

March 28, 2012
11:20 am CT
North Dakota Real Estate Commission
Office of Administrative Hearings
2911 14th St N
Suite 303
Bismarck ND

Present: Jerry Schlosser/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. Commissioner Louser was absent.
2. APPROVE MINUTES OF DECEMBER 7, 2011 AND FEBRUARY 29, 2012 MEETINGS. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve the minutes of December 7, 2011 and February 29, 2012 as presented. M/C
3. FINANCIAL REPORT. Executive Director Jergenson noted there were no financial reports to present.
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND.
 - a. Complaint #2011-08 Christopher L. Schmitz v Barbara A. Schultz. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to dismiss this complaint. M/C
 - b. Complaint #2012-02 NDREC v Morris J. Schwinden. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Morris J. Schwinden in which Mr. Schwinden 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 Sheridan to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C
 - c. Complaint #2012-03 NDREC v Gregory L. Krueger. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Gregory L. Krueger in which Mr. Krueger 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 Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C

- d. Complaint #2012-05 NDREC v James Smykowski. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from James Smykowski in which Mr. Smykowski agrees to pay a fine of \$250 and \$280 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C
 - e. Complaint #2012-03 NDREC v James P. Knutson. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from James P. Knutson in which Mr. Knutson 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 Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms Hofland. M/C
 - f. Proposed letter to brokers on payment of commissions to unlicensed brokers. Ms Hofland discussed her proposed letter to be sent to brokers in North Dakota to inform them of potential disciplinary action if they illegally pay commissions to unlicensed brokers. It was the consensus of the Commissioners to send this letter out on Commission letterhead to licensed brokers and publish it in the newsletter. Staff was asked to place on the agenda future rule changes to Administrative Rule 70-02-03-03 regarding the verbiage “where similar privileges are extended by the other state to licensed brokers in this state.” Possibly including verbiage regarding the payment of referrals/commission to licensees out of the country.
 - g. Child Support Lien Registry – its effect on license applications. Staff will check to see if this information will now appear on the credit report or if it will be necessary to check the Child Support Lien Registry for each applicant as well.
 - h. Clarification of license requirement for property managers. NDCC 43-23-07(1) was discussed in regards to what is the requirement for a property manager to hold a real estate license. Ms. Hofland volunteered to contact someone at the Attorney General’s office to discuss NDCC § 43-23-07(1) and report back to the Commission.
 - i. Non-resident licensee transferring his/her license to a ND firm. It was the consensus to discuss this item at a future Commission meeting.
 - j. Complaint #2012-01 NDREC v Robert J. Erickson. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Robert J. Erickson in which Mr. Erickson 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
5. TRUST ACCOUNT AUDIT FINDINGS: RHONDA MAHLUM, MAHLUM GOODHART PC.
- a. Ms Mahlum reported on repeat trust account findings regarding the trust account of Robert Pearson, broker for RE/MAX Realty 1, Inc. It was noted that the auditors use the date of the deposit of earnest money in determining when it has been 3 years and the earnest money should be turned over to Unclaimed Properties. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to file a complaint against Mr. Pearson for repeated trust account findings and offer the abbreviated process with a stipulated agreement. M/C
 - b. Ms Mahlum reported that the auditors have made repeated attempts to audit the trust account of Norman Steinle, broker for Sagebrush Realty since September of 2010 and to date have not had access to the trust account files. Commissioner Youngberg moved, seconded by Commissioner Sheridan to file a complaint against Mr. Steinle and offer the abbreviated process with a stipulated agreement. M/C

6. REVIEW LICENSE APPLICATIONS.

- a. Commissioners reviewed the application of Chad P. Donnay for a reciprocal North Dakota broker license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Mr. Donnay's reciprocal broker license. M/C
- b. Commissioners reviewed the application of Gary I. Fendich for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Fendich to sit for the salesperson real estate license examination. M/C
- c. Commissioners reviewed the application of Robert D. Fjeldheim for a non-resident broker license. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to deny Mr. Fjeldheim's application based on his tax issues. M/C
- d. Commissioners reviewed the application of Heidi J. Hilzendegeer for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Ms Hilzendegeer's application due to judgments on her credit report. M/C
- e. Commissioners reviewed the application of Steven G. Lewis for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve Mr. Lewis to sit for the salesperson real estate license examination. M/C
- f. Commissioners reviewed the application of Brenda K. Olson for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table Ms. Olson's application until she can provide further information regarding the felony charge, 2 references, and an explanation regarding the items on her credit report. M/C
- g. Commissioners reviewed the application of Barbara J. Satrom for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms. Satrom to sit for the salesperson real estate license examination. M/C
- h. Commissioners reviewed the application of Jason E. Semerad for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve Mr. Semerad to sit for the salesperson real estate license examination. M/C
- i. Commissioners reviewed the application of Michelle M. Weinzetl for a reciprocal North Dakota broker license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms. Weinzetl's reciprocal broker license. M/C

