

May 9, 2013
8:00am Central Daylight Time
North Dakota Real Estate Commission
Conference Room (1st Floor)
200 E Main Ave
Bismarck ND

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

1. CALL MEETING TO ORDER. Chair Louser called the meeting to order. All Commission members were present. Guest were welcomed.
2. APPROVE MINUTES OF MARCH 26, 2013 MEETING. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve the minutes of March 26, 2013. M/C
3. FINANCIAL REPORT. Executive Director Jergenson presented the April financial reports noting that the credit card renewal fees are not reflected in these reports. She stated that the bank reconciliation from American Bank Center (the account in which the credit card transactions are deposited) shows a balance of \$145,200.81. Income is above projected and in most instances expenses are below budgeted. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the April 2013 financial report.
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND.
 - a. Consideration of Stipulated and Settlement Agreements:
 - Complaint #2013-05 NDREC v Eden K. Bachmeier. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Eden K. Bachmeier in which Ms. Bachmeier agrees to pay a fine of \$250, \$280 legal/investigative costs (both within 30 days of Notice of Entry of the Order) and submit bank statement, reconciliation & vendor balance summary reports monthly for 12 months. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
 - Complaint #2013-06 NDREC v Don P. Pierce. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Don P. Pierce in which Mr. Pierce agrees to pay a fine of \$250, \$280 legal/investigative costs (both within 30 days of Notice of Entry of the Order) and attend a 3 hour ce course on agency not to be counted toward the regular required hours for continuing education. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve the

- Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
 - Complaint #2013-08 NDREC v Bob P. Schmidt. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Bob P. Schmidt in which Mr. Schmidt agrees to pay a fine of \$250, \$280 legal/investigative costs (both within 30 days of Notice of Entry of the Order) and attend a 3 hour ce course on agency not to be counted toward the regular required hours for continuing education. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
 - Complaint #2013-08 NDREC v William A. Chaussee. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from William A. Chaussee in which Mr. Chaussee agrees to pay a fine of \$250, \$280 legal/investigative costs (both within 30 days of Notice of Entry of the Order), attend a 3 hour ce course on agency, not to be counted toward the regular required hours for continuing education, and submit bank statement, bank reconciliation & vendor balance summary reports monthly for 12 months. Commissioner Cymbaluk moved, seconded Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
 - Complaint #2012-12 NDREC v Michael G. Sims. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Michael G. Sims in which Mr. Sims agrees to pay a fine of \$250 and \$600 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
 - Complaint #2013-07 NDREC v Joe J. Frenzel. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Joe J. Frenzel in which Mr. Frenzel agrees to pay a fine of \$250, \$280 legal/investigative costs (both within 30 days of Notice of Entry of the Order) and attend a 3 hour ce course on agency not to be counted toward the regular required hours for continuing education. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
- b. Report on Unlicensed Activity: Special Assistant Attorney General Connie Hofland reported that letters have been sent to the following regarding possible unlicensed activity: Tri Star Realty, Rocky Mountain Realty/David Loyens (who responded that he was selling real property he owned), Nelson Homes (who responded that he will discontinue selling mobile homes and the land they are on), and Riley Hunter/Prudential Real Estate in Gillette, Wyoming (has not responded). Ms. Hofland stated that she would contact the Attorney General's office for other possible avenues we can use in dealing with unlicensed activity.
- c. Ms. Hofland provided a reminder on open records violations which have been in the news recently with the Board of Higher Education.
5. DISCUSS ADVERTISING VIOLATION AND INCLUDING THE BROKER WHEN A COMPLAINT IS FILED AGAINST A LICENSEE FOR AN ADVERTISING VIOLATION. (ADMINISTRATIVE RULE 70-02-03-02.1). Commissioners reviewed advertisements from Theresa Halvorson, Barry Halvorson, and Anne Kallhoff all of whom are licensed with Keller Williams Roers Realty. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to file a complaint for violation of the advertising rule against Theresa Halvorson, Barry Halvorson, Anne Kallhoff and their broker Betsy J. Denis. M/C Letters are to be sent to the designated brokers of Prudential Premier Real Estate for the font size used for the company name in their ad and Castle Realty for not identifying their company in the ad.

