

December 7, 2011  
1:20 pm CT  
North Dakota Real Estate Commission  
State Capitol Building  
Peace Garden Room  
600 E Boulevard Ave.  
Bismarck ND

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

1. CALL MEETING TO ORDER. Chair Schlosser called the meeting to order. Roll call was taken and all Commissioners were present. Guests were welcomed.
2. APPROVE MINUTES OF SEPTEMBER 20, 2011 MEETING. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve the minutes of September 20, 2011 as presented. M/C
3. APPROVE SEPTEMBER AND OCTOBER 2011 FINANCIAL REPORTS. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the September and October 2011 financial reports as presented. M/C Executive Director Jergenson informed the Commission that effective January 1, 2012 NDPERS has increased the employer and employee contribution by 2% (employee 1%, employer 1%) which will create an increase in the amount budgeted for employee retirement. Staff was directed to gather more information on the difference of a state agency and a political subdivision.
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
  - a. Complaint #2011-05 NDREC v Alison J. Schumann (Stipulation and Agreement). Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Alison J. Schumann in which Ms. Schumann agrees to pay a fine of \$250 and \$280 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C
  - b. Complaint #2011-06 NDREC v Calvin R. Klewin (Stipulation and Agreement). Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Calvin R. Klewin in which Mr. Klewin agrees to pay a fine of \$250 and \$280 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C

- c. Complaint #2011-07 NDREC v Scott C. Louser. Commissioner Louser recused herself and left the room. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to set this complaint for a hearing and to amend the complaint by adding NDCC 43-23-11.1(1)(w). M/C  
Commissioner Louser rejoined the meeting.
  - d. Summary of Good Funds statute and legislative history. Ms Hofland discussed her memo regarding the good funds statute. After some discussion Ms Hofland stated that she would amend the memo and redistribute it to the Commissioners.
  - e. Ms Hofland provided Commissioners with a copy of her response to Tim Lervick for informational purposes.
5. NON-COMPLIANCE WITH TERMS OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER: ANDREW HARDY. Executive Director Jergenson informed the Commission that Mr. Hardy had not complied with the terms of the order following his hearing. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to have Ms Hofland send Mr. Hardy a letter regarding the terms he agreed to and if Mr. Hardy has not responded by January 15, 2012 Ms Hofland is authorized to proceed with filing against Mr. Hardy in small claims court. M/C
6. TRUST ACCOUNT AUDIT FINDINGS: RHONDA MAHLUM, MAHLUM GOODHART.
- a. Ms Mahlum reported on repeat trust account findings regarding the trust account of Robert Erickson, broker for Advantage Realty, Inc. Commissioner Sheridan moved, seconded by Commissioner Youngberg to file a complaint against Mr. Erickson for repeated trust account findings and offering the abbreviated process with a stipulated agreement. M/C
  - b. Ms Mahlum reported on repeat trust account findings regarding the trust account of Morris Schwinden, broker for Amerland Co., Inc. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to file a complaint against Mr. Schwinden offering the abbreviated process with a stipulated agreement. M/C
  - c. Ms Mahlum reported on repeat trust account findings regarding the trust account of Gregory Krueger, broker for Castle Realty. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to file a complaint against Mr. Krueger offering the abbreviated process with a stipulated agreement. M/C
  - d. Ms Mahlum reported on repeat trust account findings regarding the trust account of Michael Bullinger, broker for Cityscapes Development, LLC. Commissioner Youngberg moved, seconded by Commissioner Louser to file a complaint against Mr. Bullinger offering the abbreviated process with a stipulated agreement. M/C
  - e. Ms Mahlum reported on repeat trust account findings regarding the trust account of James Smykowski, broker for Smykowski Realty. Commissioner Sheridan moved, seconded by Commissioner Youngberg to file a complaint against Mr. Smykowski offering the abbreviated process with a stipulated agreement. M/C
  - f. Ms Mahlum reported on repeat trust account findings regarding the trust account of James P. Knutson, broker for Valley Realty, Inc. Commissioner Youngberg moved, seconded by Commissioner Sheridan to file a complaint against Mr. Knutson offering the abbreviated process with a stipulated agreement. M/C

