

BEFORE THE IOWA REAL ESTATE COMMISSION

IN THE MATTER OF:)	CASE NO. 11-119
)	DIA NOS. 11REC012
Vincent Muniz Sr.)	
1338 Wilbur Street)	
Blair, Nebraska 52501)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
APPLICANT)	DECISION AND ORDER

On April 25, 2011, the Iowa Real Estate Commission (Commission) sent a letter to Victor Muniz Sr. (Applicant) notifying him that the Commission had voted to deny his application for a real estate broker license, based on the five year suspension of his Nebraska real estate salesperson license. The Applicant filed a timely request for hearing.

A prehearing conference was held on October 6, 2011. The hearing was held on October 13, 2011 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. The Applicant was self-represented. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Chairperson; Judy Stevens, Broker; Dick Robert, Broker; Gail Flagel, Broker; Robert Broomfield, Salesperson; Susan 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 open to the public, pursuant to 193 IAC 7.39(3). 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 the witnesses, and State Exhibits 1-4 (See Exhibit Index for description).

FINDINGS OF FACT

1. Victor Muniz, Sr. was initially licensed in Nebraska as a real estate salesperson (license number 0951124) in January 1995. During his licensure as a salesperson in Nebraska, the Nebraska Real Estate Commission and Mr. Muniz entered into two Stipulation and Consent Orders imposing license discipline. (Exhibits 2-3 to 2-17)

a. A Joint Stipulation and Consent Order dated March 18, 1999 censured Victor Muniz Sr. for negligence in acting as a salesperson for failing to have his clients initial the changes in the dates or to notify them that he was changing the dates on documents related to listing the clients' residential property. (Exhibits 2-4 to 2-9)

b. A Stipulation and Consent Order dated September 24, 2003 imposed a five (5) year suspension of Mr. Muniz's salesperson license based on Respondent's professional activities as a salesperson with respect to two different real estate transactions. The stipulated facts demonstrated that Respondent committed a number of violations of Nebraska law, including:

- Intentionally using advertising that is misleading or inaccurate in any material particular when he sent correspondence regarding a listing on his own company letterhead rather than on the letterhead under the direct supervision of a broker;
- Failing to account for and remit any money or funds coming into his possession belonging to others;
- Failing to place funds in the custody of his broker as soon after receipt as practicable, when the funds were entrusted to him by a person dealing with him as the representative of the broker;
- Demonstrating negligence, incompetency or unworthiness to act as a salesperson by leaving inappropriate messages on the Buyer's answering machine; and
- Failing to exercise reasonable skill and care on behalf of a client and to promote the interest of the client with the utmost good faith, loyalty, and fidelity. (Exhibit 2-11 to 2-17)

2. After his Nebraska salesperson license was suspended, Victor Muniz attended pre-broker classes and passed the examination to be licensed as a broker in the state of Nebraska. Mr. Muniz activated his Nebraska broker license on July 4, 2009. Since that time he has operated Muniz Real Estate and Consulting, Inc. in Omaha, Nebraska as a self-employed broker. His Nebraska broker license has never been disciplined. Mr.

Muniz currently resides in Blair, Nebraska. (Testimony of Victor Muniz, Sr.; Exhibit 2-2, 2-3)

3. On March 18, 2011, Victor Muniz Sr. submitted a Certificate of License History (letter of good standing) to the Iowa Real Estate Commission (Commission) in support of his request to take the Iowa-specific broker examination. Mr. Muniz hopes to obtain an Iowa broker's license through the procedure outlined in 193 IAC 5.3. This is the procedure for nonresident applicants from states or jurisdictions that do not have a reciprocal licensing agreement or memorandum with Iowa. (Testimony of Victor Muniz, Sr.; Exhibit 2-1 to 2-3)

4. On April 21, 2011, the Commission reviewed the information presented by Mr. Muniz in support of his request to take the Iowa-specific broker examination. On April 25, 2011, Mr. Muniz was notified, in writing, that the Commission had voted to deny his request due to the severity of the infraction which resulted in the five year suspension of his Nebraska license. Mr. Muniz was also notified of his right to request a formal hearing. (Exhibit 3-1)

