

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 09-107
)	DIA NOS. 09DOCRE023
Jeffrey W. Westgor,)	
Broker (B037809))	
)	FINDINGS OF FACT,
Westgor & Associates, Inc.)	CONCLUSIONS OF LAW,
7400 Metro Blvd., Ste. 100)	DECISION AND ORDER
Edina MN 55439)	

STATEMENT OF THE CASE

On December 3, 2009, the Iowa Real Estate Commission (Commission) found probable cause to file a Statement of Charges against Jeffrey W. Westgor (Respondent). The Statement of Charges alleged that Respondent engaged in practices which are harmful or detrimental to the public, in violation of Iowa Code sections 543B.29(1)(c), 543B.47(1)&(6)(2009) and 193E IAC 18.2(5), 8.14(5)(s), and 19.6(5)&(6) by the following:

- a. Failing to comply with the mandatory errors and omissions insurance requirement.

A prehearing conference was held by telephone on May 13, 2010.

The hearing was held on May 19, 2010 at 11:00 a.m. Respondent Jeffrey W. Westgor appeared. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, Public Member, Chairperson; Judy Stevens, Broker; Dick Robert, Broker; Patricia A. Daniels, Salesperson; and James O'Neill, public member. Administrative Law Judge John M. Priester assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1)(2009).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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 the witnesses; and the following exhibits:

State Exhibit 1:	Notice of Hearing and Statement of Charges (12/3/09) Notice of Rescheduled Hearing (3/11/2010) Proof of Service (3/15/2010);
State Exhibit 2:	Licensing Information re: Jeffrey W. Westgor, Broker;
State Exhibit 3:	Investigative Narrative re: 09-107, Jeff Evans;
State Exhibit 4:	Notice of Selection for Errors and Omissions Insurance Audit (5/8/2009);
State Exhibit 5:	Certificate of Coverage: Rice Insurance Services Company, LLC;
State Exhibit 6:	Response of Licensee;
State Exhibit 7:	Relevant Statutes and Administrative Rules.

FINDINGS OF FACT

1. Respondent is an Iowa licensed Broker based in Edina, Minnesota. Respondent's Iowa real estate broker license (B37809) was first issued on March 28, 1997 and is in full force and effect through December 31, 2011. Respondent owns Westgor & Associates, Inc., in Edina, Minnesota. (Testimony of Respondent; State Exhibit 1)
2. The Respondent stipulated that he had no Errors and Omissions Insurance as required by the Commission from January 1, 2009 to May 14, 2009. (Stipulation)
6. The Respondent testified that he renewed his license but forgot to renew his Errors and Omissions Insurance for 2009. He asked for leniency because he has been licensed for 13 years and has never been in trouble. During the period he was without the required insurance he conducted no business in the state of Iowa. He did not even come to the state of Iowa in that time. (Testimony of Respondent, State Exhibit 6)

CONCLUSIONS OF LAW

I. The Violation

A. Applicable Law

Each real estate broker is required by statute to maintain errors and omissions insurance coverage. Iowa Code section 543B.47(1)(2009)

The Commission may impose a civil penalty if a violation of its governing statutes or rules are found. 193E IAC 18.14(5)

Iowa Code section 543B.29(3)(2009) provides, in relevant part:

543B.29 Revocation or suspension.

1. 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:

...

c. ...engaging in...practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

i. Noncompliance with insurance requirements under section 543B.47.

Iowa law provides that “[f]ailure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for . . . the suspension or revocation of a license.” Iowa Code § 543B.47(6).

That code section requires that as a condition of licensure all real estate licensees “carry errors and omissions insurance covering all activities contemplated under this chapter.” Iowa Code § 543B.47. “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.” 193E IAC 19.6(5)

B. Discussion

The Respondent admits that he was not covered by appropriate errors and omissions insurance from January 1, 2009 to May 14, 2009. The Appellant explained that he was not actively listing properties in Iowa at this time. Additionally, he was having financial troubles and had to lay off office staff. This caused him to overlook the fact that he had not obtained the required Errors and Omissions Insurance policy.

The preponderance of the evidence established that Respondent engaged in a practice that is harmful or detrimental to the public by failing to maintain Errors and Omissions Insurance in compliance with Iowa Code sections 543B.47(1)(2009).

Even if the Respondent were not actively listing properties, as long as he holds an active license he is required to have errors and omissions insurance.

II. *Sanction*

In determining the appropriate sanction, the Commission considered the factors outlined in its rules, including the relative seriousness of the violation and the potential for harm to the public. 193E IAC 18.14(6). The Commission has consistently imposed civil penalties of \$1000 for licensees who fail to have Errors and Omissions Insurance in place.

The Commission is sympathetic to the Respondent's situation, however, the failure to have Errors and Omissions Insurance in place puts the public at risk. For this reason, the Commission believes that the violation is adequately addressed by a civil penalty of \$1000. Because the Commission has sympathy for the Respondent, it will allow him to pay off the civil penalty over a six month period of time.

ORDER

IT IS THEREFORE ORDERED that the Respondent Jeffrey W. Westgor, Broker License (B37809), shall pay a civil penalty to the Commission in the amount of \$1000. The Respondent shall be given 6 months from the issuance of this Decision and Order to pay the fine in full. Payments on the civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 09-107.

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 24 day of June, 2010


Laurie L. Dawley, Chairperson
Iowa Real Estate Commission

cc: Jeffrey W. Westgor
Westgor & Associates
7400 Metro Blvd., Ste. 100
Edina MN 55439 (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. 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.