

NEBRASKA REAL ESTATE COMMISSION

May 21-22, 2009

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on May 21, 2009, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. Also present were Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Concannon, Wilson and Marett Hearing and the Thompson and Slatten Hearing; Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present for the approval of the contract for the Director's position; and Jerry Pigsley, Special Assistant Attorney General and Counsel to the Commission, was present for Personnel Matters.

Notice of Meeting (Adopt Agenda)

Deputy Director Hoffman presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, in writing, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting were available to the public on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Deputy Director Hoffman noted that no agenda items had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Grady and seconded by Leisey to adopt the final agenda as presented. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Minutes of April 17, 2009 and May 7, 2009

The minutes of the Commission meetings held on April 17, 2009 and May 7, 2009, were considered.

After review, a motion was made by Griess and seconded by Bohrer to approve the minutes as presented. Motion carried with Bohrer, Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady not voting having not been in attendance at the May Meeting.

Receipts and Expenditures Report for April

Deputy Director Hoffman presented the Receipts and Expenditures Report for April. A copy of said report is attached to and made a part of these minutes. Deputy Director Hoffman noted that an explanation page was included on the report.

The cash fund balance as of April 30, 2009, was \$688,318.86, which compared to a cash fund balance of \$637,301.78 on April 30, 2008.

After discussion, a motion was made by Leisey and seconded by Bohrer to file the April Receipts and Expenditures Report for audit. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Hoffman presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Leisey and seconded by Grady to ratify issuance of the licenses as set forth in the report. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Examination Report - April

Deputy Director Hoffman presented for ratification the April Examination Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Grady and seconded by Leisey to ratify the April Examination Report for the purpose of issuing licenses. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Real Estate Education Matters

Pre-License Education Instructor Approval

Deputy Director Hoffman presented for ratification the Pre-License Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. There were two EcoBroker International courses which showed the approved clock hours were "6", when in fact, the approved clock hours were "3". Commissioners were made aware of this prior to the motion. The Exhibit was corrected for attachment to these minutes.)

Continuing Education Instructor Approval

Deputy Director Hoffman presented for ratification the Continuing Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. An instructor last name was misspelled instead of "Beldock" it should have been "Bedlock". Commissioners were made aware of this prior to the motion. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Leisey and seconded by Bohrer to ratify the three reports. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

There was discussion regarding pending complaints which were 120 days or more in arrears and whether deadlines needed to be placed on how long the Commission takes to review the complaints. Chairperson Gale indicated that further discussion would be held at a future meeting.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

Item A Complaint 2008-026 – Brittney Maloley vs. Jennifer Lynn Hellman and Brady Kieth Bock

Prior to discussion of this matter, Commissioner Leisey recused himself, thereby nullifying any potential conflict of interest.

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Griess and seconded by Grady that this complaint be held in abeyance and a new complaint be filed against the Respondents per the Staff verbal recommendation. Motion carried with Bohrer, Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item B Complaint 2009-009 – Duane V. Miller vs. Kenneth Edwin Bramer

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Presentation of Stipulation and Consent Orders

Complaint 2008-025, Meredith J. Jantzen vs. Kelly Jane Shandera

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2008-025, Meredith J. Jantzen vs. Kelly Jane Shandera. A copy of said Order is attached to and made a part of these minutes.

Prior to discussion of this matter, Commissioner Griess recused herself, thereby nullifying any potential conflict of interest.

After discussion, a motion was made by Leisey and seconded by Bohrer to enter into the Order as presented.

A friendly amendment was made by the mover to have the continuing education requirement be in the areas of license law and contract law. After further discussion, the mover withdrew the amendment.

Motion carried with Bohrer, Dover, Grady, Leisey, Rouch and Gale voting aye, with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Complaint 2009-019, Commission vs. Sandra K. Kester and Bennie C. Taylor

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-019, Commission vs. Sandra K. Kester and Bennie C. Taylor. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Bohrer and seconded by Leisey to enter into the Order as presented.

