

August 16, 2007
8:00 AM
North Dakota Real Estate Commission
State Capitol Building
Fort Totten Room
600 East Boulevard Ave
Bismarck ND 58505

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

8:00 AM Hearing for Complaint#2006-20 Stephanie Davos v. Jonathon Kotrba
Hearing was not held as Mr. Kotrba submitted a proposed stipulated agreement.

1. CALL MEETING TO ORDER. Chair Louser called the meeting to order. Special Assistant Attorney General Connie Hofland presented the proposed stipulated agreement from Mr. Kotrba. Commissioner Sheridan moved, seconded by Commissioner Youngberg to accept the stipulated agreement for Complaint# 2006-20 Jonathon Kotrba as presented. M/C
2. APPROVE MINUTES OF JUNE 12, 2007 MEETING. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the minutes of June 12, 2007 as written. M/C
3. APPROVE FINANCIAL REPORTS FOR JUNE AND JULY 2007. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the financial reports for June and July 2007 as presented. M/C
4. LEGAL UPDATE:
 - a. Memo from Jerry Kettleon regarding investigation of Todd Fettig. The meeting was turned over to Commissioner Cymbaluk. Commissioners Louser and Sheridan and Special Assistant Attorney General Connie Hofland recused themselves from any discussion of this agenda item. Commissioners discussed the memo from Special Assistant Attorney General Kettleon regarding the Gudmunson complaint and bringing a complaint against the brokers of record during the time of the transactions involved in the initial complaint against Gudmunson. Commissioner Youngberg moved, seconded by Commissioner Schlosser to ask Assistant Attorney General Doug Bahr to write letters to Todd Fettig and Ruth Denney informing them of what had transpired with Sheldon Gudmunson during the time each

was his broker of record, if Mr. Bahr is unable to write the letters then Special Assistant Attorney General Kettleon is to be asked. M/C
Chair Diane Louser took over the meeting.

b. Connie Hofland:

- (i) Complaint # 2007-04 NDREC v. Richard Ward. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Schlosser moved, seconded by Commissioner Youngberg to set this complaint for a hearing. M/C
- (ii) Complaint # 2007-05 Francis M. Carter v. Jack Wadhawan. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Francis Carter alleges in his complaint that Mr. Wadhawan made a substantial and willful misrepresentation about the Carter's house. He also alleges that Mr. Wadhawan solicited the Carters while they were represented by another salesperson. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to set this complaint for a hearing. M/C (1 nay Commissioner Schlosser).
- (iii) Complaint # 2007-07 Deanna Beauchem v Bob Veland. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Ms. Beauchem alleges that Mr. Veland was dishonest and provided false documentation on a worksheet he provided showing the net she would receive at closing. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to dismiss the complaint against Mr. Veland. M/C
- (iv) Ms. Hofland informed Commissioners that Jodie Deplazes had not responded to the notice of complaint sent to her. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to set this complaint for a hearing. M/C
- (v) Ms. Hofland informed the Commissioners that the issue resulting in the complaint against Kathy Feist is still in litigation.

5. REVIEW PROPOSED AMENDMENTS TO ADMINISTRATIVE RULES.

* Commissioners reviewed proposed administrative rule changes to 70-01-01-01, 70-02-01-02, 70-02-01-03 and 70-02-03-07. Commissioner Sheridan moved, seconded by Commissioner Schlosser to require non-resident broker applicants to take the state portion of the real estate license examination. M/C

* Special Assistant Attorney General Hofland stated that the Commission does not need to draft administrative rules to require background checks. The process can be handled by verbiage on the application and upon motion of the Commission. Commissioner

Sheridan moved, seconded by Commissioner Cymbaluk to require background checks for all applicants for real estate licenses in the state of North Dakota. M/C

* Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the proposed administrative rules subject to the change on 70-02-01-03 in an earlier motion. M/C

