

FILED June 9, 2016 (Date)

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

1881
Board / Commission

[Signature]
Signature, Executive Officer

IN THE MATTER OF)	CASE NO. 15-262
)	DIA NO. 15REC008
Edith L. Hines)	
Broker (B17739) ¹)	
)	
Sole-Proprietor Broker)	FINDINGS OF FACT,
4123 E. University Ave.)	CONCLUSIONS OF LAW,
Des Moines, IA 50317)	DECISION AND ORDER
)	
RESPONDENT)	

On December 17, 2015, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Edith L. Hines. (Respondent). The Statement of Charges alleged that Respondent engaged in practices harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.34(1), and 543B.46 (2015) by:

- (a) Failing to maintain at all times a record of the Respondent's trust account and improper trust account procedures. *See* 193E IAC §§13.1(6), 18.15(5)(e), and 18.14(5)(f);
- (b) Failing to accurately maintain a general ledger to record in chronological order all receipts and disbursements for Respondent's trust account. *See* 193E IAC §§13.1(6)(a) and 18.14(5)(e)(1).
- (c) Failing to accurately maintain an individual ledger for Broker's Equity for Respondent's trust account. *See* 193E IAC §§13.1(1)(c), 13.1(6), and 18.14(5)(e)(2).
- (d) Failing to accurately maintain an Individual Ledger for Interest for Respondent's trust account. *See* 193E IAC §§13.1(2), 13.1(6), and 18.14(5)(e)(2).

¹ The caption of the Notice of Hearing and Statement of Charges had an incorrect license number for Respondent, and this error was perpetuated in some of the later documents in the file. The correct license number appeared in the second paragraph of the Notice of Hearing and Statement of Charges.

(e) Failing to provide a means for a monthly reconciliation of Respondent's trust account to ensure agreement of the general ledger balance, reconciled bank balance and individual ledger accounts. See 193E IAC §§13.1(6)(a)(3), 18.14(5)(e), 18.15(5)(f).

The hearing was initially scheduled for February 4, 2016 but was continued at Respondent's request. A telephone prehearing conference was held on February 25, 2016. The state submitted its proposed exhibits 1-7 prior to the prehearing conference. Respondent submitted her proposed exhibits A-D following the prehearing conference, on February 29, 2016. Respondent's second request for a continuance was granted by the Commission on February 29, 2016. On April 28, 2016, the state submitted its Amended Exhibit 3.

The hearing was held on May 5, 2016 at 9:30 a.m. Respondent Edith Hines appeared and was represented by attorney Patrick Vint. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Terry Duggan, Chairperson; Dennis Stolk, John Goede, Helen Kimes, and Michael Telford. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2015).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2015), 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; Appearance of Counsel; Motion to Continue and Continuance Orders; Scheduling Emails and Emails transmitting exhibits; testimony of Colleen Goddard and Respondent; State Exhibits 1-7; and Respondent Exhibits A-D.

FINDINGS OF FACT

1. Respondent's Iowa real estate broker license (B17739) was first issued on August 29, 1980 and is in full force and effect through December 31, 2016. At all times relevant

to this matter, Respondent was a licensed real estate sole-proprietor broker in Des Moines, Iowa. (Respondent, Goddard testimony; State Exhibit 2)

2. Respondent has had two prior disciplinary sanctions imposed against her license as a sole-proprietor broker.

a) On February 4, 2011, the Commission approved a Combined Statement of Charges, Informal Settlement Agreement and Consent Order for Case Number A10-049 based on an audit of Respondent's trust account on November 2, 2010. Respondent admitted to engaging in practices harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c), 543B.29(10), and 543B.46(2009). The charges in that case included failure to maintain trust account records, including the general ledger, individual ledgers, and bank reconciliation to reflect current balances; failure to conduct monthly reconciliation of a written worksheet to ensure the agreement of the general ledger balance, reconciled bank balance, and individual ledger totals; failure to maintain individual ledgers for broker's equity and interest; and the release of funds from the trust account prior to closing without the express written consent of all parties to the transaction. Respondent was ordered to pay a civil penalty of \$2500 and to complete an approved eight (8) hour "Trust Accounts" course. Respondent was also required to comply with the statutes and Commission rules regulating the practice of real estate at all future times. (State Exhibit 5; Goddard testimony)

