

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:

CASE NO. 12-245

Debra J. Joynt
Broker (B59885)
RESPONDENT

1839 Cody Street
Bettendorf, Iowa 52722

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

On October 29, 2012, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Debra J. Joynt, licensed real estate broker (Respondent). The Statement of Charges alleged that Respondent failed to comply with the mandatory errors and omissions insurance requirement, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1), 543B.47(6) and 193E IAC 18.2(5), 18.14(5)(s), and 19.6(5)&(6).

The matter proceeded to a hearing on December 13, 2012 at 2:00 p.m. Assistant Attorney General John Lundquist represented the public interest and the State of Iowa. Respondent Debra J. Joynt did not appear despite personal service of process by the Scott County Sheriff's Office (Exhibit 1-4). The following Commission members presided at the hearing: Gail Flagel, Broker member; Judy Stevens, Broker member; Susan Sanders, Salesperson; John Goede, Broker member, and Mike Telford, public member. Administrative Law Judge Robert H. Wheeler assisted the Commission in conducting the hearing. Certified court reporter, Ann Moyna, recorded the proceedings. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2011). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), 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 Notice of Hearing and Statement of Charges, the state's Prehearing Conference Report, the testimony of Jeff Evans and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

1. On February 17, 2009, the Commission issued Iowa real estate broker license B59885 to Respondent Joynt. Respondent's broker license has been in effect continuously since that time. Respondent's broker license is currently in full force and effect until December 31, 2014. (Exhibit 2; Evans testimony)
2. On May 29, 2012, the Commission sent the Respondent a notice of selection for an audit and asked the Respondent to provide verification of errors and omissions insurance coverage within twenty calendar days. (Exhibit 4; Evans testimony)
3. Respondent Joynt replied to the Commission's letter by fax on May 31, 2012, and provided a certificate of insurance as verification of errors and omissions insurance coverage for the time period effective January 1, 2012, to January 1, 2013. Respondent obtained the insurance from Rice Insurance Services on February 28, 2012, indicating that the Respondent did not have errors and omissions insurance coverage for the time period from January 1, 2012, through February 28, 2012. Cindy Rice Grissom, Chief Executive Officer for Rice Insurance Services provided a letter to the Real Estate Commission which explained the backdated policy. Although the policy covers the Respondent back to January 1, 2012, this coverage only applies to claims made after the policy was obtained. Ms. Rice Grissom stated, "However, if a claim is made prior to the date the insured reinstates coverage, then there would be no coverage for the claim under the policy, since insurance was not in place when the claim arose." Ms. Rice further explained to Investigator Evans that a claim filed pre-purchase of the policy would not be covered, meaning that the public was at risk. Investigator Evans spoke with the Respondent, who stated that she did not know "...what the big deal is." (Exhibits 5, 6; Evans 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 Commission's rules must require licensees to submit evidence of compliance with the insurance requirement within twenty calendar days of the Commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.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

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 within twenty days of the Commission's request.³

The preponderance of the evidence established that Respondent failed to maintain the mandatory errors and omissions insurance from January 1, 2012, until February 28, 2012, even though the Respondent's license remained active during this time. Although the Respondent purchased a back dated policy, the evidence clearly established the period of non-coverage when the public was at risk. Respondent's failure to maintain errors and omissions insurance is a violation of Iowa Code sections 543B.47(1), 543B.47(6) and 193E IAC 18.2(5) and 19.6(6). The errors and omissions insurance requirement is for the protection of the public. Absent extraordinary mitigating circumstances, the Commission has imposed a \$1000 civil penalty for a licensee's failure to maintain the required errors and omissions insurance.

Respondent has not shown any extraordinary circumstance that merits a deviation from the Commission's established precedent. Respondent Joynt bore responsibility to maintain errors and omissions insurance. The Respondent's errors and omission insurance coverage lapsed, and the Respondent failed to comply with the applicable law.

¹ Iowa Code section 543B.47(1)(2009).

² Iowa Code section 543B.47(6)(2009).


³ 193E IAC 18.2(5), 19.6(6).

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Debra J. Joynt shall pay a civil penalty of \$1,000 for failure to maintain errors and omissions insurance from January 1, 2012, through February 28, 2012, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1), 543B.47(6)(2009) and 193E IAC 18.2(5), 18.14(5)(s), and 19.6(5) & (6). Respondent shall pay the \$1000 civil penalty within thirty (30) days of receipt 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 for fees associated with conducting the disciplinary hearing, within thirty (30) days of receipt of this decision.

Dated this 3 day of January, 2012³


Judy Stevens, Chair
Iowa Real Estate Commission

cc: Debra J. Joynt [CERTIFIED]
John Lundquist, Assistant Attorney General (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.