

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:

CASE NO. 10-246
DIA NO. 11REC009

James A. Parks
Broker (B39569)

Parks Properties
821 Jennings St.
Sioux City, Iowa 51104

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER
[DEFAULT]

Respondent

On June 24, 2011, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against James A. Parks (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). The Notice of Hearing and Statement of Charges was personally served on Respondent on June 30, 2011. (Exhibit 1-4)

A telephone prehearing conference was scheduled for August 12, 2011 at 11:00 a.m. Respondent failed to provide a telephone number where he could be reached for the prehearing. The only telephone number that the Commission had for Respondent provided an automated message indicating that the "subscriber was not available."

The hearing was held on August 19, 2011 at 2:10 p.m. Assistant Attorney General John Lundquist represented the state of Iowa. Respondent James A. Parks failed to appear for hearing. The following Commission members presided at the hearing: Laurie L. Dawley, Chairperson and public member; Dick Robert, Broker; Gail Flagel, Broker; Judy Stevens, Broker; 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 open 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 and State Exhibits 1-6 (See Exhibit Index for description).

FINDINGS OF FACT

1. The Commission issued Respondent Iowa real estate broker license B39569 on April 18, 2005. Respondent's license expired December 31, 2010. However, at all times relevant to this Decision and Order Respondent was a licensed real estate broker sole proprietor in Sioux City, Iowa. (State Exhibit 2)
2. In March 2010, Respondent was selected for a random audit to verify his compliance with the required errors and omissions insurance coverage. The Commission sent Respondent an audit notice on March 10, 2010 and asked him to provide verification of insurance coverage within twenty calendar days. Respondent did not reply to this letter. (State Exhibits 3, 4)
3. The Commission sent a second notice to Respondent's office by certified mail, return receipt requested. This second notice was returned to the Commission on April 14, 2010 marked "Moved, left no address, unable to forward." The Commission then resent the notice to Respondent's home address by certified mail. This notice was delivered and signed for by Respondent on April 19, 2010. (Exhibits 3, 5)
4. Respondent did not provide the requested proof of his errors and omissions insurance coverage. Commission staff spoke to Respondent by telephone on May 17, 2010, June 15, 2010, July 30, 2010, and October 15, 2010. In each conversation Respondent stated that he would send in his broker license to be placed on inactive status. However, he failed to place his license on inactive status, and he was actively licensed as a broker throughout 2010. Respondent's broker license expired on December 31, 2010. As of the date of the hearing,

Respondent still had not provided proof of the required errors and omissions insurance for 2010. (Exhibits 2, 3)

CONCLUSIONS OF LAW

I. Failure To Appear

Board rule provides that service of the notice of hearing may be made by personal service as in civil actions; by restricted certified mail, return receipt requested; or by acceptance of service by the licensee or the licensee's duly authorized legal representative.¹ In this case, Respondent was properly served by personal service.

If a party fails to appear after proper service of notice, the presiding officer may enter a default decision or may proceed with the hearing and enter a decision in the absence of the party.² Respondent failed to appear, and the Commission properly elected to proceed with the hearing in his absence.

II. Failure To Maintain Errors and Omissions Insurance

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.³ 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.⁴

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.⁵ A licensee is required to carry insurance on an uninterrupted basis and

¹ 193 IAC 7.6(2).

² 193 IAC 7.27(1).

³ Iowa Code section 543B.47(1)(2009).

⁴ Iowa Code section 543B.47(6)(2009).

⁵ 193E IAC 18.2(5), 19.6(6).

may not avoid discipline simply by acquiring insurance after receipt of an audit notice.⁶

The preponderance of the evidence established that Respondent failed to maintain errors and omissions insurance coverage for 2010, in violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5), 19.6(5), and 19.6(6). Respondent was actively licensed as a broker throughout 2010 but has failed to provide proof that he maintained uninterrupted errors and omissions insurance. In addition, Respondent failed to respond to the Notice of Hearing and Statement of Charges or to appear for hearing. The circumstances of the violation are therefore aggravated and justify a higher civil penalty than the \$1000 that is typically imposed for failure to maintain uninterrupted E & O insurance.

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 five hundred dollars (\$1,500). 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 ~~27~~ day of September, 2011.



Laurie L. Dawley, Chairperson
Iowa Real Estate Commission

cc: James Parks
John Lundquist, Assistant Attorney General

⁶ 193E IAC 19.6(5).

Motion to Vacate Default

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and the affidavit(s) must be attached to the motion to vacate. 193 IAC 7.27(3)

Appeal on the Merits

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.