

State of Iowa
Before the Iowa Real Estate Commission

In the Matter of:)	Case No. A08-007
)	DIA No. 08DOCRE022
Michelle R. Paulson,)	
Broker No. B30339)	
)	
Grinnell Fifth Avenue Realty)	
807 – 4 th Avenue)	Findings of Fact, Conclusions
Grinnell, Iowa 50112)	of Law, and Order

This matter concerns a notice of hearing and statement of charges initially filed on August 8, 2008. The matter was continued and held before the Iowa Real Estate Commission (the Commission) on April 23, 2009. The following board members were present: James Hughes,¹ Laurie Dawley, Patricia Daniels, Lori Diehl, and Dan Barry. Jeffrey Farrell, an administrative law judge, assisted the commission.

John Lundquist, an assistant attorney general, represented the public interest. The State's exhibits 1-5 were admitted into the record. Michelle Paulson represented herself. She testified at the hearing. She also presented her sister, Tamara Kriegel as a witness.

FINDINGS OF FACT

Michelle Paulson has been a licensed real estate broker since September 15, 2004. She operates a business known as Grinnell Fifth Avenue Realty, LLC. (Exhibits 1-2).

On March 27, 2008, Jeff Evans, a trust account auditor for the commission, stopped at Ms. Paulson's office to conduct a routine audit. Mr. Evans followed his usual protocol for the audit, which was random and unannounced. Ms. Paulson stated others in the office were cooperative and provided all records requested. (Evans testimony; exhibit 3).

Mr. Evans found two issues during the audit. First, he found no evidence that Ms. Paulson had conducted a written monthly reconciliation of her trust account. The reconciliation is known as the "three-way tie." The three-way tie is a reconciliation of three accounts: the general ledger balance, individual ledgers, and reconciled bank

¹ Mr. Hughes term expired on April 30, 2009. The decision could not be issued before the end of his term, so he is not officially a decision-maker on this case. The decision was unanimous, so there was no impact on the final outcome.

balance. A copy of the three-way tie worksheet is shown at exhibit 3, page 2. (Evans testimony; exhibit 3).

Mr. Evans performed the three-way tie reconciliation, which led to the second issue. The general ledger amount contained the same balance as that shown on the reconciled bank statement; both were \$2,474.08. However, the total from the individual ledgers was \$2,162.19, which was \$311.89 less than general ledger and bank balance. Mr. Evans issued a finding that there was \$311.89 of unidentified funds in the trust account. Mr. Evans left a copy of his report for Ms. Paulson. Mr. Evans was not overly concerned at the time he left. He thought that the shortage may have resulted from a missing individual ledger card. (Evans testimony; exhibit 3).

On April 2, 2008, Ms. Paulson filed a cover letter with a revised reconciliation statement. Ms. Paulson stated that she was not familiar with the three-way tie form, but would begin using it to reconcile accounts. She reported several expenses that had not been accounted for. These additions showed an actual shortage in the account. She also paid \$500 into the account as part of her "broker's equity," which is used to pay small charges and fees. The broker's equity cannot exceed \$500. Because there was an actual shortage in the account, Ms. Paulson's \$500 payment covered the shortage, and left \$368.73 in remaining broker's equity. (Evans testimony; exhibit 3).

Mr. Evans testified to additional concern with Ms. Paulson's response. Because there were unaccounted expenses paid out of the account, the broker equity had actually been less than zero. He testified that, although no member of the public lost money, there was a potential for harm because some of the public's money was used to cover realtor expenses. Mr. Evans acknowledged that the risk and the amount of the shortage was small. He further acknowledged that he believes Ms. Paulson understood the nature of the problem and will not commit future violations. (Evans testimony).

Ms. Paulson testified that she was sorry for the mistake and that it would not happen again. She did not dispute any of the testimony provided by Mr. Evans. She stated that the mistake likely would have been avoided if she had known about the three-way tie form. She and Ms. Kriegel testified that they had split up the accounting, which may also have contributed to the discrepancy. Ms. Paulson agreed that additional education would be a fair remedy, but contests the imposition of a fine. She argued that the mistake was innocent and the commission could be assured of compliance in the future without imposing a fine. (Paulson, Kriegel testimony).

