

FILED

June 4, 2015 (Date)

BEFORE THE IOWA REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

IREL  
Board / Commission  
Signature Executive Officer

IN RE:	)	Case No. 14-236
	)	DIA No. 15REC001
JACK K. RASH	)	
Broker (B15347000)	)	
	)	
STAR PERFORMERS, LTD.	)	<b>FINDINGS OF FACT,</b>
209 West 5 <sup>th</sup> Street, Suite T	)	<b>CONCLUSIONS OF LAW,</b>
Waterloo, IA 50701	)	<b>DECISION AND ORDER</b>
	)	
Respondent.	)	

The Iowa Real Estate Commission issued Respondent Jack Rash Broker License No. B15347000. Rash's license will expire on December 31, 2015. Rash is the broker in charge of Star Performer's Ltd. Star Performer's Ltd. received License No. F03534000 from the Commission on December 7, 1993, and its license will expire on December 31, 2016. Rash supervises two employees, Adam Biretz, a licensed salesperson, and Rick Schoulte, a licensed broker associate.

On March 30, 2015, the Commission filed a Notice of Hearing and Statement of Charges, charging Rash with: (1) being unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public and/or having a professional license revoked in violation of Iowa Code sections 543B.29(1)(c), (1)(d), (1)(l), 543B.34(1)(h), and 193 IAC 18.14(5)(s); and (2) failing to fully cooperate with a licensee disciplinary investigation and/or failing to timely provide information requested by the Commission relative to a complaint investigation in violation of Iowa Code section 543B.34(1)(j) and 193E IAC 18.2(7) and 18.14(5)(i).

A contested case hearing was held on May 7, 2015. Assistant Attorney General John Lundquist represented the state of Iowa. Sandy Malek appeared and testified on behalf of the state of Iowa. Rash was self-represented and testified. Exhibits 1 through 14 and A were admitted into the record.

The following Commission members presided at the hearing: Terry Duggan, Chair and Broker; Dennis Stolk, Vice-Chair and Broker; Carol Haines, Public Member; Helen Kimes, Broker; Janet DeMott, Salesperson; and Michael Telford, Public Member. Administrative Law Judge Heather Palmer assisted the Commission in conducting the hearing. A certified court reporter recorded the proceeding. The hearing was held open to the public at Rash's request.

After testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)f, to deliberate its decision. The

Commission instructed the Administrative Law Judge to draft a Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

### **FINDINGS OF FACT**

Rash was licensed as a certified residential real estate appraiser in Iowa. The Iowa Real Estate Appraiser Examining Board ("Appraiser Board") issued Rash Certificate No. CR02113 on June 29, 1999.

On January 4, 2013, the Appraiser Board placed Rash's certified residential real estate appraiser license on probation and ordered him to submit a quarterly log of appraisals, work under the supervision of a certified residential real property appraiser, and to undergo a desk review of his appraisals, after finding he failed to adhere to appraisal standards in the development and communication of appraisals, failed to exercise reasonable diligence in the development, preparation and communication of appraisals, and demonstrated negligence or incompetence in the development, preparation, and communication of appraisals. Rash appealed the decision to the Iowa District Court for Black Hawk County. The district court denied Rash's Petition for Judicial Review.

In May 2013, the Appraiser Board filed a Notice of Hearing in a Disciplinary Case against Rash alleging Rash had failed to comply with the Board's January 4, 2013 disciplinary order.

On January 23, 2014, the Appraiser Board issued Findings of Fact, Conclusions of Law, Decision and Order. The Appraiser Board found Rash had failed to comply with the January 4, 2013 and revoked Rash's appraiser certificate. Rash did not appeal the January 23, 2014 decision.

The Appraiser Board received information Rash had continued to sign and certify appraisals as a certified residential real estate appraiser following the revocation of his appraiser certificate.

On October 2, 2014, the Appraiser Board filed a Notice of Hearing on Unlawful Acts and Imposition of Civil Penalties against Rash. A contested case hearing was held on November 17, 2014. The day of the hearing Rash left a message for Toni Bright, the Executive Director for the Appraiser Board, notifying her he was having car trouble and left a cellular telephone number. Bright, the Assistant Attorney General, and the Administrative Law Judge attempted to return a call to Rash before the hearing scheduled for 10:30 a.m. Rash did not answer the telephone. Bright left Rash a second message at 10:35 a.m., informing him he needed to return her call by 10:45 a.m., or the hearing would proceed without him. Bright did not receive a return call from Rash.