After discussion, the mover and second withdrew the pending motion.

After further discussion, a motion was made by Leisey and seconded by Rouch to enter into the Order as presented with Sandra K. Kester, and to decline the proposed Stipulation and Consent Order for Mr. Taylor.

Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Complaint 2009-020, Commission vs. Candice Jo Troia

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-020, Commission vs. Candice Jo Troia. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Griess and seconded by Bohrer to enter into the Order as presented. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

**Complaint 2009-021,
Commission vs. Timothy Scott Brewster**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-021, Commission vs. Timothy Scott Brewster. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Leisey and seconded by Dover to enter into the Order as presented.

After discussion, the mover and second withdrew the pending motion.

After further discussion, it was the consensus of the Commission to decline the proposed Stipulation and Consent Order as presented.

**Complaint 2008-023,
Travis and Dawn Kovarik vs. Ronald Earl Bunger
Complaint 2009-022,
Commission vs. Ronald Earl Bunger**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2008-023, Travis and Dawn Kovarik vs. Ronald Earl Bunger and Complaint 2009-022, Commission vs. Ronald Earl Bunger. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Griess to enter into the Order as presented. The motion died for lack of a second.

After further discussion, it was the consensus of the Commission to decline the proposed Stipulation and Consent Order as presented.

**Complaint 2009-025,
Commission vs. Patricia Ann Lunz**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-025, Commission vs. Patricia Ann Lunz. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Bohrer to enter into the Order as presented. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Hearings

**Complaint 2008-012 Commission vs. Charles Wing Concannon,
Stacy Jo Wilson and Peggy Barbara Marett**

A Hearing was held on May 21, at 9:30 a.m., in the matter of Complaint 2008-012 Commission vs. Charles Wing Concannon, Stacy Jo Wilson and Peggy Barbara Marett. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondents Charles Wing Concannon and Stacy Jo Wilson were present and represented by Counsel Susan Napolitano of Lincoln. Respondent Peggy Barbara Marett was not present.

Chairperson Gale inquired as to the notices given to Ms. Marett and wanted to make sure she was aware of the Hearing. Counsel Barton indicated that Ms. Marett did not want to participate in the Hearing and also had not renewed her real estate license for 2009.

Counsel Barton indicated that the Commission could not take action against Ms. Marett's real estate license since it had not been renewed. Counsel Barton suggested that the Commission dismiss the Complaint against Ms. Marett. A motion was made by Leisey and seconded by Dover that the Complaint be dismissed without prejudice against Peggy Barbara Marett since she no longer had a real estate license. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

After opening statements, Counsel Barton called Stacy Jo Wilson and Charles Wing Concannon as witnesses.

Counsel Barton offered six Exhibits, all of which were received by Chairperson Gale.

Counsel Napolitano offered nine Exhibits, all of which were received by Chairperson Gale.

Counsel Napolitano called Craig Larabee as a witness.

At 11:00 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:14 a.m.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

Prior to any motion the following occurred:

Commissioner Rouch felt that obtaining signatures of all owners was considered best practice, but were not required. Commissioner Bohrer concurred.

Commissioner Griess expressed concern and had a different opinion. She indicated that in order to sell a property, the signatures of all owners were required and until all of the signatures had been obtained there was no contract. She also indicated that the rest of the paperwork reflected a signature of a co-owner, however, the materials were dated on a date when both Sellers were supposedly not available.

Chairperson Gale felt that the language in the law was clear and plain. He was unsure how the law was unclear about obtaining the owner's signatures and felt that the use of the law should be consistent.

Commissioner Grady agreed that the law was clear and felt that it was misleading to offer property if there had not been an agreement among owners. He also noted that it was a requirement to obtain all of the owners' signatures.

