

## NEBRASKA REAL ESTATE COMMISSION

March 19, 2015

Staybridge Suites

Staybridge Room

Lincoln, NE

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### **Opening**

Acting Chairperson Ptak convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on March 19, 2015, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Chairperson Gale and Commissioner Freeman, who were absent and excused. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Duran Cell, and Deputy Director for Licensing Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Stork and Bartusek Hearings.

### **Notice of Meeting (Adopt Agenda)**

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Acting Chairperson Ptak reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Acting Chairperson Ptak pointed out to those in attendance that a public copy of the materials being used during the meeting were available on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Acting Chairperson Ptak asked that guests sign the guest list.

Director Lemon noted that agenda items 11b, 13a and 18b had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Stange and seconded by Avery to adopt the final agenda as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Minutes of February 19, 2015**

The minutes of the Commission meeting held on February 19, 2015, were considered.

After review, a motion was made by Avery and seconded by Alloway to approve the minutes as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Public Comment**

Acting Chairperson Ptak asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

## **Receipts and Expenditures Report for February**

Director Lemon presented the Receipts and Expenditures Report for February. A copy of said report is attached to and made a part of these minutes. Director Lemon noted that an explanation page was included on the report.

The cash fund balance as of February 28, 2015, was \$1,260,763.41, which compared to a cash fund balance of \$1,199,491.57 on February 28, 2014.

After discussion, a motion was made by Stange and seconded by Avery to file the February Receipts and Expenditures Report for audit. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

## **Specialized Registrations**

There were no specialized registrations to be presented at the meeting.

## **Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report**

Deputy Director Rut presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Alloway and seconded by Avery to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

## **Examination Report - February**

Deputy Director Roubal presented for ratification the February Examination Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Avery and seconded by Stange to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

## **Examination Passing Roster**

Deputy Director Roubal presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

## **Real Estate Education Matters**

### **Pre-License Education Provider/Course Approval**

Deputy Director Roubal presented for ratification the Pre-License Education Provider/Course Approval Report, a copy of which is attached to and made a part of these minutes.

### **Pre-License Education Instructor Approval**

Deputy Director Roubal presented for ratification the Pre-License Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

### **Continuing Education Activity Approval**

Deputy Director Roubal presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

### **Continuing Education Activity Significant Change**

Deputy Director Roubal presented for ratification the Continuing Education Activity Significant Change Report, a copy of which is attached to and made a part of these minutes.

### **Broker-Approved Training Recognition**

Deputy Director Roubal presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Stange and seconded by Avery to ratify the five reports. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Continuing Education and Broker-Approved Training Annual Report**

Deputy Director Roubal presented the Continuing Education and Broker-Approved Training Annual Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained the contents in the report and the process followed to obtain the annual report.

After review, a motion was made by Avery and seconded by Alloway to remove the providers from approved status who had failed to provide an Annual Report for 2014 activities and who were reported on the Continuing Education and Broker-Approving Training Annual Report exhibit. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Continuing Education and Broker-Approved Training Renewal Report**

Deputy Director Roubal presented the Continuing Education and Broker-Approved Training Renewal Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained the contents in this report and the course renewal process providers have to engage in every three years to renew courses or let them expire. (Note: It was

discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The name of one of the providers was set forth as "Deeb Realty" when, in fact, the name should have been "Nebraska Realty".)

After review, a motion was made by Stange and seconded by Avery to ratify the courses listed on the Continuing Education and Broker-Approved Training Renewal Report. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Pending Sworn Complaints and Investigative Matters**

Deputy Director Cell presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

#### **Item A Complaint 2013-024 – Troy Trumm vs. Dawn M. Bierman**

Deputy Director Cell requested Complaint 2013-024 be dismissed. Deputy Director Cell explained that Complaint 2013-024 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2013-024 in abeyance until the new complaint had been adjudicated. Complaint 2014-033 was the new complaint.

A motion was made by Avery and seconded by Alloway to dismiss Complaint 2013-024, since the Commission accepted a Stipulation and Consent Order for Complaint 2014-033 at this meeting. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Presentation of Stipulation and Consent Orders**

#### **Complaint 2014-033, Commission vs. Troy Arthur Trumm**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-033, Commission vs. Troy Arthur Trumm. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Stange and seconded by Alloway to enter into the Order as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

#### **Complaint 2014-035, Commission vs. Michael R. Crawford**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-035, Commission vs. Michael R. Crawford. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Avery and seconded by Stange to enter into the Order as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

## **Disciplinary Hearings**

### **Complaint 2014-041 - Commission vs. Lisa K. Stork**

A Hearing was held on March 19, at 10:00 a.m., in the matter of Complaint 2014-041, Commission vs. Lisa K. Stork. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Lisa K. Stork was present.

After Opening Statements, Counsel Barton offered ten Exhibits, all of which were received by Acting Chairperson Ptak. Counsel Barton called Duran Raymond Cell as a witness.

