

FILED February 3, 2022 (Date)
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Board / Commission
Signature, Executive Officer

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

PAMELA J. ROGERS
Broker (B32001000)

IN RE: CASE NO. 21-189
DIA NO. 22PLBREC0003

Lande Real Estate, LLC
118 W. 1st Street
Sumner, IA 50674,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

RESPONDENT

On October 6, 2021, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Pamela Rogers (Respondent). The Statement of Charges alleged that the Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(j), 543B.47(1), 543B.47(6) and 193E Iowa Administrative Code 18.2(5), 18.14(5)(s), 19.6(5) and 19.6(6).

A prehearing conference was held on November 24, 2021. The hearing was held in-person on December 2, 2021 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Attorney Pat Dillon represented the Respondent. The following Commission members presided at the hearing: Dennis Stolk, Chairperson, Broker Member; Jim Clingman, Vice-Chairperson, Broker Member; Janet DeMott, Salesperson Member; Dakotah Reed, Broker Member; and Wendy Carminhato, Public Member. Administrative Law Judge Kathleen O'Neill 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.15(5) (2021).

After hearing the 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 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 investigator Renee Paulsen; testimony of background manager, Ashley Thompson; testimony of Respondent Pamela Rogers; and State's Exhibits 1-8. (See Exhibit Index for description).

FINDINGS OF FACT

1. The Respondent's Iowa real estate broker license (B32001000) was first issued on March 10, 1994 and is in full force and effect through December 31, 2023. The Respondent's real estate broker license was active at all times relevant to this matter. (Ex. 2).

2. The Respondent has had two prior disciplinary sanctions imposed against her license.

a) On November 7, 2019, the Commission approved a Combined Statement of Charges, Informal Settlement Agreement and Consent Order for Case Number 19-154. The Respondent was charged with failing to properly effectuate the terms of an executed purchase agreement and failing to deposit earnest payments received by a broker in an Iowa real estate trust account in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46, and 543B.56(1)(b). These violations occurred between December 2018 and April 2019. (Ex. 1, Paulsen testimony).

b) On June 11, 2020, the Commission approved a Combined Statement of Charges, Informal Settlement Agreement and Consent Order for Case Number 18-215. This Consent Order was based on:

(1) Respondent's failure to account for or remit any moneys coming into her possession that belonged to others within a reasonable amount of time, in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1)(g), 543B.34(1)(h), and/or 543B.56(1)(d);

(2) failing to deposit trust funds received by the broker in furtherance of the sale, rental, purchase, or exchange of real property in an Iowa real estate trust account in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), 543B.46 and/or 543B.56(1)(b); and

(3) failing to obtain the written consent of both the buyer and the seller before acting as a dual agent in a real estate transaction in violation of Iowa Code sections 543B.29(1)(d), 543B.34(1)(d), 543B.56(1)(a), 543B.56(1)(b), and/or 543B.58(1).

These violations occurred between July 18, 2018 and August 31, 2018. (Ex. 1, Paulsen testimony).

3. The Commission employs Ashley Thompson as its Background Manager. She obtains and processes fingerprints and looks at criminal records in order to approve licenses. The Commission performs random audits for errors and omissions requirements and Ms. Thompson reviews the records. If a lapse appears, she will further investigate. (Thompson testimony).

4. On May 10, 2021, Ms. Thompson emailed the Respondent a Notice of Selection for Errors and Omissions Insurance. This notice asked that the Respondent provide verification of her 2021 Real Estate Errors and Omissions Insurance coverage in Iowa for a random audit as provided in Iowa Code section 543B.47(1) and IAC 193E 19.6(543B) within twenty (20) calendar days. Ms. Thompson received no response. On May 28, 2021, Ms. Thompson sent the Respondent a second notification, also via email. She again received no response. Therefore, on June 17, 2021, Ms. Thompson called the Respondent and left a message. The Respondent spoke to Ms. Thompson the following day and provided a current firm insurance policy. Ms. Thompson explained that the firm's umbrella policy did not cover the Respondent as an individual broker; she was required to have an individual policy. (Ex. 3, 4, 6, Thompson testimony).

5. On June 21, 2021, the Respondent submitted a current broker policy with an enrollment date of June 21, 2021. The Respondent's broker license had been active during the time that she did not have an individual insurance policy, January 1, 2021 through June 21, 2021. (Ex. 7, Thompson, Paulsen testimony).

6. The Commission charged the Respondent with failing to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(j), 543B.47(1), 543B.47(6) and 193E IAC 18.2(5), 18.14(5)(s), 19.6(5), and 19.6(6). (Ex. 1).

