

BEFORE THE INDIANA
REAL ESTATE COMMISSION
CAUSE NO.: IREC 11-29

IN THE MATTER OF:)
DANIELLE NICOLE HISAW (SP30706730))
12477 WEST 93rd AVENUE)
SAINT JOHN, INDIANA 46373)



FINAL ORDER

Hearing having been held on June 1, 2011, in Room W064 of Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, the Indiana Real Estate Commission ("Commission"), by a vote of 10-0-0, issues its Final Order in this matter as follows:

FINDINGS OF FACT

1. This proceeding is pending on Danielle Nicole Hisaw's ("Petitioner") petition for review of the Board's May 12, 2011 suspension of her real estate salesperson license based on her not paying a civil penalty assessed in a Notice of Noncompliance, issued on January, 2011, placing the petitioner's real estate salesperson license on conditional status, imposing a civil penalty of one thousand dollars (\$1,000) and requiring her to obtain sixteen hours of continuing education (six hours in mandatory courses and ten hours in elective courses).

2. The Petitioner did not petition for review after receiving the Notice of Noncompliance due, at least in part, to a confusing interaction with an Indiana Professional Licensing Agency staff member. At that time though, she did submit continuing education certificates which showed seventeen hours of continuing education for the July 1, 2008 through June 30, 2010 reporting period. However, only six of those hours were obtained before she renewed with the

remaining eleven (ten of which were needed to renew her license) obtained in July 2010, after the end of the reporting period and after she renewed her license.

3. Therefore, at the time of the audit, Petitioner had met the continuing education requirement, but ten hours were not obtained in a timely manner as required.

4. Because of the confusion described in Finding of Fact No. 2, believing she had resolved the matter, the Petitioner did not pay the civil penalty by the deadline. The Commission, noting the unpaid civil penalty, suspended her license by order issued on May 12, 2011.

CONCLUSIONS OF LAW

1. Under Ind. Code § 25-34.1-9-11, real estate salespersons are required to obtain sixteen hours of continuing education for each renewal (reporting) period, six hours of which must be in mandatory courses and ten hours of which must be in elective courses. This requirement has been further implemented by the Commission by rule in 876 IAC 4, including the details for mandatory and elective courses found in 876 IAC 4-2-3 and 876 IAC 4-2-4.

2. The Petitioner failed to meet the applicable continuing education requirements to renew her real estate salesperson license in 2010.

3. Ind. Code § 25-1-4-5(a) states that when the Commission determines after an audit that a practitioner failed to meet the continuing education requirements that it shall:

- (1) Send the practitioner notice of noncompliance by certified mail to the practitioner's last known address.
- (2) As a condition of license renewal, require the practitioner to comply with [Ind. Code § 25-1-4-5(b)].
- (3) For license renewal, issue a conditional license to the practitioner that is effective until the practitioner complies with [Ind. Code § 25-1-4-5(b)].

Ind. Code § 25-1-4-5(b) states that:

Upon receipt of a notice of noncompliance under [Ind. Code § 25-1-4-5(a)], a practitioner shall do either of the following:

(1) If the practitioner believes that the practitioner has [met the continuing education requirements], within twenty-one (21) days of service of the notice, send written notice to the [Commission] requesting a review so that the practitioner may submit proof of compliance.

(2) If the practitioner does not disagree with the [Commission's] determination of noncompliance, do the following:

(A) Except as provided in [Ind. Code § 25-1-4-5(d)], pay to the [Commission] a civil penalty not to exceed one thousand dollars (\$1000) within twenty-one days of receipt of the notice.

(B) Acquire, within six (6) months after receiving the notice, the number of credit hours needed to achieve full compliance.

(C) Comply with all other provisions of [Ind. Code ch. 25-1-4].

Ind. Code § 25-1-4-5(c) through (e) also apply as follows:

(c) If a practitioner fails to comply with [Ind. Code § 25-1-4-5(b)], the [Commission] shall immediately suspend . . . the license of the practitioner and send notice of the suspension . . . to the practitioner by certified mail.

(d) If the [Commission] determines that a practitioner has knowingly or intentionally made a false or misleading statement to the [Commission] concerning compliance with the continuing education requirements, in addition to the requirements under this section the [Commission] may impose a civil penalty of not more than five thousand dollars (\$5000) under [Ind. Code § 25-1-4-5(b)(2)(A)].

(e) The [Commission] shall:

(1) reinstate a practitioner suspended; or

(2) renew the practitioner's license in place of the conditional license issued under [Ind. Code § 25-1-4-5(a)(3);

if the practitioner supplies proof of compliance with this chapter under subsection (b)(1)

....

4. Typically after a suspension, the only matter a licensee could challenge would be the suspension itself and not the Notice of Noncompliance. However, because of the confusion

described in Findings of Fact 2 and 4, combined with the recognition by the Commission that the result would have been different in some respects had the Commission been aware of all the facts sooner, some revision of the substance contained in the Notice of Noncompliance is appropriate.

5. A conditional real estate salesperson license was properly issued in place of the renewed real estate salesperson license. However, because the Petitioner has already completed the required hours (although improperly late), no further make up hours need to be required at this time. Also, given the findings of fact regarding the nature of her obtaining her continuing education, the appropriate exercise of the Commission's penalty setting discretion would be to impose a one hundred dollar (\$100) civil penalty. Her suspended license should be reinstated upon her paying the one hundred dollars.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Petitioner's Notice of Noncompliance is revised to require no additional continuing education hours and to require a **CIVIL PENALTY of ONE HUNDRED DOLLARS AND ZERO CENTS (\$100.00)**. This civil penalty shall be paid by check or money order, made payable to Indiana Professional Licensing Agency, either delivered in person or mailed, to the following address:

Indiana Professional Licensing Agency
Attn: Jeanette Roberts
402 W. Washington St., Room W072
Indianapolis, Indiana 46204

2. The suspension of the Petitioner's license was appropriate, but it shall be reinstated upon her payment of the \$100.00 civil penalty.

3. Any continuing education credit hours that were obtained to make up the deficiency in the July 1, 2008 through July 1, 2010 reporting period may not be counted toward compliance with the July 1, 2010, to June 30, 2012, reporting period.

SO ORDERED this 22 day of June, 2011.

INDIANA REAL ESTATE COMMISSION

By: 

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

Copy to:

Danielle Nicole Hisaw
12477 West 93rd Avenue
Saint John, Indiana 46373

CERTIFIED MAIL NO.: 91 7190 0005 2720 0008 9615
RETURN RECEIPT REQUESTED