

NEBRASKA REAL ESTATE COMMISSION

November 21, 2019

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on November 21, 2019, 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 Ken Dahlke, and Deputy Director for Licensing Monica Rut. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Salkin Hearing.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice thereof relating to this meeting, which is attached to and made a part of these minutes. Chairperson Evnen 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 Evnen 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 Evnen asked that guests sign the guest list.

Director Lemon noted that agenda item 6a had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Gehrki and seconded by Ritter to adopt the final agenda as presented. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Minutes of October 17, 2019

The minutes of the Commission meeting held on October 17, 2019, were considered.

After review, a motion was made by Ritter and seconded by Starman to approve the minutes as presented. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Public Comment

Chairperson Evnen 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, 2019, was \$1,394,804.84, which compared to a cash fund balance of \$1,371,542.18 on October 31, 2018.

After discussion, a motion was made by Starman and seconded by Bourne to file the October Receipts and Expenditures Report for audit. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Specialized Registrations

Time-Share Registrations - Amendment for Marriott Vacation Club Destinations

Director Lemon presented a specialized registration report which included the registration of amendment to the time-share registration for Marriott Vacation Club Destinations. A copy of said report is attached to and made a part of these minutes.

A motion was made by Titus and seconded by Gehrki to approve the amendment to the registration as presented. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

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 Dover and seconded by Bourne to ratify issuance of the licenses as set forth in the report. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen 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.

After review, a motion was made by Gehrki and seconded by Ritter to ratify the October Examination Report for the purpose of issuing licenses. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen 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.

PSI Third Quarter School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of July 1, 2019 through September 30, 2019, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal noted that the PSI Third Quarter School reports are being presented as a replacement for those presented last month which were incorrect. She explained each of the reports relating to the national tests and the school reports.

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.

Commission-Approved Training Activity Recognition

Deputy Director Roubal presented a Commission-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 Titus and seconded by Gehrki to ratify the four reports. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Pending Sworn Complaints and Investigative Matters

Deputy Director Dahlke 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 2018-033

Deputy Director Dahlke 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 Ritter that the complaint be set for hearing. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item B Complaint 2019-017 - Walter & Pamela Sell vs. Robby Gene Predmore & Teresa Predmore

Deputy Director Dahlke 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 Gehrki and seconded by Ritter that the complaint be dismissed without prejudice. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item C Complaint 2019-003

Deputy Director Dahlke 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 Ritter and seconded by Dover that this complaint be held in abeyance and a new complaint be filed and set for hearing against the Respondent per the Staff recommendation. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item D Complaint 2019-002 - Courtney & Philip Manzitto vs. Shawn Patrick McGuire

Deputy Director Dahlke 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 Bourne that this complaint be dismissed without prejudice. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item E Complaint 2019-005 - Leland & Glynnis Rupp vs. Christine Ann O'Brien

Deputy Director Dahlke 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 Gehrki and seconded by Ritter that the complaint be dismissed without prejudice. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item F Complaint 2017-018 – Dusko Slavnic vs. Michael Howard Salkin

Deputy Director Dahlke requested Complaint 2017-018 be dismissed. Deputy Director Dahlke explained that Complaint 2017-018 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 2017-018 in abeyance until the new complaint had been adjudicated. Complaint 2018-032 was the new complaint.

A motion was made by Gehrki and seconded by Bourne to dismiss Complaint 2017-018, since the Commission held the Hearing for Complaint 2017-032 at this meeting. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item G Complaint 2016-014 - Amy Schulze & Paul Fleuren vs. Matthew Alson Rasmussen & Michael Louis Riedmann

Deputy Director Dahlke requested Complaint 2016-014 be dismissed. Deputy Director Dahlke explained that Complaint 2016-014 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 2016-014 in abeyance until the new complaint had been adjudicated. Complaint 2017-023 was the new complaint.

A motion was made by Gehrki and seconded by Titus to dismiss Complaint 2016-014, since the Commission accepted a Stipulation and Consent Order for Complaint 2017-023 at the last meeting. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2019-007 and 2019-010,
Commission vs. Jeffrey Marc Cohn**

Director Lemon presented a Stipulation and Consent Order in the matter of Complaints 2019-007 and 2019-010, Commission vs. Jeffrey Marc Cohn. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Dover to enter into the Order as presented. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

**Complaint 2019-001,
Commission vs. Ryan Basye**

Deputy Director Dahlke presented a Stipulation and Consent Order in the matter of Complaint 2019-001, Commission vs. Ryan Basye. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Gehrki and seconded by Bourne to enter into the Order as presented. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye and with Bourne voting nay.