6. EMAIL CORRESPONDENCE FROM CHAD WACHTER. Mr. Wachter expressed his concern over Dorothy Pudwill's actions towards him since he completed the "Broker Inspection" form. It was the consensus that Ms. Pudwill's actions are not under the control of the Commission.
7. EMAIL CORRESPONDENCE FROM GARY BLETH. Executive Director Jergenson shared an email she had received from Mr. Bleth in which he expressed his feelings regarding the complaint filed against him by the Commission.
8. REVIEW TABLED BROKER LICENSE APPLICATION OF ROBERT L. TIMM. Mr. Timm joined the meeting in person. Chair Louser turned the meeting over to Vice Chair Cymbaluk and recused herself. Special Assistant Attorney General Constance Hofland provided background information regarding Mr. Timm's broker license application to date. Commissioner Sheridan moved, seconded by Commissioner Youngberg to allow Mr. Timm to take the broker license examination. M/C (3 ayes, 1 nay Commissioner Schlosser) Chair Louser took over the meeting.
9. DISCUSS QUESTION FROM BROKER REGARDING APPOINTED AGENCY. In an appointed agency office, where the designated broker lists and sells, when an offer comes in on the designated broker's listing the broker then becomes a dual agent to both the seller and the buyer. In question is the fairness of representation to the seller client whose agent has now become a dual agent while the buyer client has both the broker (as a dual agent) and his/her buyer agent representing him/her. Consensus was that in an appointed agency office the only way the seller would have a different agency relationship would be if the designated broker turned the listing over to another agent in the office. The question posed to Ms. Hofland was: Would it be possible to have both the buyer and seller agree in writing that the designated broker would represent only the seller – no dual agency? Ms. Hofland will research and report back to the Commission at the next meeting.
10. REVIEW LICENSE APPLICATIONS:
 - a. Commissioners reviewed the application of Bryan C. Baneck for a salesperson license. Mr. Baneck joined the meeting in person. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Baneck to sit for the salesperson real estate license examination. M/C
 - b. Commissioners reviewed the application of Joshua A. Boschee for a salesperson license. Mr. Boschee joined the meeting via conference call. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Mr. Boschee to sit for the salesperson real estate license examination. M/C
 - c. Commissioners reviewed the application of Michael T. Cunningham for a non-resident salesperson license. Mr. Cunningham joined the meeting via conference call. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Cunningham to sit for the state portion of the real estate license examination. M/C
 - d. Commissioners reviewed the application of Joshua F. Dietz for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Dietz to sit for the salesperson real estate license examination. M/C
 - e. Commissioners reviewed the application of Andrew A. Fatka-Westlake for a non-resident broker license. Mr. Fatka-Westlake joined the meeting via conference call to address issues on his credit report. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Fatka-Westlake to sit for the state portion of the real estate license examination subject to him providing verification to staff that the judgment has been satisfied. M/C
 - f. Commissioners reviewed the application of Daniel C. Geever for a non-resident broker license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Geever to sit for the state portion of the real estate license examination. M/C
 - g. Commissioners reviewed the request for a waiver of the 2 years of experience as a salesperson from Steven C. Haaby on his application for a broker license. Mr. Haaby was present at the meeting to discuss the reason for his request. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to deny Mr. Haaby's request for a waiver to take the broker license examination and approve him to sit for the salesperson real estate license examination. M/C