Commissioner Leisey felt that the law was not as clear as the others indicated. He explained that his legal counsel had said that two signatures were considered best practice but were not required. He also noted that only one signature was required in order to market a property.

Commissioner Dover indicated that clarification of the law could be suggested at a later time. He also indicated that property could not be offered unless all signatures were obtained. He felt that the Commission needed to protect the public's best interest.

Commissioner Griess asked Commissioner Leisey if he could explain what language in the law was unclear. Commissioner Leisey indicated that the law only refers to one owner. He noted that if one owner signed the documents, then the licensee could move forward. Chairperson Gale asked that the Commissioners look at the law as set out. Commissioner Leisey again reviewed the law and felt that the law was unclear.

Commissioner Leisey indicated that some sections of the law refer to all owners while other sections do not. Chairperson Gale clarified that the law means all with interest or owners. He indicated that the Commission abides by the law and the law was not flexible.

Chairperson Gale indicated that he felt the Respondents "jumped the gun" and continued for months without getting the appropriate signatures. He felt that the Respondents were neglectful and needed to update their office procedures. He also felt that the law was clear and should be enforced.

Commissioner Leisey asked if the law was so clear, why legal counsel had advised incorrectly and an owner of a school had been teaching this law incorrectly. He noted that if the law was clear there would not be this much misunderstanding. Chairperson Gale indicated that ignorance was no defense. Chairperson Gale indicated that the law should not be interpreted any other way and that the Legislature had ultimate authority. Commissioner Leisey felt that the law could be interpreted either way.

Commissioner Bohrer indicated that there were multiple documents which had been signed by both owners implying both owners' intention. Chairperson Gale indicated that he would challenge that both owners signed the documents since they were dated the same date but the owners were in separate places.

Commissioner Grady indicated that the License Law was to protect the public. He noted that several people had not complied with the law. He explained that the Respondents did not get the agreement signed but led the public to believe that the property was for sale. He also explained that the spirit of the License Law had been broken and in his many years of practice he had never heard that the signatures of all owners were not required.

Commissioner Leisey felt that there were good reasons to have documents signed by all owners, but did not feel that the law was clear. Commissioner Dover asked if multiple people owned a property, why all of the owners would not need to sign. Commissioner Leisey indicated that in the law "owner" is singular not plural. Commissioner Dover felt that if the law meant for it to be singular that it would have said "one of the owners".

A motion was made by Grady and seconded by Dover that the Respondents are found guilty as set out in Complaint 2008-012. Motion carried with Dover, Grady, Griess and Gale voting aye, and with Bohrer, Leisey and Rouch voting nay.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against either Respondent.

The Commissioners then discussed the penalty to be assessed.

Commissioner Leisey felt that the Respondents should receive a light punishment. Chairperson Gale felt that licensees need to have uniformity of practice which could be the value of this case. He also felt that the Respondents acquired incorrect guidance that they could market property without the appropriate signatures, however, this was not lawful practice. He suggested that the

penalty for the Respondents should be a censure of their license and additional continuing education.

Commissioner Griess indicated that while additional continuing education would be acceptable, she felt that the Respondents had understood the situation and therefore changed their procedures. She was not convinced that the Respondents required a penalty of additional continuing education but that a censure of their real estate license would be appropriate. Commissioners Dover and Leisey concurred.

Commissioner Grady indicated that continuing education was important and that the message needed to be clear that the law needed to be followed. Therefore, he felt that the Respondents should be required to take six hours of continuing education in the area of license law. He also indicated that he felt the Respondents had ignored the law and that by taking additional continuing education in license law, they may learn the importance of doing what they should be doing.

Commissioner Leisey indicated that sitting through a hearing and appearing before the Commission was more educational than any continuing education course that could be required. He felt that a censure of license would be an appropriate penalty without requiring additional continuing education.

A motion was made by Leisey and seconded by Dover in Complaint 2008-012, that Charles Wing Concannon and Stacy Jo Wilson should receive a censure. Motion carried with Bohrer, Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady voting nay.