- g. Ms. Mahlum informed the Commission of repeated problems regarding the trust account audit of Earl Allen. It was also pointed out that Mr. Allen may be in a conservatorship. Commissioner Sheridan moved to send a letter to Mr. Allen and his power of attorney regarding his supervisory responsibilities and the facts brought forward by the auditor. M/C Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to file a complaint against Mr. Allen on the repeated trust account audit findings. M/C
7. REPORT ON AUDIT OF REAL ESTATE COMMISSION FINANCIAL RECORDS: RHONDA MAHLUM, MAHLUM GOODHART PC. Ms Mahlum discussed the annual audit report in detail and stated that it was a very good audit. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to accept the audit report for fiscal year July 2010-June 2011.
8. REVIEW LICENSE APPLICATIONS.
- a. Commissioners reviewed the application of Toni R. Duckworth for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms Duckworth to sit for the salesperson real estate license examination. M/C
  - b. Commissioners reviewed the application of Neil L. Friedman for a reciprocal salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to deny Mr. Friedman's reciprocal license due to the number of issues on his credit report and state and federal tax liens. M/C
  - c. Commissioners reviewed the application of Scott S. Lara for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to table Mr. Lara's application and request more information regarding the extradition charge appearing on the ND criminal case records search. M/C
  - d. Commissioners reviewed the application of Stacey O. Lavidas for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Louser to approve Ms Lavidas to sit for the salesperson real estate license examination. M/C
  - e. Commissioners reviewed the application of Derrick A. McCoy for a non-resident broker license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve Mr. McCoy to sit for the state portion of the real estate license examination. M/C
  - f. Commissioners reviewed the application of Alexander J. Loomis for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Mr. Loomis to sit for the salesperson real estate license examination. M/C
9. DISCUSS DRAFT OF ARELLO® SUPERVISING BROKER BEST PRACTICES WHITEPAPER. The Commission took no action.
10. REVIEW PROPOSED CONTRACT WITH INTERNET SERVICE PROVIDER. Executive Director Jergenson discussed the proposal from Midcontinent. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to authorize Ms. Jergenson to make the decision on the terms of the contract and sign it. M/C
11. RISC 3<sup>RD</sup> QUARTER CLAIMS REPORT. Commissioners reviewed the claims report and asked staff to verify the number of claims in 2011.
12. 2011 ARELLO® ANNUAL CONFERENCE REPORTS: COMMISSIONERS CYMBALUK AND YOUNGBERG, EXECUTIVE DIRECTOR JERGENSON. Written reports were filed by the three conference attendees.
13. SHOULD THERE BE A QUESTION ON THE LICENSE APPLICATIONS ABOUT FORECLOSURE? Staff noted that there are questions regarding tax liens and bankruptcies on the license applications and are getting asked if foreclosures are included in that inquiry.

Commissioner Cymbaluk moved, seconded by Commissioner Louser to add a question regarding foreclosure on the license applications and to run a credit report on all applicants. M/C

14. 2012 DISTRICT 2 & 3 CONFERENCE UPDATE. Executive Director Jergenson shared the plans to date for the conference we are co-hosting with the South Dakota Real Estate Commission.
15. REVIEW GRANTED REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the September 2011 meeting. A list of those waivers is attached to these minutes.
16. COMMISSION GOALS. The goals of the Commission were reviewed.
17. OTHER BUSINESS.
  - Executive Director Jergenson stated that she had received calls from brokers regarding title companies telling them to use the earnest money in their trust accounts as payment of the commission in a transaction. Administrative Rule 70-02-01-15(2)(c) states that a broker cannot do this.
  - Commissioners reviewed the subdivided land registration application of Wild Horse Wyoming Properties LLC, Wild Horse Ranch at Lake Hattie. Staff noted that the Consent to Service form and a bond were not included in the registration packet. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to approve the registration of Wild Horse Ranch at Lake Hattie pending receipt of the bond in the amount of \$25,000 and the Consent to Process form. M/C
  - Dates for the next Commission meeting and hearing were discussed. It was the consensus to schedule the hearing in late March or early April and to hold a conference call if there are a large number of applicants waiting for Commission approval.

There being no further business the meeting was adjourned by Chair Schlosser.

Respectfully submitted,

Patricia M. Jergenson  
Executive Director