- h. Commissioners reviewed the application of Howard B. Hintz for a non-resident salesperson license. Mr. Hintz joined the meeting via conference call to explain the litigation described on his application. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Hintz to sit for the state portion of the real estate license examination. M/C
 - i. Commissioners reviewed the application of Daniel E. Madrigal for a reciprocal salesperson license. Mr. Madrigal joined the meeting in person to discuss his felony. Mr. Jack Matasoky, Daniel's Minnesota broker, joined the meeting via conference call to speak on Mr. Madrigal's behalf. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to approve issuing a reciprocal salesperson license to Mr. Madrigal. M/C
 - j. Commissioners reviewed the application of Jennifer L. Mansour for a salesperson license. Ms. Mansour joined the meeting in person to discuss issues on her credit report. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Ms. Mansour to sit for the salesperson real estate license examination once she provides verification that the delinquency on her credit report has been paid to staff. M/C
 - k. Commissioners reviewed the application of Jessica Nguyen for a non-resident broker license. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to deny the application of Ms. Nyuyen due to numerous items in collection on her credit report. M/C
 - l. Commissioners reviewed the application of Conner C. Perkins for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to table Mr. Perkins application and request him to appear before the Commission. M/C
 - m. Commissioners reviewed the application of Annie L. Sproule for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Sproule to sit for the salesperson real estate license examination. M/C
11. DISCUSS 2014 MANDATORY COURSE TOPIC. SEE LETTER FROM NDAR. Jill Beck/NDAR CEO was present to share ideas of possible topics for mandatory education from her association. Commissioner Schlosser moved, seconded by Commissioner Sheridan to require 3 hours of mandatory continuing education in 2014 in either agency or fair housing. M/C
 12. DISCUSSION ON HOMES FOR HEROES PROGRAM. Dick Ockhardt joined the meeting via conference call to discuss his concerns regarding the Homes for Heroes program. Once his concerns were discussed Mr. Ockhardt no longer had an issue with the program.
 13. 2013 LICENSE STATISTICS. Executive Director gave a report on the license numbers for 2013.
 14. 2012 CE AUDIT REPORT. Executive Director Jergenson reported that 209 licensees were audited this year, 15 reminder letters were sent and at this time all but 1 were in compliance.
 15. REVIEW APPLICATION FOR REGISTRATION OF THE VILLA @ DISNEY'S GRAND FLORIDIAN RESORT. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the registration of The Villa @ Disney's Grand Floridian Resort. M/C
 16. OFFICE MOVE UPDATE. The office will be closed May 20-21 for moving.
 17. DATABASE SEARCH UPDATE. Executive Director Jergenson assured Commissioners that the search for a database provider is ongoing. Contact has been made with GL Solutions and a recent request for information on databases used by the jurisdiction was recently conducted on the ARELLO® list serve. Ms. Jergenson will be getting a compilation of the information gathered on the list serve.
 18. ARELLO® LEADERSHIP SYMPOSIUM REPORTS: COMMISSIONER YOUNGBERG, EXECUTIVE DIRECTOR JERGENSON. Written reports were filed.
 19. ARELLO® MID-YEAR MEETING REPORTS: COMMISSIONERS CYMBALUK AND YOUNGBERG, EXECUTIVE DIRECTOR JERGENSON. Written reports were filed.
 20. ELECTION OF OFFICERS. Commissioner Schlosser nominated Commissioner Roger Cymbaluk for Chair and Commissioner Kris Sheridan for Vice Chair for the fiscal year July 1, 2013 through June 30, 2014. Motion was seconded by Commissioner Youngberg. M/C

21. REVIEW APPROVED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the March 26, 2013 meeting. A list of those waivers is attached to these minutes.
22. SCHEDULE NEXT COMMISSION MEETING. The consensus was to schedule the next Commission meeting via conference call for 8:00 am on either June 19, 2013 or June 20, 2013. Staff will send out an email to verify which of those dates is preferable.
23. COMMISSION GOALS. The goals of the Commission were reviewed. Staff was reminded that at the next Commission meeting in which all Commissioners are present in person, a review of the responsibilities of a Commissioner should be a part of the meeting agenda.
24. OTHER BUSINESS:
 - At a previous meeting Ms. Hofland was asked to research if the Commission could require a broker applicant to take the state portion of the real estate examination. It was Ms. Hofland's opinion that the Commission has the flexibility to make that request of an applicant.
 - Question posed to the Commission: is it acceptable for a licensee to write in a sales contract that if the lender uses appraiser X or Y, the contract is null & void? It was the consensus of the Commissioners that there were no issues from the Commission's standpoint.
 - Executive Director Jergenson asked Commissioners for their feedback on a continuing education course application in which it appeared that the course provider was promoting their product. Commissioners agreed that that was how the course outline appeared.
 - Executive Director Jergenson asked Commissioners to look at a promotion that she had been asked to approve stating that she knows that it is not the responsibility of the Commission staff to approve or disapprove advertisements but many questions do come to the Commission office.

There being no further business Chair Louser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director