Ms. Stork offered six Exhibits, all of which were received by Acting Chairperson Ptak. Ms. Stork called herself as a witness.

After closing arguments had been presented, Acting Chairperson Ptak declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Stange and seconded by Alloway in Complaint 2014-041, that Lisa K. Stork violated Neb. Rev. Stat. 81-885.24(28) and (29) and 81-885.12(2). Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

Acting Chairperson Ptak opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Alloway and seconded by Dover in Complaint 2014-041, that Lisa K. Stork receive a three year suspension, all served on probation, plus six hours of additional continuing education to be determined by Staff, Ms. Stork must immediately notify the Commission staff of any violation of the law during the probation period and pay a one thousand dollar civil fine. Motion failed with Alloway and Dover voting aye, with Avery, Ptak and Stange voting nay, and with Freeman and Gale not participating or voting, being absent and excused.

A motion was made by Stange and seconded by Avery in Complaint 2014-041, that Lisa K. Stork receive a three year suspension, with one year served on suspension and the remaining two years served on probation, plus six hours of additional continuing education to be determined by Staff. Ms. Stork must immediately notify the Commission staff of any violation of the law during the suspension period and pay a one thousand dollar civil fine. Motion failed with Avery, Ptak and Stange voting aye, with Alloway and Dover voting nay, and with Freeman and Gale not participating or voting, being absent and excused.

A motion was made by Alloway and seconded by Stange in Complaint 2014-041, that Lisa K. Stork receive a three year suspension, with six months served on suspension and the remaining two and one half years served on probation, plus six hours of additional continuing education to

be determined by Staff. Ms. Stork must immediately notify the Commission staff of any violation of the law during the suspension period and pay a one thousand dollar civil fine. Motion failed with Alloway, Dover and Stange voting aye, with Avery and Ptak voting nay, and with Freeman and Gale not participating or voting, being absent and excused.

A motion was made by Avery and seconded by Stange in Complaint 2014-041, that Lisa K. Stork receive a three year suspension, with nine months served on suspension and the remaining two years and three months served on probation, plus six hours of additional continuing education to be determined by Staff. Ms. Stork must immediately notify the Commission staff of any violation of the law during the suspension period and pay a one thousand dollar civil fine. Motion carried with Alloway, Avery, Dover and Stange voting aye, with Ptak voting nay, and with Freeman and Gale not participating or voting, being absent and excused.

With the consent of the Respondents, Acting Chairperson Ptak directed Counsel Barton to prepare the Order.

Acting Chairperson Ptak notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Acting Chairperson Ptak announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 11:34 a.m..

#### **Complaint 2015-001 – Commission vs. Todd S. Bartusek**

A Hearing was held on March 19, at 1:00 p.m., in the matter of Complaint 2015-001, Commission vs. Todd S. Bartusek. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Todd S. Bartusek was present and represented by Counsel Matthew D. Hammes of Omaha.

After opening statements, Counsels Barton and Hammes stipulated to the fact that Mr. Bartusek violated §81-885.24(28). The Hearing and testimony would provide evidence whether Mr. Bartusek also violated §81-885.24(29).

Counsels Barton and Hammes jointly offered 17 Exhibits, all of which were received by Acting Chairperson Ptak.

Counsel Hammes called Todd S. Bartusek, Vincent W. Leisey, Ellen Jaworski, Brandon Koom, and Robert R. Ryan, II as witnesses.

At 2:09 p.m., Acting Chairperson Ptak declared a brief recess, and reconvened the Hearing at 2:17 p.m.

After closing arguments had been presented, Acting Chairperson Ptak declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Avery and seconded by Alloway in Complaint 2015-001, that Todd S. Bartusek violated Neb. Rev. Stat. § 81-885.24(29) and as previously stipulated § 81-885.24(28). Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

Acting Chairperson Ptak opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #2013-016, dated May 16, 2013, censuring Bartusek's license, plus a civil fine of \$1,000.00, an additional 6 hours of continuing education, including 3 hours in the area of agency and 3 hours in the area of disclosures.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Avery and seconded by Alloway in Complaint 2015-001, that Todd S. Bartusek should receive a three year suspension with eighteen months served on suspension and the remaining eighteen months served on probation, plus six hours of additional continuing education to be in the area of ethics, pay a civil fine of one thousand five hundred dollars and Mr. Bartusek must notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time during the three year suspension period. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

With the consent of the Respondent, Acting Chairperson Ptak directed Counsel Barton to prepare the Order.

Acting Chairperson Ptak notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Acting Chairperson Ptak announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 3:26 p.m.

### **Informal Special Appearances**

#### **Edwin Glen Ziska, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Ziska's special appearance; a letter of explanation from Mr. Ziska; character reference letters for Mr. Ziska; a Justice System Search summary from the State of Nebraska on Mr. Ziska's cases; Mr. Ziska's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Ziska was present.