With the consent of the Respondents, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondents that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and that the Respondents would have thirty days from the date of the Order to reimburse the Commission for said costs.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 11:58 a.m.

Complaint 2008-004 Commission vs. Gary Thomas Thompson and Michael Dean Slatten

A Hearing was held on May 22, at 9:31 a.m., in the matter of Complaint 2008-004 Commission vs. Gary Thomas Thompson and Michael Dean Slatten. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Gary Thomas Thompson was present and represented by Counsel Peter Katt of Lincoln. Respondent Michael Dean Slatten was present and represented himself.

After Opening Statements, Counsel Barton offered seven Exhibits all of which were accepted by Chairperson Gale.

Counsel Barton called Pat Stehly, Michael Dean Slatten and Gary Thomas Thompson as witnesses.

At 10:35 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 10:50 p.m.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

At 12:00 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 12:10 p.m.

Prior to any motion the following occurred:

Chairperson Gale felt that the Commission should decide which statutes were violated. Commissioner Griess suggested that the Respondents be discussed separately. The Commissioners concurred.

The Commission discussed Michael Dean Slatten's violations first.

Commissioner Leisey felt that the discussion should not be whether the Respondents are guilty but what penalty should be assessed. He felt that Mr. Slatten's penalty should be less than Mr. Thompson's penalty. Commissioner Grady felt that there would be two separate conclusions and penalties which would need to be decided. Chairperson Gale indicated that there had been virtually no attention given to the records or accounting transactions. He felt the Respondents were lucky that the public had not been injured in this case. He felt that Mr. Slatten had a grudge against Mr. Thompson since the branch office was not succeeding. He also indicated that the branch office needed to have good staff and they should have worked to market the office rather than to poach good staff. He expressed concern that the Respondents had not been paying attention to procedure and that no one had looked for the missing files until December which was three months after the audit.

Commissioner Griess indicated that the law would not allow Mr. Thompson to be the designated broker and manage a branch office, therefore, he had to employ a different broker. She thought that the Respondents had poor communication and that Mr. Slatten had not been made aware of his duties and responsibilities as a branch manager.

Chairperson Gale felt that the Commission should go through each allegation to determine which statutes had been violated.

The Commission reviewed the allegations set forth in pages four through eight of exhibit 1.

After discussion, a motion was made by Leisey and seconded by Dover that Mr. Slatten violated Title 299 Chapter 3-001; Title 299 Chapter 3-002; Title 299 Chapter 3-004; Title 299 Chapter 5-003.11; Title 299 Chapter 5-003.14; Title 299 Chapter 5-003.19; Neb. Rev. Stat. §76-2421 (1); and Neb. Rev. Stat. §81-885.24 (29). Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

After discussion, a motion was made by Leisey and seconded by Grady that Mr. Thompson violated Title 299 Chapter 3-002; Title 299 Chapter 5-003.11; Title 299 Chapter 5-003.14; Title 299 Chapter 5-003.19; Neb. Rev. Stat. §76-2421 (1); Neb. Rev. Stat. §81-885.24 (29); and Title 299 Chapter 5-003.22. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

A motion was made by Leisey and seconded by Dover to reconsider the motion made for Mr. Slatten since one of the violations had been misstated. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

A motion was made by Leisey and seconded by Grady that Mr. Slatten violated Title 299 Chapter 3-001; Title 299 Chapter 3-002; Title 299 Chapter 5-003.11; Title 299 Chapter 5-003.14; Title 299 Chapter 5-003.19; Neb. Rev. Stat. §76-2421 (1); and Neb. Rev. Stat. §81-885.24 (29). Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

The Commission decided to first discuss the penalty which would be assessed to Mr. Slatten.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #2003-023, dated May 28, 2003, suspending Mr. Slatten's license for two years with the entire period stayed and served on probation, plus an additional twelve hours of continuing education, including three hours in the area of agency, three hours in the area of license law, three hours in the area of contracts and three hours in the area of trust accounts.