Disciplinary Hearings

Complaint 2018-032 - Commission vs. Michael Howard Salkin

A Hearing was held on November 21, at 10:42 a.m., in the matter of Complaint 2018-032, Commission vs. Michael Howard Salkin. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Michael Howard Salkin was present and represented by Counsel Douglas W. Ruge of Omaha.

After Opening Statements, Counsels Prochaska and Ruge jointly offered twenty-six Exhibits, all of which were received by Chairperson Evnen. Counsel Prochaska called Michael Howard Salkin as a witness.

Counsel Ruge called Michael Howard Salkin as a witness.

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

At 12:49 p.m., Chairperson Evnen declared a recess of the Hearing. The Hearing reconvened at 12:54 p.m.

At 12:54 p.m., a motion was made by Titus and seconded by Gehrki to go into closed session to deliberate the matters adduced at hearing and to protect reputation of the licensee. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

At 2:20 p.m., a motion was made by Titus and seconded by Gehrki to reconvene in open session. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

After discussion, a motion was made by Gehrki and seconded by Ritter to dismiss without prejudice in Complaint 2018-032, Michael Howard Salkin with regard to violating Neb. Rev. Stat. §81-885.21(6). Motion carried with Dover, Gehrki, Ritter, and Evnen voting aye, and with Bourne, Starman and Titus voting nay.

After further discussion, a motion was made by Ritter and seconded by Gehrki to dismiss without prejudice in Complaint 2018-032, Michael Howard Salkin with regard to violating Neb. Rev. Stat. §76-2422(2). Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

A motion was made by Titus and seconded by Ritter that in Complaint 2018-032, Michael Howard Salkin violated Neb. Rev. Stat. §81-885.24(29). Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

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

At 2:32 p.m., a motion was made by Gehrki and seconded by Ritter to go into closed session to discuss the penalty to be assessed and to protect reputation of the licensee. Motion failed with Ritter, Gehrki, and Evnen voting aye, and with Bourne, Dover, Starman, and Titus voting nay. The Commissioners then discussed the penalty to be assessed.

A motion was made by Titus and seconded by Gehrki in Complaint 2018-032, that Michael Howard Salkin should receive a censure, plus six hours of additional continuing education.

There was discussion regarding specific courses that Mr. Salkin should be required to take. An amendment was offered that Mr. Salkin take three hours in contract law and three hours in license law. The amendment was approved by the mover and the second. Motion carried with Ritter, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

With the consent of the Respondent, Chairperson Evnen directed Counsel Prochaska to prepare the Order.

Chairperson Evnen notified the Respondents that as a part of the Order in this matter, the Respondent is required, under Nebraska Revised Statutes Section 84-914(1) and Title 305 Nebraska Administrative Code, Chapter 4-007.05, to pay the costs of the appearance fee by the court reporter, and any and all witness fees, including mileage and the cost of serving any witness. The Respondent will be billed by the Commission Office, or the amount may be specified in the Order, and will have thirty days from receipt of the costs to totally reimburse the Commission.

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

The Hearing was adjourned at 2:40 p.m.

Informal Special Appearances

Georgiy Mykhaylovych Ptashynskyy, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

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

Mr. Ptashynskyy explained the situations regarding his criminal history.

After discussion, a motion was made by Bourne and seconded by Starman to allow Mr. Ptashynskyy to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Ptashynskyy 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.

Commissioner Starman offered an amendment to add that Mr. Ptashynskyy must also notify the

Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within five days for a period of three years. The amendment was accepted by the mover. Motion failed with Bourne, Gehrki, and Starman voting aye, and with Dover, Ritter, Titus, and Evnen voting nay.

A motion was made by Titus and seconded by Dover that Mr. Ptashynskyy not be allowed to sit for the salesperson examination at this time. Motion carried with Dover, Gehrki, Ritter, Titus and Evnen voting aye, and with Bourne and Starman voting nay.

Russell Dean Kyle, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Kyle distributed bank statements as reference to explain charges within the exhibit. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

Mr. Kyle explained the situations regarding his criminal history.