6. DOUG BAHR/ATTORNEY GENERAL'S OFFICE. REVIEW MEMO ON HEARING PROCEDURES FROM CONNIE HOFLAND. Attorney General Doug Bahr presented the 3 hearing options available to the Commission. The options are: 1) the Administrative Law Judge (ALJ) acts as a procedural hearing officer. He does not provide the board guidelines writing the findings of fact. Board members must attend the hearing and write the decision, however, they can ask the attorneys from both sides to draft findings of fact which will help the Board to draft their findings of fact, 2) the ALJ holds a hearing and makes a recommended decision. He drafts the finding of facts and the final order. The Board can reject the ALJ's decision and write its own or modify the findings of fact. Under state law the Board has to explain why they reject the ALJ's findings. Board members do not have to attend the hearing and if they do they are not able to participate in it and 3) the Board has the authority to turn the complaint over to the ALJ to make the final decision on the Board's behalf. Few boards use this option unless it is on a case by case basis. Mr. Bahr recommended that the Commission be consistent with the procedure and not go back and forth. The Commission will always have to get separate counsel to draft findings of fact – litigation counsel cannot be used to draft the findings of fact.

Commissioner Cymbaluk had to leave the meeting and rejoined via conference call.

7. APPEARANCE BY DEREK O. CHRISTOPHERSON REGARDING THE DENIAL OF HIS REQUEST TO HAVE HIS SALESPERSON REAL ESTATE LICENSE REINSTATED. Derek O. Christopherson appeared before the Commission to discuss the denial of his request to have his real estate salesperson license reinstated. Commissioner Schlosser moved, seconded by Commissioner Youngberg to allow Mr. Christopherson to take the salesperson license exam and accept his previous pre-licensing education. M/C
8. REVIEW REQUEST OF TODD B. NEDBERG TO HAVE HIS BROKER'S LICENSE REINSTATED. Commissioners reviewed a letter from Mr. Nedberg in which he stated that he was unaware of any problems with his 2007 license renewal until he received the letter notifying him that his broker's license had been cancelled for non-renewal. He asked that the Commission reinstate his license. Executive Director Jergenson informed the Commissioners that in checking with RISC E&O insurance it was discovered that Mr. Nedberg had not paid for insurance coverage in 2005, 2006, and 2007. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to file a complaint against Mr. Nedberg. M/C It was the consensus of the Commissioners to no longer accept renewals or applications to issue a license without proof (a Certificate of Coverage) that errors and omissions insurance has been given. Commissioner Schlosser moved, seconded by Commissioner Sheridan to deny Mr. Nedberg's request to have his license renewed. M/C

9. REVIEW APPLICATIONS FOR SALESPERSON LICENSES:

- a. Commissioners reviewed the application of Jordan P. Clark for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Mr. Clark to sit for the salesperson real estate examination. M/C
 - b. Commissioners reviewed the application of Adam C. Cogdill for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Cogdill to sit for the salesperson real estate examination. M/C
 - c. Commissioners reviewed the application of Michele L. Kjelshus for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Kjelshus to sit for the salesperson real estate examination. M/C
 - d. Commissioners reviewed the application of Charles B. Klinkhammer for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Klinkhammer to sit for the salesperson real estate examination. M/C
 - e. Commissioners reviewed the application of Joanna M. Pladson for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to table action on Ms. Pladson's application until additional information is received regarding the misdemeanor on her application. M/C
 - f. Commissioners reviewed the application of Cheryl L. Sanderhill for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Ms. Sanderhill to sit for the salesperson real estate examination. M/C
 - g. Commissioners reviewed the application of Jonathon A. Vonesh for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve Mr. Vonesh to sit for the salesperson real estate examination. M/C
 - h. Commissioners reviewed the application of Renee M. Wilson for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Ms. Wilson to sit for the salesperson real estate examination. M/C
 - i. Commissioners reviewed the application of John P. Zink for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve Mr. Zink to sit for the salesperson real estate examination. M/C
 - j. Commissioners reviewed the application of Michael R. Zink for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve Mr. Zink to sit for the salesperson real estate examination. M/C
 - k. Commissioners reviewed the application of Mandi C. Stagl for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table action on Ms. Stagl's application pending the receipt of additional information regarding the bankruptcy on her application. M/C
10. REVIEW APPLICATIONS FOR BROKER LICENSES.
- a. Commissioners reviewed the application of Bruce A. Bosch for a broker license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve Mr. Bosch to sit for the broker real estate examination. M/C