The Commissioners then discussed the penalty to be assessed.

Commissioner Leisey felt Mr. Slatten should have to serve three months on suspension with a two year probation period and be required to take additional continuing education in trust accounts and license law. Commissioner Grady agreed that a suspension would be in order, but felt Mr. Slatten should serve a thirty to sixty day suspension. However, he felt that it was more important that Mr. Slatten never be a designated broker or a branch manager again since he had displayed his inability to do so.

Chairperson Gale felt that the disciplinary action being discussed for Mr. Slatten should be significant but that Mr. Thompson had more responsibility as the designated broker. He also felt that the prior disciplinary action had not proven to be sufficient. Commissioner Griess asked if a penalty could be imposed that a licensee could not become a designated broker or a branch manager.

Deputy Director Hoffman indicated that in the past, the Commission had issued licenses with the restriction that they remain under the supervision of a designated broker and if they chose to be a designated broker, they would have to appear before the Commission for that request to be granted. She felt that since these types of terms had been given to new licensees, that the Commission could impose such a penalty on a current licensee. She noted that with a broker license, a licensee could be an associate broker, an employing broker or a managing associate broker. Chairperson Gale restated that a restriction could be imposed that the broker licensee be restricted to only being an associate broker without becoming an employing broker or a managing associate broker. Deputy Director Hoffman agreed.

Commissioner Leisey proposed that Mr. Slatten receive two years of probation with thirty days served on suspension or two years probation with no suspension. Chairperson Gale agreed with the proposed two years probation but also felt that Mr. Slatten should not be a managing broker during that period; serve a thirty-day suspension; and take additional continuing education. He felt that in addition Mr. Slatten should have to appear before the Commission at the end of the two year probation period, if he had no other complaints filed against him, to ask for a change of status

of his license. Commissioner Rouch indicated that if Mr. Slatten had any complaints against him during the two years of probation then he would not be allowed to ask for a status change.

A motion was made by Leisey and seconded by Dover in Complaint 2008-004, that Michael Dean Slatten receive a two-year suspension, thirty-days served on suspension and the balance served on probation, plus six hours of additional continuing education in a subject deemed suitable by Commission Staff.

A friendly amendment was made by the mover to require Mr. Slatten's license be held in the capacity of a non-managing associate broker status after the thirty-day suspension had been served. Mr. Slatten must also appear before the Commission after the two-year suspension in order to have his license status changed to a management capacity. It was accepted by the second.

Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

The Commission decided to discuss the penalty which would be assessed to Mr. Thompson.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #94-032, dated September 28, 1994, suspending Mr. Thompson's license for sixty days with the entire sixty days stayed and served on probation, plus an additional 3 hours of continuing education, in the area of trust accounts.

Commissioner Dover felt that Mr. Thompson should receive a one year suspension and two years of probation. He also felt that Mr. Thompson should have job descriptions and policies written since he was the responsible broker.

Commissioner Leisey agreed with Commissioner Dover but felt that Mr. Thompson should be required to take additional continuing education in the area of trust accounts.

Commissioner Grady felt that Mr. Thompson should have his real estate license revoked.

Chairperson Gale indicated that Mr. Thompson's previous violations were fourteen years ago with no other complaints or findings against him and therefore the behavior may not be a habit or pattern but instead he learned his lesson back in 1994.

Commissioner Griess agreed that a one year suspension would be appropriate.

Commissioner Rouch agreed with a one year suspension but was surprised that the same issues which were stipulated to fourteen years ago were the same issues being discussed again.

Chairperson Gale proposed two years suspension, one year served on suspension and the balance served on probation, plus an additional six hours of continuing education in the areas of trust accounts and license law.

Commissioner Griess felt that Mr. Thompson should develop a business plan. Commissioner Dover felt that Mr. Thompson should put together a procedure manual which included staff job descriptions.