b) On August 1, 2013, the Commission approved a Combined Statement of Charges, Informal Settlement Agreement and Consent Order for Case Number 13-071. This Consent Order was based on Respondent's failure to have mandatory errors and omissions insurance at the time of a random audit in March 2013. Respondent was ordered to pay a civil penalty of \$1000. Respondent was also required to comply with the statutes and Commission rules regulating the practice of real estate at all future times. (State Exhibit 6; Goddard testimony)

3. The Commission employs Colleen Goddard as its Trust Account Auditor to ensure that all broker trust accounts are maintained in compliance with Iowa law. Goddard travels to 99 counties and completes approximately 300-350 trust account audits each year. Her goal is to audit every real estate trust account in Iowa at least once every three years. When Goddard arrives for an audit, she asks the broker for the bank statement that was used for the last monthly reconciliation, for their general ledger, for any open individual ledgers, and for their documentation of the monthly reconciliation showing the agreement or "three-way tie" between the general ledger, the sum of the individual ledgers, and the reconciled bank balance. The Commission's

rules require these records to be available for audit during business hours. (Goddard testimony)

The trust account check book can serve as the "general ledger" so long as it includes a chronological accounting of all money into and out of the trust account, including the interest. The Commission's rules require brokers to have individual ledgers to separately account for each individual real estate transaction, for broker's equity, and for interest in the trust account. Broker's equity is the broker's personal funds, not to exceed \$500, which may be used for banking fees such as the cost of checks. Brokers are required to remit all interest in the trust account to the state on a quarterly basis. The individual ledger for interest must show the interest paid into the trust account each month and must show the interest going out of the account each quarter. (Goddard testimony)

In addition, the broker must maintain written documentation of monthly reconciliations of their general ledger balance with the reconciled bank balance and any open individual ledgers. This reconciliation is often referred to as "the 3-way tie." The 3-way tie must show that the reconciled bank balance is exactly the same number as the total of the individual ledger accounts and the general ledger balance. No specific form is required for the documentation of the monthly reconciliation, although the Commission does provide an optional form for this purpose on its website. If the broker is unable to establish the 3-way tie through the monthly reconciliation, it could signify an error in one of the individual ledgers or in the general ledger. It could also mean that trust funds are missing from the trust account or that there are excess unidentified funds in the trust account. (Goddard testimony; State Exhibit 4-3)

If the broker does not have all of the necessary records available at the time of the audit, Goddard encourages the broker to provide her with the necessary records as soon as possible following the audit. If the broker provides additional records following the audit, Goddard will provide the additional records to the Commission's disciplinary committee when she presents her written deficiency report. (Goddard testimony)

4. On September 22, 2015 at approximately 2:15 p.m., Colleen Goddard arrived at Respondent's office at 4123 E. University in Des Moines, Iowa to conduct an unannounced audit of Respondent's trust account. Respondent testified that she had moved her office into the basement of her home approximately 1-2 weeks prior to the audit because she was providing care for her brother who had suffered a number of strokes. According to the Commission's licensing records, Respondent reported

moving her office to 4123 E. University on August 7, 2015, or approximately 6 weeks prior to the audit. (Goddard, Respondent testimony; State Exhibit 2)

Goddard prepared the following written documents after the audit: a Trust Account Examination Deficiency Report dated September 22, 2015, a one page Summary of Case 15-262 dated November 5, 2015, and a Supplemental Narrative dated March 25, 2016. When she was asked to prepare the Supplemental Narrative, Goddard relied on her memory to provide the additional details. (Goddard testimony; State Exhibits 3, 4)

Goddard followed her usual procedures for this audit, and she asked Respondent for her reconciled bank statement for the prior month, for her general ledger, for any open individual ledgers, and for documentation of the monthly reconciliation showing the 3-way tie. Goddard and Respondent provided somewhat different descriptions of their initial conversation:

