

April 12, 2007
8:00 AM
ND Real Estate Commission
200 E Main Ave Suite 204
1st Floor Conference Room
Bismarck ND 58501

Present: Jerry Schlosser/Chair, Diane Louser/Vice Chair, Roger Cymbaluk/Member,
Kris Sheridan/Member, Jerry Youngberg /Member, Patricia M.
Jergenson/Secretary Treasurer, Constance Hofland/Special Assistant Attorney
General

1. CALL MEETING TO ORDER. Chair Jerry Schlosser called the meeting to order. Roll call was taken.
2. APPROVE MINUTES OF FEBRUARY 21, 2007 MEETING. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the minutes of February 21, 2007. M/C Item #5(ii) "Commission will consider filing a complaint against Lujean (Jeannie) M. Shirley" on these minutes was addressed as old business. Secretary Treasurer Jergenson noted that Ms Shirley's license was cancelled in 2005. No further action will be taken.
3. APPROVE FINANCIAL REPORTS FOR OCTOBER, NOVEMBER, & DECEMBER 2007 AND JANUARY, FEBRUARY 2007. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve all of the financial reports as submitted. M/C
4. LEGAL UPDATE: CONNIE HOFLAND.
 - (i) Complaint #2006-14 Cari Wiend v Rick Delzer. Chair Schlosser recused himself from this portion of the meeting and turned the meeting over to Vice Chair Louser. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Ms. Wiend alleged that Rick Delzer did not honor the purchase agreement presented to him by her agent because he preferred a second offer he received after Ms Wiend's offer was delivered to the seller. Ms. Hofland believed that there was insufficient evidence to establish that Mr. Delzer made substantial or willful misrepresentations, or that his conduct was dishonest or fraudulent. However she felt that it did appear that there may be a potential violation of NDCC 43-23-11.1(w) as the evidence could establish that Mr. Delzer did not meet the generally accepted standards of expertise, care or professional ability expected of real estate brokers or salespersons. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to dismiss the complaint and to include in the letter notifying Mr. Delzer of the dismissal of the complaint

notice that the Commission is concerned about the level of attention paid to detail and the lack of adherence to the terms of the Purchase Agreement. M/C The meeting was returned to Chair Schlosser at this time.

- (ii) Complaint# 2006-15 Marvin Greenberg v. Richard Ward and Nicole Moen. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Mr. Greenberg alleges in his complaint that Richard Ward falsified information on his broker license application in addition to allegations regarding tax documents and the purchase of some property. Ms Hofland informed the Commission that there appeared to be sufficient evidence to set a hearing on the matter of the falsification of information on Mr. Ward's application for licensure. She also recommended the Commission table further investigation on matters currently in litigation. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to table the current complaint against Mr. Ward pending resolution of the lawsuit and on its own motion to file a complaint against Mr. Ward for not being truthful on his application. M/C Ms Hofland recommended the complaint against Nicole Moen be dismissed. Commissioner Cymbaluk moved, seconded by Commissioner Louser to dismiss the complaint against Nicole Moen. M/C
- (iii) Complaint# 2006-19 Marlene Betz v. Ann Strandemo. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Ms. Betz alleges in her complaint, among other claims, that the sale of a duplex which was part of an irrevocable trust was illegal because the grantor signed the purchase agreement without authority, that Ann Strandemo sold the property for less than the value and that she also listed the property without signed approval from all three of the trustees. Ms Hofland recommended the complaint against Ann Strandemo be dismissed as there appears to be insufficient evidence of potential violations of statute or administrative rules. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to dismiss the complaint against Ann Strandemo. M/C
- (iv) Complaint# 2006-20 Stephanie Davos v. Jonathon Kotrba. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Ms. Davos alleges in her complaint that Jonathon Kotrba led her to believe that he would assist her in the sale of her home and look out for her best interest, conned her into signing the purchase agreement for less than true value, represented to her that she would end up with \$1200 after closing, threatened her with legal action, forced her to initial changes to the purchase agreement and acted improperly when he tried to take possession of the house after closing. Commissioner Sheridan moved, seconded by Commissioner Louser to set this complaint for a hearing on all possible violations. M/C
- (v) Complaint# 2006-21 Sharon Ness v. Judy Hoskin. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Ms. Ness alleges in her complaint, among other claims, that Judy Hoskin refused to list her house for \$79,000 as Ms Ness wanted and insisted on listing it for \$59,000, she ignored Ms Ness's decision making rights, took advantage of Ms Ness's disabilities, favored the buyer, did not explain dual agency or closing

costs options, coerced Ms Ness to give the buyer the hot tub, and did not act in Ms Ness's best interest and breached the duty of loyalty. Ms Hofland recommended this complaint be dismissed as there does not appear to be sufficient evidence of potential violations. Commissioner Cymbaluk moved, seconded by Commissioner Louser to dismiss the complaint against Judy Hoskin. M/C