7. REVIEW TABLED APPLICATIONS.

- a. Ms. Clark's application was reviewed at the February 29, 2012 Commission meeting. The Commission moved to table action on her application until the Commission had the opportunity to review her criminal background check. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Ms. Clark's application for a salesperson license based upon her background check and credit report. M/C
- b. Ms. Fettig's application was reviewed at the February 29, 2012 Commission meeting. The Commission moved to table action on Ms. Fettig's application until she provides certificates of licensure from any jurisdiction where she currently holds or has held a real estate license and an explanation regarding the items in collection on her credit report. Ms. Fettig has provided documentation regarding the items in collection: letter of explanation, copy of divorce papers, copy of lawsuit papers, and 2 letters from Drake & Associates. She sent a copy of her license rather than a certificate of licensure. No action was taken until Ms Fettig provides a certificate of licensure.
- c. Mr. Lara's application was reviewed at the December 7, 2011 Commission meeting. The Commission moved to table action on his application until Mr. Lara provides an explanation as to why he did not include information regarding charges for 3 misdemeanor charges and an extradition charge on his application. Scott S. Lara appeared before the Commission in person regarding his application. Commissioner Sheridan moved, seconded by Commissioner Youngberg to deny Mr. Lara's application for a salesperson license. M/C

- d. Mr. Radloff's application was reviewed at the February 29, 2012 Commission meeting. The Commission moved to table action on his application until he provided an explanation regarding his producer's license, an explanation regarding issues on his credit report & a letter of recommendation from his current bank. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to deny Mr. Radloff's application for a salesperson license based on the information provided by Mr. Radloff. M/C
8. NSF CHECKS.
- a. Executive Director Jergenson provided the Commissioners with a timeline of staff's attempts to get Mr. Stan J. Dockter to respond to requests regarding the NSF check for his 2012 license renewal. It was the consensus to send Mr. Dockter a letter and carbon copy his broker & the sales manager of his office. It should be noted in the letter that an inordinate amount of time had been spent by Commission staff to resolve an issue Mr. Dockter should have taken care of immediately.
- b. Executive Director Jergenson noted that the check Mr. Troy J. Radloff paid his application fee came back NSF. Since Mr. Radloff's application for a license was denied earlier no additional action was taken.
9. APPEAL ON DENIED APPLICATION OF NEIL FRIEDMAN. Mr. Friedman appeared before the Commission in person to appeal the denial of his application for a reciprocal salesperson license. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to deny Mr. Friedman's appeal and he can reapply after it can be shown that the liens have been paid. M/C
10. REVIEW APPLICATION OF BEN HANSON FOR A RECIPROCAL LICENSE. Executive Director Jergenson explained the inconsistencies in the applications submitted by Ben W. Hanson for a reciprocal license and also that he is living in North Dakota even though he is applying for a reciprocal license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny a reciprocal license for Mr. Hanson. M/C
11. REQUESTS TO HAVE LICENSES REINSTATED AFTER CANCELLATION FOR NON-RENEWAL.
- a. Commissioners reviewed the request submitted by Karen Burns to have her license, which was cancelled for non-renewal, reinstated. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg that Ms Burns' license remain cancelled in accordance with NDCC § 43-23-13.1. M/C
- b. Commissioners reviewed the request submitted by Derek B. Knutson to have his license, which was cancelled for non-renewal, reinstated. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg that Mr. Knutson's license remain cancelled in accordance with NDCC § 43-23-13.1. M/C
- c. Commissioners reviewed the request submitted by Rosanna L. Ough to have her license, which was cancelled for non-renewal, reinstated. Commissioner Sheridan moved, seconded by Commissioner Youngberg that Ms Ough's license remain cancelled in accordance with NDCC § 43-23-13.1. M/C
- d. Commissioners reviewed the request submitted by Scott E. Volkert to have his license, which was cancelled for non-renewal, reinstated. Commissioner Sheridan moved, seconded by Commissioner Youngberg that Mr. Volkert's license remain cancelled in accordance with NDCC § 43-23-13.1. M/C
12. PRACTICE BROKERS, INC. RENEWAL OF RECIPROCAL LICENSE AS ACTIVE WHEN THEY WERE INACTIVE IN MINNESOTA. Executive Director Jergenson provided Commissioners with the chain of events leading up to the discovery that Kathleen Gergen-Mandel (MN broker) and Gerald R. Peterson (MN broker associate) both licensed in ND with active reciprocal licenses had renewed as active in North Dakota when their licenses in MN were inactive due to the Ms Gergen-Mandel not having completed ce hours in MN. Ms. Gergen-Mandel sent a letter explaining the

