

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF)	CASE NO. A09-036
)	DIA NO. 10DOCRE012
JANE PAGEL)	
Broker (B41352))	
)	
A-1 Real Estate Services)	FINDINGS OF FACT,
1604 3 rd Avenue South)	CONCLUSIONS OF LAW,
Denison, Iowa 51442)	DECISION AND ORDER
Respondent)	

On October 5, 2010, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Jane Pagel. (Respondent). The Statement of Charges alleged that Respondent engaged in practices harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c), 543B.29(10)¹, 543B.34, and 543B.46 (2009) by:

- (a) Failing to maintain at all times a record of the Respondent's trust account. See 193E IAC §§13.1(6) and 18.14(5)(e).
- (b) Failing to maintain the general ledger, individual ledgers, and bank reconciliation to reflect accurate balances. See 193E IAC §§13.1(6) and 18.14(5)(e).
- (c) Failing to properly maintain individual ledgers for each real estate transaction. See 193E IAC §§13.1(6)(b), and 18.14(5)(e)(2).

A prehearing conference was held by telephone on December 2, 2010. The hearing was held on December 9, 2010 at 9:30 a.m. Respondent Jane Pagel appeared and was self-represented. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Chairperson; Dan Berry, Broker; Robert Dick, Broker; Judy Stevens,

¹ This Code citation contains a typographical error. Iowa Code section 543B.29 was renumbered in the 2009 Code. The language previously found in Iowa Code section 543B.29(10)(2007) ("noncompliance with trust account requirements under section 543B.46") now appears in section 543B.29(1)(j) in the 2009 Iowa Code.

Broker-Associate; Lori Diehl, Salesperson; and James O'Neill, 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 at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2009).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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; State Exhibits 1-4 (See Exhibit Index for description); and Respondent Exhibits 1-8)

FINDINGS OF FACT

1. Respondent's Iowa real estate broker license (B41352) was first issued on January 3, 2005 and is in full force and effect through December 31, 2013. At all times relevant to this matter, Respondent was a licensed real estate broker officer assigned to A-1 Real Estate Services, a licensed real estate firm (F04921) in Denison, Iowa. (Testimony of Respondent; State Exhibit 2)
2. The Commission employs Colleen Goddard as a Trust Account Auditor to ensure that all broker trust accounts are maintained in compliance with Iowa law. On December 1, 2009 at approximately 12 noon, Colleen Goddard conducted an unannounced audit of the trust account at A-1 Real Estate Services. Ms. Goddard had mailed Respondent a questionnaire prior to arriving for the audit. When Ms. Goddard arrived, Respondent told her that she had an appointment with her attorney scheduled for 1:00 p.m. Ms. Goddard believed that would allow sufficient time to complete the audit. In accordance with her usual procedures, Ms. Goddard asked Respondent for copies of her last month's bank reconciliation, her general ledger, and all individual ledgers. (Testimony of Colleen Goddard)
3. The Commission's rules require brokers to document, on a written worksheet, the reconciliation of the general ledger balance with the reconciled bank balance and the individual ledger accounts to ensure agreement (referred to as the 3-way tie). When

this is done properly, the reconciled bank balance is the same number as the total of the individual ledger accounts and the general ledger balance. In order to arrive at the reconciled bank statement, the broker must take the balance recorded on the most recent bank statement, add in all deposits in transit, and subtract all outstanding checks. The method of documentation is not specified in the rule. Some brokers document the monthly reconciliation on the back of their bank statements; others use a computer program or separate worksheet.

Respondent provided Colleen Goddard with her bank statements for the previous year. The most recent bank reconciliation in Respondent's records appeared on the back of the January 2009 bank statement, nearly 11 months prior to the audit. On the day of the audit, Respondent's records did not include any monthly reconciliations for February 2009-November 2009 although Respondent provided monthly reconciliations in the documents she produced at hearing. (Testimony of Colleen Goddard; Respondent; State Exhibit 3; Respondent Exhibit 5; 193E IAC 13.1(6))

4. The only individual ledger that Respondent provided to Colleen Goddard was a ledger for 2008 broker's equity and interest. (Testimony of Colleen Goddard; State Exhibit 3-3) At hearing, Respondent provided some individual ledgers, including separate ledgers for broker's equity and accrued interest. However, none of these individual ledgers were provided to Ms. Goddard at the time of the audit. (Testimony of Respondent; Colleen Goddard; Respondent Exhibit 8)

