testimony. In addition, Respondent failed to present any compelling personal circumstances justifying waiver or mitigation of the \$1,000 penalty typically imposed for this type of violation.

¹ Iowa Code section 543B.47(1)(2009).

² Iowa Code section 543B.47(6)(2009).

³ 193E IAC 18.2(5), 19.6(6).

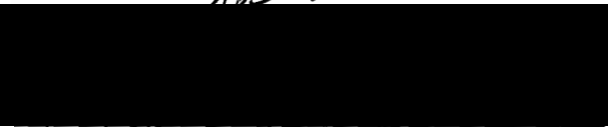
⁴ 193E IAC 19.6(5).

ORDER

IT IS THEREFORE ORDERED, that for failure to maintain uninterrupted errors and omissions insurance, Respondent shall pay a civil penalty in the amount of one thousand dollars (\$1,000). Payment must be made within thirty (30) days of the issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing, within thirty (30) days of receipt of this decision.

Dated this 23rd day of June, 2011.



Laurie L. Dawley, Chairperson
Iowa Real Estate Commission

cc: Judith O' Donohue, Respondent's Attorney [CERTIFIED]
John Lundquist, Assistant Attorney General (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.