7. The failure to have errors and omissions insurance was the Respondent's third violation of Iowa Code section 543B.29 and/or Iowa Code section 543B.34 within a three-year period. Iowa Code section 543B.29(4) mandates that: "A real estate broker's

or salesperson's license shall be revoked following three violations of [Iowa Code section 543B.29] or [Iowa Code] section 543B.34 within a three-year period." (Ex. 8).

8. At hearing, Respondent Pamela Rogers explained that she had been an agent since 1988 and a broker since 1991. She was unaware of the May 10 and May 28, 2021 emails from Ms. Thompson. Her first notification of the errors and omissions insurance coverage question was Ms. Thompson's June 17, 2021 phone call. The Respondent agreed that the email address used by Ms. Thompson was the correct address, but had no explanation why she failed to see the emails. (Rogers testimony).

9. The Respondent was unaware that her insurance lapsed in January 2021. She renewed both her individual policy and firm's policy at the same time; she sent in two separate checks in two separate envelopes. She had been doing a substantial amount of paperwork and "changing everything out with the MLS." She put the receipt of her firm policy in the file and never noticed that her personal policy had not been returned. She sincerely believed that her personal policy was complete, as evidenced by the fact she sent in her firm policy. (Rogers testimony).

10. The Respondent explained details regarding her first two discipline cases by the Commission, changes she would have made, and charges she would have responded to differently. She was not disputing the facts, but wanted to explain what happened. (Rogers testimony).

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

¹ Iowa Code (ICA) § 543B.47(1)(2021).

² ICA § 543B.47(6).

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 20 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 the Respondent failed to maintain uninterrupted errors and omissions insurance coverage from January 1, 2021 through June 21, 2021, in violation of Iowa Code sections 543B.29(1)(j), 543B.47(1), 543B.47(6) and 193E IAC 18.2(5), 18.14(5)(s), 19.6(5) and 19.6(6). This failure created a very real risk to the public because the insurance company likely would have refused to pay any claims filed against the Respondent during that time period.

Sanction

Iowa Code section 543B.29(4)(2021) provides that a real estate broker's or real estate salesperson's license *shall* be revoked following three violations of Iowa Code section 543B.29 or section 543B.34 within a three-year period. The Board previously disciplined the Respondent in case numbers 19-154 and 18-215. Both case numbers 19-154 and 18-215 involved the Respondent's violations of both Iowa Code chapters 543B.29 and 543B.34. Case Number 19-154 involved the Respondent's failure to properly effectuate the terms of an executed purchase agreement and failing to deposit earnest payments received by a broker in an Iowa real estate trust account. These violations occurred between December 2018 and April 2019. Case number 18-215 involved the Respondent's failure to account for or to remit any moneys coming into her possession that belonged to others, failing to deposit trust funds, and failing to obtain the written consent of both the buyer and the seller before acting as a dual agent in a real estate transaction. These violations occurred between July 18, 2018 and August 31, 2018.

In the current case, the Respondent has been found in violation of Iowa Code chapter 543B.29 for failing to comply with the mandatory errors and omissions insurance requirement. This violation occurred between January 1, 2021 and June 21, 2021. The Commission is therefore required to impose the license revocation mandated by Iowa Code section 543B.29(4) for three violations of Iowa Code sections 543B.29 or 543B.34 within a three-year period.

³ 193E Iowa Administrative Code (IAC) 18.2(5), 19.6(6).

⁴ 193E IAC 19.6(5) (emphasis added).


If the order of revocation does not establish terms upon which reinstatement may occur, a person whose license has been revoked, suspended, or voluntarily surrendered may not apply for reinstatement until at least two years have elapsed from the date of the order.⁵ Following the revocation or surrender of a broker or salesperson license, an applicant for reinstatement must, as a condition of reinstatement, start over as an original applicant for a salesperson license, regardless of the type of license the applicant previously held. The applicant shall be required to satisfy all preconditions for licensure as a salesperson.⁶

DECISION AND ORDER

IT IS THEREFORE ORDERED that Broker License B32001000, issued to Respondent Pamela J. Rogers, is hereby REVOKED, effectively immediately upon service 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 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 3rd day of February, 2022.



Dennis Stolk, Chairperson
Iowa Real Estate Commission

cc: Respondent – Pamela J. Rogers [CERTIFIED]
Attorney – Pat Dillon
Assistant Attorney General - John Lundquist

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

⁵ 193E IAC 18.15(2).

⁶ 193E IAC 18.15(3).

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filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.