confusion regarding MN no longer the accepting her law license ce hours. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to reinstate the reciprocal licenses for Ms. Gergen-Mandel and Mr. Peterson once their licenses are active in Minnesota. M/C

13. ON-GOING EDUCATION JANUARY 2012 PRE-LICENSING COURSE. Staff noted that the 30 hr pre-licensing course recently given in Bismarck by On-Going Education was held in the conference room of a real estate company and condensed into 3 days rather than the usual 4. Executive Director Jergenson will discuss the concerns of the Commission regarding holding the class in a neutral location and that 8 hours per day are allowed in Administrative Rules with Ms. Halvorson of On-Going Education.
14. BENNETT & PORTER INSURANCE SERVICES EMAILED REQUEST DATED 2/13/12 REGARDING BOND REQUIREMENT FOR SUBDIVIDED LAND. The insurance agent for Wild Horse Wyoming Properties, LLC emailed a request for the Commission to waive the requirement for a bond in order to have the registration of Wild Horse Ranch @ Lake Hattie approved. Commissioners took no action. It was the consensus that it was their choice to submit the registration and therefore must comply with the requirements.
15. REVIEW REQUEST FOR INFORMATION FROM DOYLE L. RANDALL REGARDING REGISTRATION OF SALESPERSON/BROKER ASSOCIATE CORPORATION. NDCC § 43-23-05.1. Mr. Randall emailed a scenario in which a licensee has a corporation (not real estate related) and wants to set up a subsidiary of that corporation for the purposes of having their commissions paid to that subsidiary. It was determined that Ms. Hofland should review this.
 - * Ms Hofland asked to discuss a possible stipulation from Mr. Louser's attorney, Casey Chapman. Chair Schlosser allowed the discussion. The Commission was asked if would consider a stipulation on the condition that it not be published. Discussion. It was determined that the condition would not be acceptable.
16. ADMINISTRATIVE RULES HEARING MARCH 14, 2012. Executive Director reported that she and Ms Hofland had attended the Administrative Rules hearing and the rules as presented by the Commission had been approved.
17. 2012 LICENSE RENEWAL STATS. The license renewal stats for 2012 were reviewed.
18. 2012 ARELLO® DISTRICT 2 & 3 CONFERENCE UPDATE. Executive Director Jergenson provided Commissioners with an update of the plans for the district conference.
19. RISC 2011 4TH QUARTER REPORT. This report is provided quarterly by RISC for informational purposes.
20. ARELLO® LEADERSHIP SYMPOSIUM REPORTS: COMMISSIONER CYMBALUK AND EXECUTIVE DIRECTOR JERGENSON. Written reports were filed for review.
21. REVIEW GRANTED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the December 2011 meeting. A list of those waivers is attached to these minutes.
22. COMMISSION GOALS. The goals of the Commission were reviewed.
23. OTHER BUSINESS.
 - a. Staff discovered that Catherine R. Cronen had been issued a reciprocal broker license as the broker of Lexstar Development Corp however her MN license was never issued under Lexstar, nor is it currently issued under Lexstar, as stated on her application. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to revoke Ms Cronen's reciprocal license based on the fact that she was never properly licensed. M/C
 - b. Commissioners were given a heads up that the copier has 3.5 million copies on it and needs to be replaced.
 - c. Staff will review approved online courses to see if any will comply with the requirements of the 15 course specific pre-licensing courses so that applicants may have another avenue in which to complete their pre-licensing education.
 - d. The office lease is up July 31, 2012. Staff will look into other possible office space.

North Dakota Real Estate Commission
March 28, 2012
Page 6

There being no further business Chair Schlosser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director