- According to Goddard, Respondent stated that she had just moved, that all of her records were in boxes, and that she had sent her trust account books and records to her CPA. Goddard did not notice any unpacked boxes in Respondent's office. Respondent did not tell Goddard that she could provide the requested records if Goddard gave her additional time to find them in her unpacked boxes. (Goddard testimony; State Exhibit 3)
- Respondent testified that there were four boxes against the wall of her office that she had not yet unpacked and that she told Goddard that her records were "over there in one of those boxes." Respondent further testified that she told Goddard that if Goddard wanted to go get a cup of coffee, she would "get them out" but Goddard responded "no, we work with what we have." Respondent denied telling Goddard that the trust records were at the CPA's office. Respondent has never used a CPA for her trust account records. (Respondent testimony)

For reasons that will be discussed more fully later in this decision, the Board has determined that Goddard's testimony was more credible than Respondent's testimony. The Board does not believe that Goddard would have refused to allow Respondent the opportunity to retrieve her trust account records from boxes if Respondent had in fact told Goddard that she had the trust account records in her office.

Respondent was able to provide Goddard an on-line trust account bank statement dated September 22, 2015, and a copy of her August 31, 2015 bank statement. Respondent told Goddard that the last time that she deposited any earnest money in her trust account was in December 2014. Respondent was able to provide her bank

statement from December 2014 when Goddard asked her for it. The bank statements were in Respondent's desk drawer. (Goddard testimony; State Exhibits 3, 4)

Goddard specifically asked Respondent if she had a general ledger or a check book for the trust account. Respondent did not provide a checkbook to Goddard. Respondent told Goddard that she did not have a general ledger and that she uses the carbon copy of checks to track the earnest money in her trust account. Respondent also told Goddard that she could not provide any individual ledgers for the broker's equity or interest in her trust account. Goddard asked Respondent if "she had anything" to show the 3-way tie. Respondent told her "no" and Respondent did not provide any documentation to show a 3-way tie between her reconciled bank statement, general ledger, and individual ledgers. (Goddard testimony; State Exhibits 3, 4)

Goddard then attempted to perform her own reconciliation of the Respondent's trust account using the most recent bank statement and the reconciliation form that is available on the Commission's website. Based on Respondent's statement to her that her last transaction was in December 2014, Goddard made the assumption that all of the money currently in Respondent's trust account, minus interest, was her broker's equity. Using the most recent bank statement that showed a balance of \$299.13, Goddard allocated \$299.06 as Respondent's broker's equity and \$.07 as the interest. Goddard was unable to complete the 3-way tie, however, because she was not provided a general ledger for the account. (Goddard testimony; State Exhibits 4-3)

The audit was concluded at approximately 3:30 p.m. Goddard verbally reviewed her findings with Respondent and asked Respondent if she had any questions. Goddard informed Respondent that she would email her the written report when she got back to the office. On September 22, 2015, Goddard emailed the Trust Account Examination Deficiency Report to Respondent and asked her to sign and return the report. Respondent signed and returned the written report on September 24, 2015. (Goddard, Respondent testimony; State Exhibit 4)

5. Goddard's Trust Account Examination Deficiency Report found that Respondent:

- was not performing written monthly reconciliations for the real estate trust account;
- did not have a general ledger and was using a carbon copy of the check to track earnest money;

- was not performing a written three-way tie on a worksheet to document and ensure agreement of the general ledger balance, individual ledgers, and the reconciled bank balance (three-way tie step being left out); and
- was not maintaining individual ledgers for broker's equity or interest.