On November 25, 2014, the Appraiser Board issued Findings of Fact, Conclusions of Law, Decision and Order finding a preponderance of the evidence established Rash had prepared and submitted at least 44 residential appraisal reports after he received notice his appraiser certificate had been revoked. The Appraiser Board concluded Rash had repeatedly represented himself to be a certified residential real estate appraiser with an

active certification. Rash received payments totaling \$19,475 for appraisal reports he prepared and signed after January 10, 2014. The Board found that any of Rash's appraisal reports submitted for lending purposes would need to be redone by a certified appraiser at additional cost. The Appraiser Board noted:

[i]n this case, the Board is authorized to impose a maximum civil penalty of \$44,000, or \$1,000 for each appraisal report that Respondent prepared, signed and submitted following the effective date for the revocation of his certification. The Board has determined that the facts of this case warrant the maximum civil penalty for each violation. Respondent's violations were repeated and ongoing over a seven month period. Respondent has had no contact with the Board and it is not known if he is continuing to falsely represent himself as a certified real estate appraiser in the state of Iowa. Respondent's violations involve misrepresentation and deception. Respondent clearly knew that his certificate had been revoked and yet continued to represent himself as an appraiser in good standing, submitted his certificate number and expiration date (prior to revocation) with the reports, and even included a copy of his certificate with the reports that he submitted. The violations were both willful and intentional, and Respondent has acted in bad faith. There is no evidence that Respondent has taken any remedial action whatsoever. In addition, Respondent has not cooperated with the Board. He never responded to the Notice issued by the Board, he failed to appear for the hearing, and he failed to return calls from the Board on the day of the hearing. Moreover, Respondent's violations have caused severe harm to the public and may have eroded the public trust in the real estate appraiser profession as a whole.

(Exhibit 12 at 6-7). The Appraiser Board ordered Rash to cease and desist from holding himself out as a certified real estate appraiser and ordered him to pay a \$44,000 civil penalty. The Appraiser Board ordered the Appraiser Board staff to "promptly notify" the Commission of the enforcement action against Rash. (Exhibit 12). Rash did not appeal the November 25, 2014 decision.

On December 16, 2014, Bright notified Jeff Evans, the Executive Director of the Commission, the Appraiser Board had revoked Rash's appraiser certificate on January 24, 2014. Bright reported the Appraiser Board had taken additional action against Rash following the revocation and enclosed a copy of the November 25, 2014, Findings of Fact, Conclusions of Law, Decision and Order. The Commission's investigator, Malek, commenced an investigation.

On January 15, 2015, Malek served Rash with a letter informing him the Commission had received information from the Appraiser Board regarding the revocation of his appraiser certificate and that Rash had continued to represent himself as a certified appraiser following the revocation. Malek requested Rash "provide a written explanation on the circumstance surrounding your revocation and your reasons to continue practicing as a certified appraiser after you were no longer qualified to do so."

(Exhibit 5). Malek attached a copy of the Appraiser Board's decisions from January 23, 2014, revoking Rash's appraiser certificate, and the November 25, 2014 cease desist order imposing a civil penalty of \$44,000. Malek requested Rash provide a written response within 14 calendar days. Malek did not receive a response from Rash within 14 calendar days.

Malek testified Rash called her and informed her that he had misplaced the paperwork. He requested she resend the January 15, 2015 letter. Malek resent the letter by e-mail. Malek did not receive a written response from Rash. Malek reported Rash's failure to respond affected her ability to completely investigate the allegations against Rash.

On March 30, 2015, the Commission filed a Notice of Hearing and Statement of Charges, charging Rash with: (1) being unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public and/or having a professional license revoked in violation of Iowa Code sections 543B.29(1)(c), (1)(d), (1)(l), 543B.34(1)(h), and 193 IAC 18.14(5)(s); and (2) failing to fully cooperate with a licensee disciplinary investigation and/or failing to timely provide information requested by the Commission relative to a complaint investigation in violation of Iowa Code section 543B.34(1)(j) and 193E IAC 18.2(7) and 18.14(5)(i).

During the hearing Rash testified about difficulties he had with Bright during the Appraiser Board's investigations and actions between 2012 and 2014. Rash believes he has been unfairly targeted by Bright and the Appraiser Board.