5. Colleen Goddard attempted to reconcile Respondent's trust account using the limited documentation that Respondent provided. Based on that information, Ms. Goddard calculated the individual ledger total as \$18.34 and the general ledger total as \$18.34. The reconciled bank balance was \$391.25. This represented an "overage" of \$372.91 in unidentified funds in the trust account. (Testimony of Colleen Goddard; State Exhibit 3)

6. Colleen Goddard prepared a Trust Account Examination Survey Report, which listed three findings or deficiencies. Ms. Goddard and Respondent both signed the report on the day of the audit. The report found that Respondent was not accurately performing monthly reconciliations on a written worksheet to document and ensure agreement on the General Ledger Balance, Individual Ledgers, and the Reconciled Bank Balance. The last bank reconciliation was for January 2009. The report also found that Respondent was not maintaining individual ledgers for all real estate transactions and had not updated her broker's equity since 2008. (Testimony of Colleen Goddard; State Exhibit 3)

CONCLUSIONS OF LAW

Each real estate broker is required by statute to maintain a common trust account in a bank, savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons.² Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges related to the trust account.³

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of...practice harmful or detrimental to the public...or noncompliance with the trust account requirements under 543B.46.⁴

The legislature has specifically authorized the Commission to adopt rules to ensure implementation of Iowa Code section 543B.46.⁵ Pursuant to this authority, the Commission has adopted the following relevant rules:

193E IAC 13.1(6) provides, in part:

13.1(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

...

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

² Iowa Code section 543B.46(1)(2009)

³ Iowa Code section 543B.46(4)(2009).

⁴ Iowa Code section 543B.29(1)(c)(2009).

⁵ Iowa Code section 543B.46(8)(2009).

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transactions and clearly separates the transaction from all others. The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

...

193E IAC 18.14(5)(e) provides, in relevant part:

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations for which a civil penalty may be imposed:

...

e. Maintaining inadequate transaction records such as:

- (1) Failing to maintain a general ledger.
- (2) Failing to maintain individual account ledgers.
- (3) Failing to retain records on file.

Real estate brokers have essential statutory and fiduciary duties to maintain proper trust account books and records, to properly account for the public's money, and to submit to audits. Unless proper accounting procedures are utilized in a timely manner, it is impossible to ensure and verify that brokers are fulfilling their obligation to protect and preserve client moneys that they hold in trust and that they are not commingling trust funds. As the licensed broker, Respondent is legally and ethically responsible to timely account for all trust account funds that she receives and disburses and to comply with all of the Commission's rules pertaining to trust accounts.

The preponderance of the evidence established that at the time of the audit, Respondent had not documented monthly reconciliation of her trust account for the prior 11 months, in violation of Iowa Code sections 542B.29(1)(c), 543.46, and 193E IAC 13.1(6) and 18.14(5)(e). In addition, Respondent failed to properly maintain individual ledgers for each real estate transaction, in violation of 542B.29(1)(c), 543.46, and 193E IAC 13.1(6)(b) and 18.14(5)(e)(2). Finally, Respondent was unable to show, on a written worksheet, the three-way tie between the general ledger, reconciled bank balance, and sum of the individual ledgers, in violation of Iowa Code sections 542B.29(1)(c), 543.46, and 193E IAC 13.1(6) and 18.14(5)(e). Colleen Goddard's testimony concerning the audit was credible and persuasive.

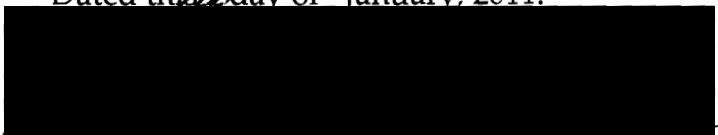
DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Jane Pagel, Broker License (B41352), shall personally complete the eight-hour Commission approved broker pre-license education course "Iowa Real Estate Trust Accounts." The original certificate of attendance must be submitted to the Commission office with a cover letter to the Commission's Executive Officer, referring to Case No. A09-036. These hours shall be in addition to any real estate continuing education required by law for license renewal and must be completed within six (6) months of the date of this Order.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Commission in the amount of \$1500 (\$500 for each of the three deficiencies noted in the audit report) within six (6) months of the date of this Decision and Order. The civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. A09-036.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this 24 day of January, 2011.



Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Jane Pagel
A-1 Real Estate Services
1604 3rd Ave. South
Denison, Iowa 51442 (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. Any 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.