Chairperson Gale asked if additional continuing education would be necessary. Commissioner Griess felt that Mr. Thompson should take additional continuing education in the areas of license law and trust accounts.

Chairperson Gale asked if Mr. Thompson had worked at a real estate company or if he was an employing broker. Commissioner Leisey indicated that Mr. Thompson was the designated broker for a real estate company. Commissioner Grady added that he was probably the owner of the real estate company. Chairperson Gale felt that Mr. Thompson should not be the designated broker or the owner of the company, but could still function as a real estate licensee. Commissioner Rouch indicated that anyone can own a real estate company without holding a real estate license. Chairperson Gale felt that if the Commission voted to place Mr. Thompson's license on a one-year suspension, he would be able resume activities as a designated broker after he had served the one-year suspension, in which case he did not feel this punishment would suffice.

Commissioner Dover explained that if Mr. Thompson was to serve a one-year suspension, he would essentially be managing a temporary designated broker. Commissioner Grady indicated that Mr. Thompson would still be the boss and owner of the real estate company. Commissioner Lesiey indicated that Mr. Thompson would not be able to do any real estate activities, himself, if he received a one-year suspension.

Chairperson Gale felt that Mr. Thompson should receive a six month suspension and his real estate license be restricted so that he could not be a designated broker for two years.

Commissioner Griess indicated that Mr. Thompson would probably hire a different designated broker to temporarily take his place and he would continue to not oversee the broker. Commissioner Grady felt that this scenario could not be prevented but was unsure what would solve the problem.

A motion was made by Dover and seconded by Leisey in Complaint 2008-004, that Gary Thomas Thompson receive two-years probation, the first year served on suspension; provide the Commission Staff with a policy and procedure manual which would address the maintenance of transaction files and trust account management; and six-hours of additional continuing education in the areas of license law and trust accounts.

A friendly amendment was made by the mover that the continuing education be completed by the end of the probation period. It was accepted by the second.

Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

With the consent of the Respondents, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondents that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and that the Respondents would have thirty days from the date of the Order to reimburse the Commission for said costs.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 1:06 p.m.

Informal Special Appearances

Adam Wayne Eppolito, Salesperson Applicant

Deputy Director Hoffman presented exhibits which included: correspondence regarding Mr. Eppolito's special appearance; a summary of Mr. Eppolito's criminal history which was not previously reported; letters of reference; and information related to a previous informal special appearance. A copy of said exhibit is attached to and made a part of these minutes. Mr. Eppolito was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Eppolito explained how his life had changed since his past appearance.

Deputy Director Hoffman indicated that there had been an exhibit included regarding criminal history which had not been reported by Mr. Eppolito. She explained that the Commission had received access to the Department of Justice's website since Mr. Eppolito's previous special appearance, which was where the information was collected. She also explained that the criminal history obtained had not shown up on the background report received from the Nebraska State Patrol.

Mr. Eppolito explained the circumstances of the additional record which were reflected in the information obtained from the Department of Justice's website.

After discussion, a motion was made by Grady and seconded by Leisey to allow Mr. Eppolito to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Dover, Grady, Griess, Leisey, and Rouch voting aye, with Gale voting nay, and with Bohrer not participating or voting, being absent and excused.

Fining Authority Recommendations

Deputy Director Mayrose presented a draft set of guidelines for use exercising fining authority. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Mayrose indicated that he produced a list of the statutes most often violated and started the fines at \$500.00 for the less severe violations.

Deputy Director Hoffman indicated that most jurisdictions who had fining authority did not have hard and fast guidelines. In fact, most jurisdictions indicated that the circumstances of each violation should be considered when setting fines, therefore, they advised against attempting to set a menu of fines.