- (vi) Correspondence regarding dismissal of Complaints #2006-16 and #2006-18. Commissioners received a letter from Jeff Stack requesting the Commission to reopen the dismissed complaint against Bruce Fadness and Sharon Rasmussen. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to not reopen the complaint against Mr. Fadness and Ms Rasmussen based on the fact that the letter from Mr. Stack did not provide any new information that would warrant the reopening of the complaint. M/C
Commissioners received a letter from Pamela Devins requesting the Commission to reopen the dismissed complaint against Cheryl Tupa. Commissioner Sheridan moved, seconded by Commissioner Youngberg to reaffirm the Commission's first decision to dismiss the complaint. M/C
- (vii) Review of the memo on hearing procedures was tabled.
- (viii) Memo on Jim Lund team advertising. Connie Hofland presented her response to an inquiry from Brenda Martinson regarding the advertising of the "Jim Lund Team". Ms Hofland noted following issues: advertising as the Jim Lund Team by Jim Lund and not as he is licensed, solicitation of listings, rebate, and advertising by Alexandra Thomte and Ashley Olson as the Jim Lund Team and not as RE/MAX Realty 1 as they are licensed. Commissioners directed Ms Hofland to reply to Ms Martinson's inquiry and include the following points: the practice of leaving business cards with \$500 inducement at a listed home is not proper (targeted solicitation), advertising by a licensee is to be done under the exact name a licensee is licensed using the name of the broker or firm under which they are licensed, and full details of inducements must be provided in the marketing tools. Commissioners are to be carbon copied Ms Hofland's response.
- (ix) Shopping of offers. In a memo dated February 19, 2007 Ms Hofland addressed inquiries on the legality of "shopping offers". There is not a ND statute or regulation that requires licensees, without being requested to do so, to treat the terms and conditions of offers as confidential. It is suggested that licensees discuss this issue with their clients. If a buyer wants their offer to be kept confidential consider having a confidentiality statement signed – if an offer is not to be kept confidential then the conditions of the offer can be disclosed.
- (x) Revisit 359homes.com issue. In a memo dated February 19, 2007 Ms Hofland investigated the website www.359homes.com and wrote "even with the disclaimer that they are not licensed real estate brokers or agents, the information on the website indicates that Cory and Gary Brenden may be in violation of NDCC 43-23-06.1(8)(a),(g), and (h)." It was the consensus of the Commission to have Ms Hofland send a letter to Gary and Cody Brenden noting the possible license law violations and the recommendation that they discontinue their activities until they are in compliance with applicable statutes.

- (xi) Notification by licensee of felony or misdemeanor convictions. There does not appear to be a statute or rule that requires real estate licensees to notify the Commission within a specific period of time of any misdemeanor or felony convictions. In her memo Ms Hofland states: NDCC 43-23-11.1 limits grounds for suspension to having "been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery larceny, extortion, conspiracy to defraud, or other similar offense." So if they were only arrested and not convicted, or if the conviction is only for a misdemeanor that does not involve theft, etc, it may not even be an issue on renewal of license. However, if the convictions fit the requirements of 43-23-11.1, the commission could "upon its own motion" investigate the activities of the licensee, without waiting for the renewal application. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to conduct background checks on Shawn Huber, Brian Gullickson, and Jason Speiss to be provided to the Commission at the next meeting. M/C
5. DISCUSS ADMINISTRATIVE RULE 70-02-03-15.1(8). Chair Schlosser opened discussion on the timing of agency disclosure. It was the consensus that this is a broker issue and that when possible the auditors should review the dates of the agency disclosure forms and contracts.
6. REQUEST FOR OPINION FROM THE FARGO-MOORHEAD AREA ASSOCIATION OF REALTORS®. The Fargo-Moorhead Area Association of REALTORS® requested an opinion from the Commission regarding advertising that says "Purchase your next home from me and receive a 42" plasma TV...call for details" and whether or not inducement slogans printed on business cards which are left after showings are considered solicitation of listings. These issues were discussed earlier under item 4(viii). Commissioners instructed Ms Hofland to send the same letter to the FMAAR as is being sent to Brenda Martinson of RE/Max Realty 1.
7. REVIEW APPLICATIONS FOR SALESPERSON LICENSES.
- a. Commissioners reviewed the application of Jennie S. Baumgartner for a salesperson license. Ms Baumgartner was present at the meeting to answer any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Baumgartner to sit for the salesperson real estate examination. M/C
 - b. Chair Schlosser turned the meeting over to Vice Chair Louser and recused himself from this portion of the meeting. Commissioners reconsidered the application of Heather L. Hanson for a salesperson license. Ms Hanson provided the Commissioners with the information they requested at the February 21, 2007. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Ms. Hanson to sit for the salesperson real estate examination. M/C The meeting was turned back over to Chair Schlosser.
 - c. Commissioners reviewed the application of Shauna C. Forshner for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Forshner to sit for the salesperson real estate examination. M/C