A motion was made by Titus and seconded by Bourne that Mr. Kyle not be allowed to sit for the salesperson examination at this time. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Commission Legislation on Unlicensed Assistants

Director Lemon presented industry suggested revisions for the Commission's review and proposed legislation. A copy of said exhibit is attached to and made a part of these minutes. Andy Alloway with the Nebraska REALTORS® Association, Executive Committee was present to discuss this agenda item.

Director Lemon explained the history regarding the proposed legislation for unlicensed assistants and explained that suggested changes were also enclosed for the Commission's review.

Mr. Alloway explained that the Nebraska REALTORS® Association reviewed the proposed language for Unlicensed Assistants and solicited comments from members. He noted that while they support the legislation, they had suggested a few changes as set forth in the exhibit.

There was discussion regarding the nature of the calls made by unlicensed assistants, what qualifies as administrative functions and possible language which may be used by unlicensed assistants on phone calls.

There was further discussion regarding the current law, proposed law, proposed changes and the possible actions going forward.

Chairperson Evnen indicated that the process needs to be defined, the law needs to be very clear and provide a mechanism for enforcement. He also noted that due to the revisions discussed, there would not be sufficient time to get the issues addressed and the bill drafted before the 2020 legislative session.

A motion was made by Gehrki and seconded by Ritter that Director Lemon work with the Nebraska REALTORS® Association to refine the proposed unlicensed assistant language, while taking into consideration the discussion of the Commission at this meeting, to be drafted for the next legislative session. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Consider Draft Amendments to Nebraska Administrative Code Title 299, Chapter 3, to Incorporate the Trust Account Manual into the Code and Provide a Trust Account Waiver and Title 299, Chapter 7, to Add One Hour to the In-Classroom Daily Limit

Director Lemon presented proposed changes to the Nebraska Administrative Code Title 299, Chapter 3, to incorporate the Trust Account Manual into the Code and provide a trust account waiver and Title 299, Chapter 7, to add one hour to the in-classroom daily limit. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the prior discussions regarding the Trust Account Manual and regarding the proposed language changes to regulations. He indicated that the legislature has suggested that these types of documents, which require and prohibit certain behavior, be put into regulations rather than interpretive documents so that they can go through the regulatory review process and have the force of law when approved. He reviewed the proposed changes regarding the trust account waiver and noted that the audits would be still be conducted for compliance purposes when a trust account waiver had been granted. He further explained that Title 299, Chapter 7 provides for only an 8 hour in-classroom daily limits, however, the continuing education is approved in three hour increments, therefore the rule change would allow for 9 hour in-classroom daily limits.

Chairperson Evnen indicated there were a few clerical errors on the second to the last page which need to be fixed before the rule hearing.

A motion was made by Bourne and seconded by Ritter to approve the amended language and set it for a rule hearing. Motion carried with Bourne, Dover, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Report of Use of Social Media in Advertising

Director Lemon presented an exhibit reporting the compliance and functionality of advertising and social media. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained concerns licensees had regarding certain social media apps not allowing for brokerage names to be displayed prominently as required by the Commission's advertising regulations. While compliance may require some additional steps when creating posts to social media, there are ways for the licensees to add the brokerage names. Director Lemon suggested providing licensees with guidance documents and specific examples to comply when using certain social media apps.

There was discussion regarding advertising in general on social media and the Commissioners

voiced their concerns.

No action was necessary on this report.

Information Matters

There were no Information Matters to be discussed at this meeting.

Future Meeting Dates

January 23-24, 2020 – Country Inn & Suites, Lincoln

February 27-28, 2020 - Staybridge Suites, Lincoln

March 19-20, 2020 - Staybridge Suites, Lincoln

April 16-17, 2020 - Staybridge Suites, Lincoln

May 21-22, 2020 - Staybridge Suites, Lincoln

June 18-19, 2020 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:27 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:42 a.m.

At 12:49 p.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 12:54 p.m.

At 3:34 p.m., there being no further business to come before the Commission, the Chairperson declared the meeting adjourned.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the November 21, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on November 25, 2019, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

James McCord, Nemaha Valley Board of REALTORS®, Nebraska City

Charles Chadwick, CNC Realty, Omaha

Debbie Mitchell, Coldwell Banker REA, Omaha

Christie Bevington, Nebraska REALTORS® Association, Lincoln

Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln

Andy Alloway, Nebraska REALTORS® Association, Lincoln

Maggy Mantonya, Lincoln