

NEBRASKA REAL ESTATE COMMISSION

November 19, 2015

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on November 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. 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. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Miller Show-Cause Hearing and the Mitchell and Hart Hearing.

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. Chairperson Gale 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.

Chairperson Gale 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. Chairperson Gale asked that guests sign the guest list.

Director Lemon noted that agenda item 16b had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Freeman and seconded by Dover to adopt the final agenda as presented. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Minutes of October 15, 2015

The minutes of the Commission meeting held on October 15, 2015, were considered.

After review, a motion was made by Freeman and seconded by Alloway to approve the minutes as presented. Motion carried with Alloway, Dover, Freeman, Titus and Gale voting aye, and with Avery and Stange not voting having not been in attendance at the October Meeting.

Public Comment

Chairperson Gale 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 October

Director Lemon presented the Receipts and Expenditures Report for October. 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 October 31, 2015, was \$1,061,466.74, which compared to a cash fund balance of \$830,790.68 on October 31, 2014.

After discussion, a motion was made by Freeman and seconded by Stange to file the October Receipts and Expenditures Report for audit. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

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 Stange and seconded by Freeman to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Examination Report - October

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

There was discussion regarding the education providers and the results of low testing scores.

After review, a motion was made by Freeman and seconded by Stange to ratify the October Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

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

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 Instructor Approval

Deputy Director Roubal presented for ratification the Continuing Education Instructor 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 Alloway to ratify the four reports. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

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 2014-040 - Jesse & Adam Wenzel vs. Michael John Pokorny

Deputy Director Cell presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Freeman and seconded by Stange that the complaint be dismissed without prejudice and a letter of admonishment be sent to Seller's agent. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Item B Complaint 2015-004- Jeri Cristine Schlickbernd vs. Jeff Rothlisberger & Maximino Lopez-Leon

Deputy Director Cell presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Titus and seconded by Freeman that the complaint be set for hearing on the violations alleged in the report for the Salesperson. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

A motion made by Alloway and seconded by Freeman that the complaint be dismissed against the Designated Broker and a letter of admonishment be sent to the Designated Broker. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Presentation of Stipulation and Consent Orders

Complaint 2015-010, Ilene Weber OR COMMISSION-CHECK IFMC vs. Darla Bruna

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2015-010, Ilene Weber vs. Darla Bruna. 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 Freeman to enter into the Order as presented. Motion carried with Alloway, Avery, Dover, Freeman, Stange, and Titus voting aye, and with Gale voting nay.

Disciplinary Hearings

November 19, 10:30 a.m. - Show-Cause Hearing on SC2015-001, Commission vs. Chris Miller, d.b.a. Delta Real Estate Portfolio

A Hearing was held on November 19 at 10:30 a.m., in the matter of SC2015-001. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Chris Miller was not present.

After opening statements, Counsel Prochaska offered thirteen Exhibits, all of which were received by Chairperson Gale. Counsel Prochaska called Duran Cell as a witness.

At 10:55 a.m. Chairperson Gale indicated that at this time, no party has claimed to be Mr. Miller or Counsel for Mr. Miller appearing on this matter.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made by Titus and seconded by Avery, that in Complaint SC2015-001, Chris Miller failed to show-cause why he should not be found to be in violation of the License Act and failure to comply with Show-Cause Order issued by the Commission.

An amendment was offered by Commissioner Freeman that Mr. Miller should also be found in violation of Neb. Rev. Stat. §§81.885.24 (29). The amendment was accepted by the mover and the second.

Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission held a show-cause hearing on January 23, 2015 requiring Mr. Miller to pay a civil fine of \$4,000 by 26, 2015; plus all requirements of the cease and desist order dated June 17, 2014. [Miller did show cause as to why he should not be subject to sanctions for failing to abide by the provisions

the Commission's Cease and Desist Order, CD2014-006; Miller did knowingly and repeatedly violate the provisions of such Commission Cease and Desist Order by providing and offering to provide on the Internet real estate brokerage and other property management services for Nebraska real estate that Miller and anyone associated with Delta REP did not own, without having an appropriate Nebraska real estate license on July 15, 2014, October 7, 2014, 10, 2014 and January 6, 2015.]

