

North Dakota Real Estate Commission
May 8, 2003
Pearce & Durick Law Office
Conference Room
1:00 PM Central Time

Present: Diane Louser/Chair, Roger Cymbaluk/Vice Chair, Bob Willer/Member, Kris Sheridan/Member, Jerry Youngberg/Member, Patricia M. Jergenson/Secretary Treasurer, David Reich/Legal Counsel

1. Chair Diane Louser called the meeting to order.
2. APPROVE MINUTES OF THE PREVIOUS MEETING. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the minutes of the previous meeting as sent. M/C
3. FINANCIAL REPORT. Financial reports for February, March, and April 2003 were reviewed. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the financial reports. M/C
4. REVIEW FORMAL COMPLAINTS.
Case# 2002-08 Don Pavlicek v. Steve Schwab. The Commission reviewed the formal complaint filed by Mr. Pavlicek alleging that Mr. Steve Schwab had violated certain regulations by failing to disclose known prior water damage to the subject home. Mr. Reich recommended dismissal of this complaint because the Pavlicek's have since signed a release and confirmed that this complaint may be dismissed. Commissioner Youngberg moved, seconded by Commissioner Willer to dismiss the complaint and to include in the letter to Mr. Schwab notifying him of the dismissal of the complaint that based on the information provided it would appear that more attention should be made to items (in particular property disclosure forms) during the course of a transaction. M/C
Case# 2002-09 Kathleen & Brian Bietz v. Don Deutsch. The Commission reviewed the formal complaint filed by Kathleen and Brian Bietz alleging that Don Deutsch had failed to properly explain that a mortgage application needed to be made within five days after the acceptance of the purchase agreement in order to qualify for FHA financing, should not have released earnest money to the seller, and failed to provide them with signed transaction documents on request. Mr. Reich recommended dismissal of this complaint as it appears that there is not sufficient evidence of a violation of statutes and/or regulations to proceed to hearing. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to dismiss the complaint and to include in the letter to Mr. Deutsch language regarding standards of care. M/C

Case# 2002-10 Jane Nelson v. Michael Puklich. The Commission reviewed the formal complaint filed by Jane Nelson alleging that Mr. Puklich threatened her with legal action to collect attorney fees and REALTOR® fees if she did not go through with the sale of her property and that he released confidential information. Mr. Reich recommended dismissal of this complaint as it did not appear that there was sufficient evidence of a violation of statutes and/or regulations to proceed with hearing, he did have some concerns he expressed to the Commission regarding documentation provided by Assist 2 Sell when requested. Commissioner Cymbaluk moved, seconded by Commissioner Willer to table this complaint. M/C

Case# 2003-03 Brent Levinson v. Arlene Volk and Michael Puklich v. Arlene Volk. The Commission reviewed the formal complaints filed by Mr. Levinson and Mr. Puklich, both complaints arose out of the same facts and were consolidated for investigation and determination. The complaints alleged that Ms. Volk asked Mr. Levinson improper questions regarding the condition of his home and made an extremely low offer to purchase to him personally in front of her clients. Mr. Reich recommended dismissal of this complaint as Mr. Levinson expressed his desire to dismiss the complaint when interviewed by Mr. Reich and Mr. Puklich expressed his desire to dismiss the complaint upon receiving knowledge of Mr. Levinson's request for dismissal. Mr. Reich informed the Commission of his concerns regarding the filing of this complaint – in particular the responsibility of the complainant to verify under oath that the facts in the complaint have been verified which it appears had not been done in this situation. Commissioner Sheridan moved, seconded by Commissioner Youngberg to dismiss the complaint. Chair Diane Louser gave Ron Volk permission to address the Commission with his concerns regarding the filing of this complaint. Mr. Volk was informed that the Commission cannot discuss the complaint without both parties present. Commissioner Willer called for the question. M/C

5. LIMITED RECIPROCAL AGREEMENTS. Mr. Reich reviewed NDCC 43-23-10 Nonresident brokers – Reciprocity – Consent to Service. and reported to the Commission that based on his review it does not appear that legally North Dakota can enter into a limited reciprocal agreement with another state. It was the consensus of the Commission that the acceptance of changes to the reciprocal agreement with the State of Indiana was not possible.
6. FARGO-MOORHEAD AREA ASSOCIATION OF REALTORS® REQUEST FOR OPINION ON “HANDLING OF MULTIPLE OFFERS” PAPER FROM NAR. Mr. Reich researched the statutes and regulations governing real estate licenses, in particular NDCC 43-23-11.1 Subsection U, 70-02-03-06, and 70-02-03-15 Subsection 7d and found the disclosure of multiple offers is not directly addressed. It was the consensus of the Commission that there is no conflict between the NAR paper and North Dakota law.
7. REFERRAL FEES. The question “Can a referral fee be paid to a licensee in a state with which North Dakota does not have reciprocity?” was discussed and answered affirmatively. NDCC 43-23-10 and 70-02-03 was reviewed.
8. REVIEW REQUEST FOR A RECIPROCAL BROKER'S LICENSE AND SALESPERSON LICENSE APPLICATION. Commissioners reviewed the application of Garry D. Helland for a reciprocal broker's license. Commissioner Cymbaluk moved, seconded by