- d. Commissioners reviewed the application of Brian K. Solum for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Solum to sit for the salesperson real estate examination. M/C
 - e. Commissioners reviewed the application of Matthew J. Power for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Mr. Power to sit for the salesperson real estate examination. M/C
 - f. Commissioners reviewed the application of Bradley E. Knudson for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to request that Mr. Knudson provide documentation to verify that the IRS tax lien has been released and that staff research the status of his auctioneer's license. M/C
 - g. Commissioners reviewed the application of Ross A. McGregor for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to request more information from Mr. McGregor regarding question #16 on his application. M/C
 - h. Commissioners reviewed the application of Daniel S. Hanson for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Hanson to sit for the salesperson real estate examination. M/C
 - i. Commissioners reviewed the application of David A. Gilkison for a salesperson license. Mr. Gilkison was present at the meeting to answer any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to deny Mr. Gilkison's application due to the fact that he is currently on probation. M/C
8. REVIEW APPLICATIONS FOR BROKER LICENSE. Commissioners reviewed the application of Tammy L. Henriksen for a broker license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms Henriksen to sit for the broker examination. M/C
 9. DISCUSS REQUEST SUBMITTED BY REAL ESTATE EDUCATION ASSOCIATION. Commissioners instructed staff to send a letter to REEA acknowledging their recommendation for ND to require it's instructors to have their Distinguished Real Estate Instructor designation and notifying them that we would not be adding this as a requirement for ND instructors.
 10. DISCUSS SUGGESTIONS FOR REVISION OF THE BROKER'S RECORD OF PROFESSIONAL REAL ESTATE ACTIVITY BROCHURE. Chair Schlosser noted that he would like this item placed on the agenda for the next meeting at which time he will present how he perceives this brochure to be used, its intent, etc.
 11. NSF CHECK RECEIVED FROM JODI J. DEPLAZES. The information Ms Deplazes provided regarding her NSF check for her 2007 license renewal was not complete as requested. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk that Ms Deplazes will remain on inactive status until the Commission receives payment for the overdraft and all information as requested has been provided for the Commission's review. M/C
 12. LEGISLATIVE UPDATE. Secretary Treasurer Jergenson gave an overview of the bills she had been watching and testifying on this session.
 13. UPDATE ON 2007 LICENSE RENEWALS. Secretary Treasurer Jergenson provided the Commission with a breakdown of 2007 license renewals.

14. WEBSITE UPDATE. Secretary Treasurer Jergenson reported that the Commission's web site should be launched sometime this summer. There was discussion on having at least a portion of this completed earlier.
15. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the requests for trust account waivers as attached to these minutes. M/C
16. DISCUSS PROPOSED ARELLO BYLAW CHANGES. Commissioners received a copy of the proposed bylaw changes that will be voted on at the upcoming ARELLO meeting.
17. COMMISSION GOALS. The goals of the Commission were revised.
18. OTHER BUSINESS:
 - a. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to table the filing of a complaint against Todd Fettig until Complaint # 2006-03 Opland v Gudmunson has been finalized. Commissioners Sheridan and Louser recused themselves from any discussion and abstained from voting on this motion. M/C
 - b. The Commission staff have been receiving numerous calls from people verbally placing a complaint, not wanting to put it in writing or to identify themselves but wanting the Commission to take some sort of action. Commissioners instructed staff to inform these individuals that the issue cannot be addressed unless it is in writing.
 - c. Commissioners were informed that Illinois has canceled reciprocity with North Dakota and that Kansas has rescinded all of its reciprocity agreements effective March 8, 2007. Reciprocity will be discussed at a future commission meeting.
 - d. The issue of licensees requesting to have their licenses issued under a name they are doing business under was discussed. It was determined that this would be allowable.
 - e. Commissioners considered the application for subdivided land registration from Whitebirch, Inc. at Breezy Point. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve the registration for Whitebirch Inc, at Breezy Point pending the receipt of a \$25,000 indemnity bond. M/C
 - f. Kelly Parrett asked the Commissioners to consider the reinstatement of his cancelled salesperson license citing a number of misunderstandings which lead to his license renewal not being turned in to the Commission office. Commissioner Cymbaluk moved, seconded by Commissioner Louser to deny Mr. Parrett's request based on the fact that he signed the Inactive Status form which includes the statement "All inactive licenses must be renewed prior to December 31st of each renewal period. All licenses will automatically be cancelled if the renewal fee is not remitted to the ND Real Estate Commission on or before the renewal deadline." M/C
 - g. Commissioners discussed possible dates for the next Commission meeting to be held in June. Agenda items will include election of officers, 2007/08 budget, and draft administrative rules.

There being no further business Chair Schlosser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Secretary Treasurer