(Goddard testimony; State Exhibit 4)

6. At hearing, Respondent submitted the following documents into the record:

- copies of her trust account bank statements from January-December 2015. (Respondent Exhibit A);
- copies of 12 "Trust Account Bank Reconciliation" documents purportedly completed by Respondent on the stated dates. (Respondent Exhibit B);
- A copy of an earnest money check for \$500 that was dated December 19, 2015, a copy of a deposit slip showing the deposit of \$500 into the trust account on December 28, 2015, and a copy of an individual sales ledger in the name of the buyer showing receipt of the \$500 earnest money check. (Respondent Exhibit C); and
- A copy of an individual ledger for broker's equity showing a balance of \$299.41 as of "1-30" and no later credits or debits. (Respondent Exhibit D)

Respondent testified that the reconciliation statements in Exhibit B and the individual ledger card for broker's equity were completed in a timely manner and were in the packing boxes in her office at the time of her audit on September 22, 2015. Respondent testified that the reconciliation dates provided on these documents are accurate. (Respondent testimony; Respondent Exhibit A-D)

Respondent admitted that she did not maintain a chronological general ledger and did not maintain a separate individual ledger for trust account interest. Respondent testified that she kept a copy of the earnest money check and a copy of her deposit slip and also made an individual ledger entry in the name of the buyer. Respondent submitted Exhibit C (for an earnest money check dated December 19, 2015) as an example of this recordkeeping. Respondent made a handwritten note on the record to document when the earnest money went out of the account. (Respondent testimony; Respondent Exhibit C)

Goddard reviewed Respondent's exhibits and agreed that there were no deposits or withdrawals of trust account funds from Respondent's account from January-September 2015. Goddard had not seen Respondent Exhibits B or D prior to their

submission by Respondent as proposed exhibits for the hearing. Respondent did not provide these documents to Goddard at the time of the audit, and Respondent never informed Goddard that these documents existed. (Goddard testimony; Respondent Exhibits A-D)

Goddard noted several deficiencies in Respondent Exhibits B and D. Of the 12 reconciliations included in Exhibit B, only 2 of them show totals for total ledgers, general ledger, and the reconciled bank balance total. The ledger card descriptions incorrectly include entries for "interest out," rather than the total of an individual ledger card for interest. The broker's equity ledger (Exhibit D) has only one entry of \$299.41 on "1-30" with no year identified. The broker's equity incorrectly includes interest, and there are none of the expected updates to reflect banking fees or any other other charges paid out of the account. (Respondent Exhibits B, D; Goddard testimony)

CONCLUSIONS OF LAW

I. *The Trust Account Violations*

Each real estate broker is required by statute to maintain a common trust account in a bank, savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons... The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and transferred to the Iowa finance authority for deposit in the housing trust fund established in section 16.181 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on the funds of others in the broker's possession. ²

Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges related to the trust account.³

² Iowa Code section 543B.46(1)(2015)

³ Iowa Code section 543B.46(4)(2015).

A license to practice the profession of real estate broker or salesperson may be revoked or suspended when the licensee is guilty of...practice harmful or detrimental to the public. Proof of actual injury need not be established.⁴ A license may also be revoked or suspended when the licensee is guilty of...[n]oncompliance with the trust account requirements under section 543B.46.⁵

The legislature has specifically authorized the Commission to adopt rules to ensure implementation of Iowa Code section 543B.46.⁶ Pursuant to this authority, the Commission has adopted the following relevant rules:

193E IAC 13.(1)(c) provides, in relevant part:

c. A broker shall not commingle personal funds in a trust account; provided, however, that **not more than \$500 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.**

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and that at no time are trust moneys used to cover any charges...

(emphasis supplied).

193E IAC 13.1(6) provides, in relevant part:

13.1(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

...

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

⁴ Iowa Code section 543B.29(1)(d)(2015).

⁵ Iowa Code section 543B.29(1)(k)(2015).

⁶ Iowa Code section 543B.46(8)(2015).

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transactions and clearly separates the transaction from all others. The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

...

193E IAC 18.14(5)(e) provides, in relevant part:

18.14(5) *Violations for which civil penalties may be imposed.* The following is a nonexclusive list of violations for which a civil penalty may be imposed:

...

e. Maintaining inadequate transaction records such as:

- (1) Failing to maintain a general ledger.
- (2) Failing to maintain individual account ledgers.
- (3) Failing to retain records on file.

f. Improper trust account and closing procedures:

...

- (11) Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.

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. The obligation to properly account for all funds in the trust account continues irrespective of the volume of real estate transactions.