A motion was made by Freeman and seconded by Avery in Complaint SC2015-001, that Chris Miller's license be revoked. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Chairperson Gale directed Counsel Prochaska to prepare the Order.

Chairperson Gale 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 Respondents would have thirty days from the date of the Order to reimburse the Commission for said costs.

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

The Hearing was adjourned at 11:14 a.m.

Complaint 2015-008 – Commission vs. Felix Dwayne Mitchell and Curtis Hart

A Hearing was held on November 17, at 1:00 p.m., in the matter of Complaint 2015-008, Commission vs. Felix Dwayne Mitchell and Curtis Hart. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondents Felix Dwayne Mitchell and Curtis Hart were present and represented by Counsels Steffi A. Swanson of Bellevue and Michael F. Polk of Omaha, respectively.

After Opening Statements, Counsel Prochaska offered 38 Exhibits, all of which were received by Chairperson Gale. Counsel Prochaska called Duran Cell, Felix D. Mitchell and Curtis Hart as witnesses.

At 2:25 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 2:36 p.m.
Counsel Swanson called Felix Mitchell as a witness.

At 4:07 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 4:17 p.m.
Counsel Polk offered one Exhibit which was received by Chairperson Gale. Counsel Polk called Kim Arnold and Mark Hart as witnesses.

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

The Commission deliberated on the matters adduced at hearing regarding Mr. Mitchell.

A motion was made by Stange and seconded by Alloway that in Complaint 2015-008, that Felix Dwayne Mitchell violated Neb. Rev. Stats. §§ 81-885.24(22) and 81-885.24(29) as a

After discussion, motion carried with Alloway, Dover, Stange, Titus and Gale voting aye, and Avery and Freeman voting nay.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against Felix Dwayne Mitchell.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Avery in Complaint 2015-008, that Felix Dwayne Mitchell receive a three year suspension, with sixty days stayed and served, a civil fine of two-thousand dollars, plus six hours of additional continuing education, three hours in agency and three hours in license law. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

The Commission deliberated on the matters adduced at hearing regarding Mr. Hart.

A motion was made by Freeman and seconded by Titus that in Complaint 2015-008, that Curtis Hart violated Neb. Rev. Stat. §§ 81-885.24(29) as relating to the failure to retain records as required and Title 299 NAC 3-001. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #2012-010, dated May 25, 2012, suspending Mr. Hart's license for a period of six months with the entire period stayed and served on probation, plus a civil fine of \$1,250.00 for failure by a designated or employing broker to supervise his or her associate brokers and salespersons.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Alloway and seconded by Stange in Complaint 2015-008 that Curt Hart receive a one year suspension all stayed and served on probation, a civil fine of one thousand five hundred dollars, plus three hours of additional continuing education in the area of license law.

After discussion, an amendment was offered by Freeman to require Mr. Hart to develop and submit a written retention and security policy that will acknowledge the real estate transactions to be maintained in the real estate files for five years. The motion was not accepted by the mover and second.

After further discussion, an amendment was offered by Freeman to require Mr. Hart to develop and submit to the Commission office a written retention and security policy that is in compliance with the Nebraska License Law and approved by the Director. The amendment was accepted by the mover and the second.

Motion carried with Alloway, Dover, Freeman, Stange, Titus and Gale voting aye, and with Avery voting nay.

With the consent of the Respondents, Chairperson Gale directed Counsel Prochaska to prepare the Order.

Chairperson Gale notified the Respondents that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and

the Respondents would have thirty days from the date of the Order to reimburse the for said costs.

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

The Hearing was adjourned at 6:00 p.m.

Informal Special Appearances

There were no informal special appearances to be presented at the meeting.

Review and Approval of Travel to ARELLO Leadership Conference

Director Lemon presented an exhibit regarding the estimated costs to attend the ARELLO Leadership Conference. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Titus and seconded by Stange to approve the reimbursement of expenditures to staff to attend the meeting set forth in the exhibit. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Legislative Matters

Director Lemon presented an exhibit regarding the explanation of the draft legislation on teams intended to provide statutory framework needed to develop more detailed rules and regulations relating to real estate teams. A copy of said exhibit is attached to and made a part of these minutes.