- b. Commissioners reviewed the application of Derrick M. Kuenzel for a broker license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Kuenzel to sit for the broker real estate examination. M/C
 - c. Commissioners reviewed the application of Lowell L. Nester for a broker license. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to table action on Mr. Nester's application until additional information is received regarding the conflicting number of transactions on his application and the completed questionnaire from his broker. M/C Commissioner Schlosser recused himself from discussion and voting.
11. UPDATE ON NEW LICENSEES WHO HAVE NOT COMPLETED THE 15 HOURS OF POST LICENSING EDUCATION. Commissioners reviewed a list of new licensees showing who had or had not completed their post licensing education requirements.
 12. REVIEW CORRESPONDENCE FROM JEFF ELIAS. Mr. Elias had written the Commission notifying them that he would not be returning to North Dakota to teach any seminars.
 13. DISCUSS MANDATORY CONTINUING EDUCATION FOR 2008/09 CE CYCLE AND REVIEW NDAR CORRESPONDENCE. Commissioners discussed possible topics for the mandatory courses for the 2008/09 continuing education cycle as well as the method of delivery that was used during the 2006/07 cycle. It was the consensus of those present that allowing a menu of mandatory course options as was done in the last ce cycle would be continued. Mandatory topics will be selected at the next Commission meeting,
 14. DISCUSS PARTICIPATION IN ARELLO COURSE CONTENT CERTIFICATION PROGRAM. ARELLO asked all jurisdictions to notify them of what level of participation could be expected in the Course Content Certification Program: require participation by education providers, recognize participation by education providers, or endorse participation by education providers. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to recognize participation by education providers. M/C
 15. REVIEW APPLICATION FOR AN INTERNET BROKER COURSE. Frank Cooke, Cooke Real Estate School, submitted a 60 hr broker level course given via the internet for approval to qualify as the necessary education to take the broker examination. Commissioners reviewed the course and materials. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve the "National Real Estate Principles" course for broker education. M/C
 16. DISCUSS SUGGESTIONS FOR REVISIONS OF THE BROKER'S RECORD OF PROFESSIONAL REAL ESTATE ACTIVITY BROCHURE. Commissioners discussed various points to be used in revising the brochure. The method of distribution for the brochure will be via the Commission's website.

17. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan recused herself. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the requests for trust account waivers as attached to these minutes. M/C
18. REVIEW SECOND QUARTER E&O INSURANCE CLAIMS REPORT FROM RISC. RISC provided the Commission with the 2nd quarter of 2007 report on E&O insurance claims.
19. COMMISSION GOALS. The Commission's goals were reviewed.
20. OTHER BUSINESS:
 - a. A licensee submitted a question regarding advertising on the internet. The question was whether the website can be advertised under an independent name as long as the brokerage name and address is included in the website. It was the consensus that it should be clear that the company name and address appears on the website. Staff showed Commissioners an advertisement in which the company name was very difficult to see. The Commission instructed staff to research possible changes to the administrative rule regarding advertising.
 - b. A mobile home listing and sales service in Bismarck pays a \$300 referral fee directly to the real estate licensee if the referral purchases a mobile home. Are they in violation of any statutes or administrative rules? Commissioners directed staff to ask Special Assistant Attorney General Hofland to research this.
 - c. Staff noted that Tana Becker and Kathryn Grady Thurston have not paid fines and/or investigative fees levied against them. Commissioner Youngberg moved, seconded by Commissioner Sheridan to ask Special Assistant Attorney General Hofland what the appropriate action regarding these unpaid fines and costs would be. M/C
 - d. Executive Director Jergenson informed the Commissioners that she had invested the \$200,000 from the general savings account as directed in 3 levels of CD's at 5.2%.
 - e. Commissioners recognized Special Assistant Attorney General Hofland for the work she did in putting together the case law report for ARELLO.

There being no further business Chair Louser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director