CONCLUSIONS OF LAW

The Iowa Real Estate Commission was created to monitor and regulate the real estate profession in the State of Iowa.² The Commission regulates the profession, in part, by granting and imposing discipline on the licenses of real estate brokers.³

One area of regulation concerns broker trust accounts. Each broker is required to maintain a common trust account for deposit of all down payments, earnest money or other trust funds.⁴ The broker shall only deposit trust funds and shall not commingle personal funds. The only exception is for \$500 in broker equity, which can only be used to cover bank service charges relating to the trust account. The broker shall authorize the commission to examine the account. The Commission shall adopt rules to implement the trust account statute. The Commission is authorized to impose sanctions for violation of the trust account statute.⁵

The Commission's rules further define the trust account requirements. The commission requires a general ledger, individual ledgers, and bank statements for each trust account.⁶ The Commission also specifically requires a monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and the individual ledger accounts to ensure agreement.⁷

Ms. Paulson committed the violations as charged by the commission. She did not conduct a monthly reconciliation of the three accounts, referenced by Mr. Evans as the three-way tie. It is irrelevant that Ms. Paulson did not know about the Commission-developed worksheet – the reconciliation is directly required by the rules. Ms. Paulson committed a second violation by not properly monitoring funds in her account. This resulted in a shortage in the fund that was not detected until Mr. Evans conducted his audit. It is true that Ms. Paulson's violation was not intentional and no client funds were actually lost. Still, the purpose of the statute, the regulations, and the reconciliation process is to provide the greatest level of protection to prevent a risk of loss. Ms. Paulson did not comply with the statute and the regulations in this regard.

2 Iowa Code sections 543B.8, 543.18.

3 Iowa Code section 543B.15-20.

4 Iowa Code section 543B.46.

5 Iowa Code section 543B.29(1)(j).

6 193E IAC 13.1(6)(a), (b).

7 193E IAC 13.1(6)(a)(3).

SANCTION

The Commission may impose a variety of sanctions, including license revocation, suspension, or probation, or requiring professional education, civil penalties, or issuing a citation and warning.⁸ The Commission has enacted a detailed list of factors that it considers when issuing a civil penalty.⁹ Improper trust account and closing procedures may be the type of violations that results in an imposition of a civil penalty.

The Commission determined that two sanctions are appropriate. First, the Commission will require Ms. Paulson to attend an eight hour trust account course. Ms. Paulson has accepted responsibility for her errors, and she is now performing the three-way tie each month. The education sanction will ensure that Ms. Paulson understands all of the Commission's trust account requirements.

Second, the Commission imposes a \$500.00 civil penalty. The Commission has imposed similar sanctions in other cases. It may be true that Ms. Paulson did not intend to put client money at risk, but her failure to perform the monthly reconciliation actually put client money at risk. The Commission has a responsibility to protect the public. The Commission must take strong action when it uncovers violations of this nature to ensure the confidence of the public and deter future violations. A \$500.00 civil penalty should meet those objectives.

ORDER

The Iowa Real Estate Commission orders Michelle Paulson to pay a civil penalty of \$500.00 for violation of Count I in the statement of charges. Ms. Paulson shall pay the civil penalty to the commission's office at 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021. The civil penalty shall be paid within 30 days of the date of this order.

Ms. Paulson shall attend an eight hour trust account course. The course shall be approved by Commission staff. The eight hours shall not count toward Ms. Paulson's continuing education requirement. Ms. Paulson shall complete the course by December 31, 2009.

Ms. Paulson shall pay \$75.00 for fees associated with conducting the disciplinary hearing.¹⁰ In addition, the executive officer of the board may bill Ms. Paulson for any witness fees and

8 Iowa Code section 272C.3(2).

9 193E IAC 18.14(5).

10 See Iowa Code section 272C.6(6).

expenses or transcript costs associated with this disciplinary hearing. Ms. Paulson shall remit payment for these expenses within thirty days of receipt of the bill.

Dated this _____ day of _____, 2009.



Chair, Iowa Real Estate Commission

cc: AGO – John Lundquist
Commerce – David Batts
Respondent
ALJ – Jeff Farrell

Notice

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act. 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.¹¹