5. Victor Muniz, Sr. appeared before the Commission at his appeal hearing and explained the circumstances leading to the five year suspension of his Nebraska salesperson license. Mr. Muniz also described his current real estate business in Nebraska and his procedures for handling client funds. He reports that he is handling all of his trust account funds consistently with Nebraska law. His current business is primarily residential, and he is only working with pre-approved buyers. Mr. Muniz is bilingual and many of his clients in Omaha are Spanish-speaking. He is hoping to be able to help clients who are moving between Omaha, Nebraska and Council Bluffs, Iowa by obtaining his Iowa license. (Testimony of Respondent)

CONCLUSIONS OF LAW

The Iowa legislature has authorized the licensure of nonresidents as real estate brokers or salespersons in Iowa under certain circumstances.¹ Nonresident applicants must establish that they are currently licensed in another state, that no charges are pending against them in that state, and that their record in the other state justifies the issuance of a license to the applicant in Iowa.² The nonresident applicant must also take and pass the Iowa-specific examination unless the applicant is licensed in a state that has similar

¹ Iowa Code section 543B.21(2011).

² *Id.*

licensing requirements to Iowa and unless that state has entered into a memorandum with Iowa extending similar recognition and courtesy to Iowa residents.³

193E IAC 5.3 provides, in relevant part:

193E-5.3(543B) License by Iowa-specific examination. A non resident applicant licensed as a salesperson or broker in a state or jurisdiction which does not have a reciprocal licensing agreement or memorandum with Iowa to be issued a comparable Iowa license by passing the Iowa portion of the examination under the following circumstances:

5.3(1) Broker. The person has been actively licensed as a broker or broker associate and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the examination.

...

5.3(3) The applicant must submit a written request for authorization to sit for the appropriate examination.

5.3(4) The applicant must submit certification of the applicant's current qualifying license from the licensing authority that issued the license.

An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.⁴ When considering the denial of license, the Commission shall consider the nature of the offense; any aggravating or extenuating circumstances that are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant; and any other factors the commission deems relevant.⁵

In 2003, Victor Muniz's Nebraska salesperson license was suspended for five years, based on an agreement he reached with the Nebraska Real Estate Commission to resolve two pending complaints. A prior five year license suspension clearly provides the Iowa Real Estate Commission with ample legal authority to deny licensure in this

³ *Id.* 193E IAC 5.3, 5.4.

⁴ Iowa Code section 543B.15(4)(2011).

⁵ Iowa Code section 543B.15(6)(2011).

state. However, the Commission has considered several mitigating circumstances, including Mr. Muniz's full cooperation with the Nebraska Real Estate Commission and the length of time that has passed since the suspension was imposed and served. In addition, the Nebraska Real Estate Commission, which is fully familiar with the circumstances leading to the suspension, permitted Mr. Muniz to become licensed as a broker in that state in 2009. Mr. Muniz has not had any disciplinary issues while licensed as a broker in Nebraska.

After listening to Mr. Muniz's testimony, which the Commission felt was sincere and credible, the Commission concluded that he should be given the opportunity to become licensed as a nonresident real estate broker in Iowa, under specified conditions. The Commission determined that its concerns about Mr. Muniz's prior 5 year license suspension may be addressed by requiring him to complete the 72 hour pre-broker education course and by subjecting his Iowa trust account records to quarterly review by the Commission's trust account auditor during his first year of licensure as a broker.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Vincent Muniz Sr. will be allowed to take the Iowa-specific examination *after* he provides the Commission with verification that he has attended the eight (8) hour trust account course. The eight (8) hour trust account course is part of the 72 hour pre-broker education required for new brokers in Iowa. Mr. Muniz may be licensed as a (nonresident) Iowa real estate broker after he completes the eight (8) hour trust account course, passes the Iowa specific examination, and submits the proper application and fee.


IT IS FURTHER ORDERED that during the first year of his licensure as a real estate broker in Iowa, Mr. Muniz's Iowa trust account records will be subject to quarterly review by the Commission's trust account auditor.

IT IS FURTHER ORDERED that Mr. Muniz shall complete the remaining 64 hours of the 72 hour pre-broker education course within the first two (2) years of his licensure as a real estate broker. Failure to comply with this requirement will result in disciplinary action against Mr. Muniz's Iowa broker license.

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Dated this ¹²7 day of *Nov*, 2011.


Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Vincent Muniz Sr.
1338 Wilbur Street
Blair, Nebraska 68008 [CERTIFIED]

John Lundquist
Assistant Attorney General
Hoover State Office Building (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.