Real Estate Teams Legislation

Director Lemon presented an exhibit of the proposed legislation to create definitions of "team" and "team leader" in the license act provide duties for a team leader as prescribed. A copy of said exhibit is attached to and made a part of these Minutes. Fred Hoppe with the Nebraska REALTORS® Association was in attendance to speak to this matter.

Director Lemon indicated that the proposed legislation would be used to define teams and team leaders and provisions as shown in the draft legislation. The proposed legislation would be necessary to lay foundation for the recognition and regulation of teams and used for the basis of any disciplinary actions. It would also lay the foundation to implement rules and regulation for teams which would be drafted in the future should legislation be adopted.

There was discussion regarding the proposed legislation and the joint activity by the Nebraska Real Estate Commission and the Nebraska REALTORS® Association.

Mr. Hoppe indicated that the legislation would set up the background with the proposed legislation to provide the Commission to draft rules and regulations.

There was also discussion regarding non-substantive changes that may be made prior to the bill being introduced to the legislature. There was discussion as to whether the Commission or Association would be presenting this bill to the legislature.

A motion was made by Freeman and seconded by Alloway to endorse the introduction of the legislative bill as amended and to allow grammatical changes as needed.

After discussion, an amendment was offered by the mover to introduce the legislative bill rather than endorse. The amendment was accepted by the second.

Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

Information Matters

Trust Account Examination Evaluation Report - Third Quarter 2015

Director Lemon presented the Trust Account Examination Evaluation Report - Third Quarter 2015. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled.

There was discussion regarding the frequency in which the evaluations were being reported.

A motion was made by Alloway and seconded by Dover to change the frequency of the trust account examination evaluation report from quarterly to annually and to research the possibility of using an online survey provider. Motion carried with Alloway, Dover, Freeman, Stange, Titus and Gale voting aye, and with Avery abstaining.

TILA-RESPA Update

Director Lemon presented an explanation of the TILA-RESPA and license number requirements. A copy of said report is attached to and made a part of these minutes.

Director Lemon explained that the Commission had received many questions regarding required license numbers on TILA-RESPA forms and a license number relating to a firm or company license. He indicated that a licensee should provide their license number but there appears to be no clear answers to the number that is being requested for a firm or company license since the Nebraska Real Estate Commission does not license entities. In some circumstances the designated broker's license number is being requested. He noted that conflicting information is being received from the CFPB and he will need to attempt to get clarification from them.

There was discussion regarding the conflicting information from CFPB and lenders requesting conflicting information.

It was the consensus of the Commission to attempt to receive a clarification from CFPB and provide that to the licensees.

No action was necessary on this report.

Future Meeting Dates

January 21-22, 2016– Staybridge Suites, Lincoln
February 18-19, 2016 – Staybridge Suites, Lincoln
March 17-18 2016 - Staybridge Suites, Lincoln
April 21-22, 2016 - Staybridge Suites, Lincoln
May 19-20, 2016 - Staybridge Suites, Lincoln

June 16-17, 2016 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:12 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

At 11:34 a.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:00 p.m.

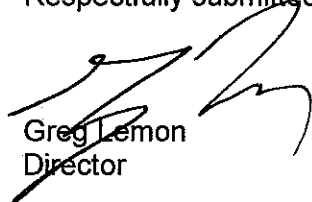
At 2:25 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 2:36 p.m.

At 4:07 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 4:17 p.m.

At 6:02 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Titus that the meeting adjourn. Motion carried with Avery, Alloway, Dover, Freeman, Stange, Titus and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the November 17, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on November 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

Mark Leaders, CBSHOME Real Estate, Omaha
Jeff Hebb, Nebraska REALTORS® Association, Lincoln
Fred Hoppe, Nebraska REALTORS® Association, Lincoln
Ken Emmons, RE/MAX Real Estate Concepts, Lincoln
Jeff Searcy, Home Real Estate, Lincoln