Commissioner Avery recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

Acting Chairperson Ptak reviewed the procedure for informal special appearances.

Director Lemon distributed an additional letter of reference for Mr. Ziska. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

Mr. Ziska explained the situations regarding his past criminal history.

After discussion, a motion was made by Stange and seconded by Dover to allow Mr. Ziska to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Ziska must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Mr. Ziska must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of four years, continue to obtain support through Alcoholics Anonymous or another reputable support group for four years, and provide the Commission staff with a quarterly report of attendance. Motion failed with Alloway, Dover and Stange voting aye, with Ptak voting nay, with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, and with Freeman and Gale not participating or voting, being absent and excused.

### **Personnel Matter – Closed Session**

At 9:27 a.m., a motion was made by Alloway and seconded by Stange to go into closed session for discussion of personnel matters. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

Acting Chairperson Ptak indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 9:46 a.m., a motion was made by Stange and seconded by Alloway to reconvene in open session. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale not participating or voting, being absent and excused.

### **Approval of Appointment of Special Assistant Attorney General**

Director Lemon presented an appointment as Special Assistant Attorneys General for Greg D. Barton and the attorneys of the law firm of O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O.. A copy of said exhibits are attached to and made a part of these minutes.

Director Lemon noted that Special Assistant Attorney General Greg D. Barton's appointment began March 16 2015 and ends on April 30, 2015. Director Lemon also noted that the new law firm of O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O. began their appointment on March 16, 2015.

A motion was made by Alloway and seconded by Stange to approve the appointments of the Special Assistant Attorney General, Greg D. Barton and the law firm of O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O. as appointed by the Office of the Attorney General. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Special Assistant Attorneys General - Contractual Matters**

Director Lemon presented a fee schedule for the newly appointed law firm O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O. A copy of said exhibits are attached to and made a part of these minutes.



Director Lemon requested authority to enter into a memorandum of understanding with the newly appointed Special Assistant Attorneys General of the law firm O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O. at the rates specified in the exhibit for this matter. A motion was made by Avery and seconded by Alloway to give Director Lemon the authority to enter into memorandum of understanding with the law firm O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C., L.L.O. as appointed by the Office of the Attorney General, and to accept the new fee schedule as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

### **Legislative Matters**

**LB28** – Director Lemon reported that this bill was placed on General File on March 11.

**LB34** - Director Lemon reported that the bill had been presented to the Governor on March 12.

**LB253** – Director Lemon reported that this bill was placed on General File on February 20.

**LB375** –Director Lemon reported that this bill was placed on General File on February 24.

**LB420** – No new information presented.

No action was necessary with regard to these matters.

### **Information Matters**

#### **ARELLO Mid-Year Meeting – April 15-18, 2015 - Albuquerque, NM**

Director Lemon explained that the deadline for registration is April 4, 2015, and the cut off for room registration is March 25.

No action was necessary on this report.

#### **Introduction of JoDell Hajek – New Trust Account Examiner – 9:05 a.m.**

Director Lemon introduced the new trust account examiner, JoDell Hajek, who began employment with the Commission office on February 23, 2015.

The Commissioners welcomed Ms. Hajek as part of Commission Staff.

No action was necessary on this report.

### **Future Meeting Dates**

April 23, 2015 – Country Inn & Suites, Lincoln  
May 21-22, 2015 – Staybridge Suites, Lincoln  
June 18-19, 2015 – Staybridge Suites, Lincoln  
August 20-21, 2015 – Staybridge Suites, Lincoln

### **Recesses and Adjournment**

At 9:49 a.m., Acting Chairperson Ptak declared a brief recess, and reconvened the meeting at 10:00 a.m.

At 11:34 a.m., Acting Chairperson Ptak declared a brief recess, and reconvened the meeting at 11:46 a.m.

At 12:15 p.m., Acting Chairperson Ptak declared a recess for lunch, and reconvened the meeting at 1:00 p.m.

At 2:09 p.m., Acting Chairperson Ptak declared a brief recess, and reconvened the meeting at 2:17 p.m.

At 3:26 p.m., Acting Chairperson Ptak declared a brief recess, and reconvened the meeting at 3:36 p.m.

At 3:52 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Dover that the meeting adjourn. Motion carried with Avery, Alloway, Dover, Ptak and Stange voting aye, with Freeman and Gale not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 19, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on March 24, 2015, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

### **Guests Signing the Guest List**

Henry Kammandel, CBSHOME Real Estate, Omaha

Arla Meyer, Woods Bros Realty, Lincoln

Vincent Leisey, Berkshire Hathaway Home Services Ambassador Real Estate, Omaha

Ellen Jaworski, Omaha

Kelley Pawol Bartusek, Omaha

Brandon Koom, Omaha

Robbie Ryan, Omaha

Harold Johnson, NP Dodge Co, Omaha