Commissioner Leisey felt the fining authority was intended to be used as an additional tool for disciplinary action and would be reviewed on a case by case basis. Chairperson Gale explained that the Commission had asked the Staff to review the process. He explained that the guidelines were not meant to establish hard and fast rules. He felt that this document helped distinguish the major and minor offenses and perhaps an introductory page of explanation could be added to this document. Commissioner Leisey expressed concern that the Commission needed to look at each disciplinary action on a case by case basis and work the fining into the process since there will be a learning curve. Commissioner Grady felt that second offenses should increase,

perhaps double the initial fine. He also felt that a minimum of at least \$500.00 would get the licensees' attention and noted they could not fine more than \$2,500.00. He agreed it would be difficult to put a value to the offense since this was not retail.

Chairperson Gale indicated that perhaps the recommendations could be postponed until after July 1, 2009, when Greg Lemon becomes the Director and either he could review the fining authority or form a subcommittee to review.

Commissioner Griess indicated that perhaps the more typical violations could be categorized by level of seriousness which would be helpful with the current regulations especially with repeat offenders. Commissioner Dover did not think that the fining authority should have guidelines or policies put in writing but agreed levels would be appropriate. Deputy Director Hoffman asked how many categories would be acceptable. Commissioner Dover felt that three separate levels would be needed. Deputy Director Hoffman suggested that offenses could be sorted as light, moderate and serious. She cautioned that no list would be an exhaustive list.

Chairperson Gale felt that the guidelines, as presented, should be reviewed by a subcommittee, staff or a combination. He suggested that the new recommendation of guidelines be reviewed at the July meeting once Greg Lemon has become the Director.

Commissioner Grady felt that the Commission Staff did a good job with the presentation and did not wish to put this item on hold too long. Chairperson Gale indicated that the Commissioners could work with Greg Lemon on this when he is on board.

No action was necessary with regard to this matter.

Approval of Appointment and Reappointment of Pre-Hearing Officers

Deputy Director Hoffman presented a list of the current pre-hearing officers, a new pre-hearing officer and pre-hearing officers which will not have renewed contracts. A copy of said exhibit is attached to and made a part of these minutes. (Note: It was discovered during the meeting that the Exhibit for this Agenda Item was incorrect. The name of the new appointment "Terry Schroff" was incorrect, the name should have appeared as "Terry R. Schaaf". The Exhibit was corrected for attachment to these minutes.)

Deputy Director Hoffman noted that four of the pre-hearing officers were interested in reappointment; one individual would like to become a pre-hearing officer; and three would no longer be pre-hearing officers.

A motion was made by Bohrer and seconded by Griess to reappoint the current pre-hearing officers and give Deputy Director Hoffman the authority to extend their agreements until June 30, 2011. Deputy Director Hoffman shall also contract with Terry R. Schaaf to be added to the list of pre-hearing officers. Deputy Director Hoffman shall also remove the three pre-hearing officers, who will not have a renewed contract, from the list of pre-hearing officers. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Approval of Contract for the Director's Position

Chairperson Gale presented a proposed contract with Gregory Lemon to become the Director of the Real Estate Commission. A copy of said exhibit is attached to and made a part of these minutes denoted as exhibit 15.

Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present for the approval of the contract for the Director's position. He indicated that the Commission had previously approved Chairperson Gale to negotiate a contract for the Director's position with Gregory Lemon. He explained that Chairperson Gale had negotiated the employment agreement and the contract contents with Mr. Lemon. He entertained a motion to approve the contract and to give Chairperson Gale the authorization to sign the contract with Mr. Lemon.

A motion was made by Leisey and seconded by Dover to enter into a Contract with the newly appointed Director, Gregory Lemon, and to give Chairperson Gale the authorization to sign the contract as presented. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Chairperson Gale indicated that a press release had been prepared by his office and would be released as soon as possible to announce Mr. Lemon as the Director.