The preponderance of the evidence established that at the time of the audit, Respondent was in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.46, and 193E IAC 13.1(6)(a) and 18.14(5)(e)(1) because she was not maintaining a general ledger to record, in chronological order, all receipts and disbursements from her trust account. In addition, Respondent failed to properly maintain individual ledgers for interest and for

broker's equity, in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.46, and 193E IAC 13.1(1)(c), 13.1(6) and 18.14(5)(e)(2). Finally, Respondent was unable to show, on a written worksheet, the three-way tie between the general ledger, reconciled bank balance, and sum of the individual ledgers, in violation of Iowa Code sections 543B.29(1)(d), 543B.29(1)(k), 543B.46, and 193E IAC 13.1(6)(a)(3), 18.14(5)(e) and 18.15(5)(f).

Colleen Goddard's testimony concerning the circumstances and results of the September 22, 2015 audit was both credible and persuasive. Goddard uses a consistent procedure to perform hundreds of audits throughout Iowa every year. There is no evidence that Goddard had any motive to provide false statements against Respondent while Respondent did have a substantial motive to place herself in the best light possible. The Board does not believe that Respondent ever told Goddard that she had the trust account records needed for the audit in boxes that were in her office. The Board does not believe that Goddard refused Respondent the opportunity to look for her trust account records in the boxes that were located in her office.

In addition, the Board does not believe that the records in Respondent Exhibits B and D were completed by Respondent prior to the audit. If Respondent had completed these records, the Board believes that she would have produced them at the time of the audit or shortly thereafter rather than waiting more than 5 months to produce them. The preponderance of the evidence in the record established that at the time of her audit on September 22, 2015, Respondent did not have a general ledger, did not have an individual ledger for broker's equity or interest, and did not have any documentation to show the 3-way tie between her reconciled bank balance, her general ledger total, and total of her individual ledgers (for broker's equity and interest).

Even if Respondent Exhibits B and D were credible, these additional documents do not refute the findings in the Trust Account Examination Deficiency Report. Respondent did not produce these documents until five months after the audit. In Exhibits B and D Respondent combined broker's equity and interest, and she did not separately account for them as required by 193E IAC 13.1(1)(c), 13.1(2), 13.1(6) and 18.14(5)(e)(2). Moreover, Respondent admits that she did not maintain a general ledger (journal) and that she did not have an individual ledger for the interest in her trust account.

II. Sanction

Iowa Code section 543B.29(4)(2015) 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 five-year period. Respondent was previously disciplined by the Board in case numbers A10-049 and 13-071. Case number A10-049 involved Respondent's violations of both Iowa Code chapters 543B.29 and 543B.34 at the time of her previous trust account audit on November 2, 2010. Case number 13-071 involved Respondent's violation of Iowa Code chapter 543B.29 when she failed to have mandatory errors and omissions insurance at the time of her random audit in March 2013. In the current case, Respondent has been found in violation of Iowa Code chapter 543B.29 based on the September 22, 2015 trust account audit. The September 22, 2015 audit was less than five years after Respondent's first violations on November 2, 2010. The Commission is therefore required to impose the license revocation mandated by Iowa Code section 543B.29(4)(2015) for three violations of Iowa Code sections 543B.29 or 543B.34 within a five-year period.

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.⁷ 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.⁸

DECISION AND ORDER

IT IS THEREFORE ORDERED that Broker License B17739, issued to Respondent Edith L. Hines, 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

⁷ 193E IAC 18.15(2).

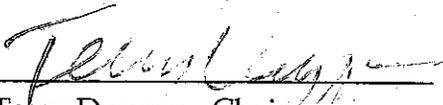
⁸ 193E IAC 18.15(3).

Case No. 15-262

Page 13

separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this 9th day of June, 2016.



Terry Duggan, Chair
Iowa Real Estate Commission

cc: Patrick T. Vint, Hopkins & Huebner, P.C., 2700 Grand Avenue, Suite 111, Des Moines, IA 50312 (CERTIFIED)

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. Any 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.