Commissioner Youngberg to accept Garry D. Helland's application for a reciprocal license. M/C Commissioners reviewed the salesperson license application of Jerome D. Herrmann. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to grant permission to Mr. Herrmann to sit for the salesperson licensing examination. M/C Secretary Treasurer Pat Jergenson noted that two additional applications were received in the Commission Office May 7, 2003 that require review by the Commissioners. It was the consensus of the Commissioners to table those applications until the next meeting.

9. REVIEW UND COMPILATION OF PRE-LICENSING COURSE EVALUATIONS. Commissioners received a copy of the University of ND's pre-licensing course evaluations for informational purposes.
10. APPLICATION FOR REGISTRATION OF SUBDIVIDED LAND: FAIRFIELD WISCONSIN DELLS AT TAMARACK. An application was submitted by Fairfield Resorts to register Fairfield Wisconsin Dells at Tamarack, a timeshare containing 24 units and 1,248 annual seven-day use periods. Commissioner Cymbaluk moved, seconded by Commissioner Willer to approve the registration of Fairfield Wisconsin Dells at Tamarack pending receipt of a \$25,000 indemnity bond as set forth in statute. M/C
11. 2003 LICENSE STATISTICS. Commissioners reviewed a compilation of license renewals for 2003.
12. ESTABLISH A RETENTION SCHEDULE FOR COMPLAINT FILES. Secretary Treasurer Pat Jergenson asked for input on establishing a retention schedule for complaint files. It was the consensus of the Commissioners to review and update the retention schedule on file with the State at an upcoming meeting. Staff will meet with legal counsel to determine what items are needed to be maintained in the complaint files.
13. STATUS OF CONTINUING EDUCATION RECIPROCALITY WITH MINNESOTA. Correspondence from Susan Schmidt, Education Coordinator MN Licensing Division, was reviewed. It states in part that if a Minnesota resident agent takes a continuing education course from a North Dakota sponsor who has not applied for and received Minnesota Commerce approval, the Minnesota resident agent must apply for individual approval in order to use the North Dakota course. This is a deviation from past recognition of continuing education. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to authorize staff to try to establish a reciprocal agreement for educational purposes with the State of Minnesota. M/C
14. REPORT ON ADVERTISING OFFERING A REBATE. Legal counsel Dave Reich stated that the statute regarding this issue is pretty broad and may need to be addressed legislatively. The possibility of more definitive guidelines was also discussed.
15. AMENDMENTS TO THE RULES AND REGULATIONS. Commissioners discussed revisions to several sections of the rules. The North Dakota Association of REALTORS® (NDAR) had requested a change requiring new licensees to attend the required courses during the first ce cycle in which they are licensed. After much discussion this issue was sent back to NDAR for their input on how this would be handled due to the availability of the

required course and timing of issuing licenses in the ce cycle. Claus Lembke, NDAR EVP, also suggested revising the title of Chapter 70-02-03. Dave Reich, legal counsel, stated that this would require statutory changes as well. This request was tabled. Staff will make the revisions as discussed and provide copies to the Commissioners and legal counsel at the next meeting.

16. OTHER BUSINESS:

- a. Discussion was opened regarding guidelines for the removal of pended or closed listings from a web site or other advertising medium. This appears to be a multiple listing service problem. The law deals with the advertising of closed or expired listings.
- b. ARELLO's Survey of Interest in Conducting Course Content Review was discussed. Staff will notify ARELLO that we are watching with interest and will consider the benefits.
- c. A situation in which a licensee may have had knowledge of an unlicensed person receiving a "facilitator fee" in a transaction was discussed. Commissioner Sheridan will make some contacts to gather more information.
- d. The payment of a commission to the corporation of a salesperson was discussed. This was addressed in a previous opinion by legal counsel Dave Reich which cites NDCC 43-23-05 and NDCC 43-13-05 indicating that payment of a commission to a corporation of a salesperson is not in compliance.
- e. Background checks will be conducted on any applicant for licensing who has answered yes to questions on the application relating to misdemeanor, felony, or criminal prosecution.
- f. Dates were discussed for the June Commission meeting.

Commissioner Cymbaluk moved, seconded by Commissioner Willer to adjourn the meeting. M/C

Respectfully submitted,

Patricia M. Jergenson
Secretary Treasurer