Rash testified he called Malek and provided her with a response to the January 15, 2015 letter. Malek did not recall Rash providing her with a response. Malek did not receive a written response from Rash prior to the hearing.

### CONCLUSIONS OF LAW

Real estate salespersons and brokers must be licensed to sell real estate in Iowa.<sup>1</sup> The Commission oversees the licensure and discipline of licensed salespersons and brokers in Iowa.<sup>2</sup> The Commission may revoke or suspend the license of a broker for: (1) professional incompetency<sup>3</sup>; (2) knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public<sup>4</sup>; (3) revocation of any professional license held by the licensee in Iowa or another jurisdiction<sup>5</sup>; and (4) for failing, to provide information requested by the Commission as the result of a formal complaint of the Commission.<sup>6</sup>

<sup>1</sup> Iowa Code § 543B.1 (2015).

<sup>2</sup> *Id.* chapter 543B.

<sup>3</sup> *Id.* §§ 543B.29(1)c., 543B.34(1)h,j.

<sup>4</sup> *Id.* § 543B.29(1)d.

<sup>5</sup> *Id.* § 543B.29(1)l.

<sup>6</sup> *Id.* §§ 543B.29(3), 543B.34(1)j.

On March 15, 2015, the Commission charged Rash with: (1) being unworthy or incompetent to act as a real estate broker in such manner as to safeguard the interests of the public and/or having a professional license revoked in violation of Iowa Code sections 543B.29(1)(c), (1)(d), (1)(l), 543B.34(1)(h), and 193 IAC 18.14(5)(s); and (2) failing to fully cooperate with a licensee disciplinary investigation and/or failing to timely provide information requested by the Commission relative to a complaint investigation in violation of Iowa Code section 543B.34(1)(j) and 193E IAC 18.2(7) and 18.14(5)(i).

The charges filed by the Commission concern conduct involving Rash's broker license. The state of Iowa did not present any evidence Rash has engaged in professional incompetency with respect to his broker license in violation of Iowa Code section 543B.29(1)c, or that he knowingly making misleading, deceptive, untrue, or fraudulent representations or engaged in unethical conduct or practice harmful or detrimental to the public with respect to his broker license in violation of Iowa Code section 543B.29(1)d. A preponderance of the evidence supports the Appraiser Board revoked Rash's appraiser certificate. Revocation of Rash's appraiser license supports disciplinary action under Iowa Code section 543B.29(1)l.

During the hearing, Rash testified he called Malek and provided her with a response to her January 15, 2015 letter. Malek did not recall that Rash provided her with a response. Malek did not receive a written response from Rash prior to the hearing. The Commission finds Rash did not fully cooperate with a licensee disciplinary action and failed to timely provide information requested by the Commission relative to a complaint investigation in violation of Iowa Code section 543B.34(1)(j).

The Commission is alarmed by Rash's actions. After the Appraiser Board revoked Rash's appraiser certified, he continued to represent himself as a certified appraiser, causing harm to the public. The Appraiser Board found Rash's violations involved "misrepresentation and deception," his acts were "willful and intentional," and he "acted in bad faith." (Exhibit 12 at 6-7). During the hearing before the Commission, Rash expressed no remorse for his actions. Rash's conduct as an appraiser is directly relevant to his actions as a licensed broker. The public relies on licensed brokers to be fair, honest, and to act in good faith. The Commission concludes Rash's broker license should be revoked.

### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Jack Rash's Broker License No. B15347000 is hereby REVOKED effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, Jack Rash shall pay \$75 for fees associated with conducting the disciplinary hearing, within 30 days of receipt of this Decision and Order.

Any application to reinstate Rash's license will be subject to the provisions of 193E IAC chapter 18. Initial application for reinstatement may not be made until at least two

years have elapsed from the date of the Decision and Order.<sup>7</sup> The burden of proof will be on Rash to establish that the reason for the revocation of his license no longer exists and that it is in the public interest for his license to be reinstated.

Dated this 4<sup>th</sup> day of June, 2015.



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Terrance M. Duggan, Chair  
Iowa Real Estate Commission

cc: Jack Rash  
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Waterloo, IA 50701 (Certified)

John Lundquist  
Assistant Attorney General  
Hoover State Office Building (Local)

### Notice

Pursuant to Iowa Code section 17A.19 and 193 IAC 7.37, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the Commission.