

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 08-231
	)	DIA NOS. 08DOCRE024
JOANN M. BUTCHER	)	
Broker (B25271)	)	
1901 South Center	)	FINDINGS OF FACT,
Marshalltown, Iowa 50158	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER
RESPONDENT	)	

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On September 11, 2008, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Joann M. Butcher (Respondent). The Statement of Charges alleged that Respondent failed to comply with the terms of a settlement agreement and consent order, in violation of Iowa Code sections 543B.29(3), 543B.34(2), and 272C.3(2)(a)(2007).

A telephone prehearing conference was held on November 7, 2008. The hearing was held on November 13, 2008 at 1:30 p.m. Respondent Joann M. Butcher appeared and was self-represented. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Dan Berry, Broker; Judy Stevens, Broker Associate; Patty Daniels, Salesperson; Lori Diehl, Salesperson; and James O' Neill and Laurie Dawley, public members. Administrative Law Judge Margaret LaMarche assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2007).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2007), 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 Jeff Evans; and the following exhibits:

State Exhibit 1: Statement of Charges, Notice of Hearing, Proof of Service

State Exhibit 2: Respondent Licensing Information  
State Exhibit 3: Complaint No. 08-231  
State Exhibit 4: Investigative Summary  
State Exhibit 5: Combined Statement of Charges, Informal Settlement and Consent Order  
State Exhibit 6: Letter, 2/18/08 (Batts to Respondent)  
State Exhibit 7: Letter, 3/27/08 (Batts to Respondent)  
State Exhibit 8: Check No. 2988  
State Exhibit 9: Letter, 4/8/08 (Batts to Respondent)  
State Exhibit 10: Letter, 5/5/08 (Evans to Respondent)  
State Exhibit 11: Letter, 6/30/08 (Evans to Respondent)  
State Exhibit 12: Letter, 7/12/08 (Respondent to Evans)

#### FINDINGS OF FACT

1. Respondent is a licensed real estate broker in Marshalltown, Iowa. Respondent's Iowa real estate broker license (B25271) was first issued on January 1, 1989 and is in full force and effect through December 31, 2009. According to the Commission's licensing records, Respondent is a sole proprietor broker and has two branch offices. Respondent had a prior trust account violation in 2004. (State Exhibits 2, 4)

2. Commission auditor Jeff Evans completed an audit of Respondent's trust account and records on November 2, 2007. Mr. Evans found that Respondent was not accurately performing a monthly reconciliation on a written worksheet to document and ensure agreement of the general ledger, individual ledgers, and reconciled bank balance (three-way tie). Respondent was also found to have nearly thirty (30) earnest money deposits that were older than three years old and were still pending in her trust account. Finally, the auditor found eight (8) outstanding checks that were more than three years old. (Testimony of Jeff Evans; State Exhibit 5)

3. On January 16, 2008, Respondent agreed to and signed a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order In A Disciplinary Case, and the Board approved the order on February 14, 2008. Respondent admitted all of the Circumstances in the Statement of Charges and agreed to:

- A reprimand;
- Payment of a \$2500 civil penalty no later than March 15, 2008;
- Hire an Iowa licensed Certified Public Accountant (CPA) to audit her trust account and establish trust account records following Generally Accepted Accounting Principles. A copy

of the trust account records and a copy of the CPA's audit report demonstrating Respondent's compliance with applicable accounting standards, Iowa law, and Commission trust account rules were to be submitted to the Commission by April 14, 2008.

- Attend the Commission approved eight (8) hour course entitled "Trust Accounts" and submit the original certificate of attendance to the Commission no later than February 14, 2009.

(Testimony of Jeff Evans; State Exhibit 5)

4. On February 18, 2008, the Commission sent Respondent a copy of the approved Informal Settlement and Consent Order and reminded her that she had to comply with the dates in the Order. On March 27, 2008, the Commission wrote to Respondent and reminded her that the \$2500 civil penalty was overdue. Respondent paid the \$2500 civil penalty on April 5, 2008. (Testimony of Jeff Evans; State Exhibits 6-9)

5. On June 5, 2008, the Commission notified Respondent that the CPA Audit report had not been received. Respondent did not reply to this letter, and a second letter was sent on June 30, 2008. On July 12, 2008, Respondent replied that she would have Roger Hackman conduct the trust account audit "as soon as he can before August 1." (Testimony of Jeff Evans; State Exhibits 11, 12)

6. On September 23, 2008, a Complaint was filed against Respondent for failure to comply with the Informal Settlement and Consent Order. As of the date of the hearing, Respondent still had not submitted the required trust account audit report. Respondent did not testify at hearing and has not explained her failure to comply. (Testimony of Jeff Evans; State Exhibits 3, 4)

#### CONCLUSIONS OF LAW

Iowa Code section 543B.29(3)(2007) provides, in relevant part:

**543B.29 Revocation or suspension.**

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Iowa Code section 543B.34(7) (2007) provides, in relevant part:

**543B.34 Investigations by commission.**

The real estate commission may ...suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee...is found guilty of any of the following:

...

2. Making any false promise of a character likely to influence, persuade or induce.

Iowa Code section 272C.3(2)(a) (2007) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of the evidence established that Respondent violated Iowa Code section 543B.29(3), 543B.34(2), and 272C.3(2)(a) (2007) when she failed to timely provide the Commission with a CPA Audit Report demonstrating her compliance with applicable accounting standards as she agreed to do when she signed the Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case. Respondent promised to have the CPA Audit completed and submitted to the Commission no later than April 14, 2008. In return, the Commission agreed to allow her to retain her broker license. To date, Respondent still has not submitted a completed CPA Audit Report, and she provides no explanation for her failure to comply.

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. Compliance with the trust fund requirements is essential both to protect the public and to preserve the integrity of the real estate professions.

Respondent's failure to comply with the Informal Settlement and Consent Order and her failure to communicate with the Commission leaves no alternative but to immediately suspend her broker license. When a broker license is suspended, all licenses associated with or assigned to that broker shall automatically be placed on inactive status for the duration of the suspension or revocation, unless transferred to another broker. 193E IAC 7.3(2).

ORDER

IT IS THEREFORE ORDERED that Broker License B25271, issued to Respondent Joann M. Butcher, is hereby immediately SUSPENDED. The suspension shall continue until Respondent establishes, to the satisfaction of the Commission, that she has fully complied with the CPA Audit Requirement described in paragraph 17 of the Combined Statement of Charges, Informal Settlement Agreement, and Consent Order approved on February 14, 2008.

IT IS FURTHER ORDERED, in accordance with 193E IAC 7.3, that:

- A. Respondent shall immediately cease engaging in any activity that requires a real estate license as defined under Iowa Code chapter 543B.
- B. Respondent shall return her broker license to the Commission office by certified mail within 72 hours of receipt of this Decision and Order.
- C. Respondent shall also immediately return all licenses that are assigned or associated with her broker license or firm as provided in Iowa Code section 543B.33 and subrule 7.2(7).

IT IS FURTHER ORDERED that if Respondent has not fully complied with all terms of the Informal Settlement and Consent Order by

February 14, 2009, the Commission will take further disciplinary action against her license.

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 11 day of November, 2008.

  
James Hughes, Chairperson  
Iowa Real Estate Commission

cc: Joann M. Butcher  
1901 South Center  
Marshalltown, Iowa 50158 (PERSONAL SERVICE)

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.