Approval of Travel to ARELLO Investigator Workshop - September 1-4 – Little Rock, Arkansas

Deputy Director Mayrose presented information regarding the estimated costs for Deputy Director for Enforcement Mayrose to attend the ARELLO Investigator Workshop in Little Rock, Arkansas, September 1-4, 2009. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Grady and seconded by Leisey to approve the travel request. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Discussion of Titanium Solutions Business Description

Deputy Director Hoffman presented a Memorandum from the Secretary of State's Office and e-mail correspondence regarding Titanium Solutions, Inc. A copy of said exhibit is attached to and made a part of these minutes.

Chairperson Gale indicated that this company had applied for a license as a collection agency. It was an unusual business model utilizing real estate licensees. He indicated that he was seeking input before issuing a collection agency license. Of particular concern was the use of real estate licensees.

Commissioner Griess indicated that this business had been in operation for several years. Commissioner Leisey felt that the Staff should research the business description and bring their research back for review by the Commissioners.

A motion was made by Leisey and seconded by Grady that staff investigate further and bring back a report to the Commission.

Commissioner Grady felt that the Staff should work with Colleen Byelick with the Secretary of State's Office, Commissioner Griess who was familiar with this type of business description and contact licensees who have done business with Titanium Solutions.

Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Legislative Matters

LB 11 - No new information presented.

LB 29 - No new information presented.

LB 30 – No new information presented.

LB 226 – No new information presented.

LB 311 – Deputy Director Hoffman reported that the bill had been signed by the Governor on May 19, 2009.

LB 315 – Deputy Director Hoffman reported that the bill had been signed by the Governor on May 19, 2009.

LB 403 – Deputy Director Hoffman reported that this bill had undergone several revisions, therefore, she had not, as yet, studied the final version. She indicated that the State Agencies would be receiving guidance on how to implement the bill. She also indicated that the bill appears to go into effect in 2011. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – April 27-29, 2009 - Asheville, North Carolina - Report of Attendees

Deputy Director Hoffman noted that Commissioners Dover, Grady and Rouch and Deputy Director Hoffman attended the ARELLO Mid-Year Meeting.

Deputy Director Hoffman felt the meeting overall was good, along with the sessions. Commissioner Dover referenced a session he attended and expressed concerns regarding real estate licensees on “My Space” and blogs failing to comply with the law.

Commissioner Grady felt that it was an interesting meeting. He indicated that he had attended a session about real estate sold at auction. He also felt that the internet was quickly getting out of hand and licensees were forgetting that once information was out there and in print there was no way of retracting it.

Commissioner Rouch felt ARELLO offered great sessions and thought there had been value to the meeting. She also felt that it was valuable to meet other Commissioners. She indicated that she had discovered Nebraska may be the only State where the Chairperson of the Real Estate Commission was the Secretary of State and she was proud of that.

No action was necessary on this report.

ARELLO District Meeting – June 25-27, 2009 - Louisville, Kentucky

Deputy Director Hoffman noted that Commissioners Griess, Dover, Rouch and Deputy Director Hoffman had signed up to attend. Commissioner Grady indicated that he was interested in going to the Meeting and would go online to register.

Deputy Director Hoffman indicated that if anyone was interested in attending the Commissioner College, there was a separate registration required and they would have to sign up online.

No action was necessary on this report.

Trust Account Examination Evaluation Report - First Quarter 2009

Deputy Director Hoffman presented the Trust Account Examination Evaluation Report - First Quarter 2009. A copy of said report is attached to and made a part of these minutes.

Deputy Director Hoffman reviewed some of the comments received.

There was discussion regarding the consistency of examinations performed and providing guidelines for brokers on preparing for a trust account audit.

No action was necessary on this report.

Personnel Matters - Closed Session

At 2:55 p.m., on May 21, a motion was made by Grady and seconded by Griess to go into closed session for discussion of personnel matters. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Chairperson Gale again indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 3:28 p.m., a motion was made by Dover and seconded by Leisey to reconvene in open session. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

After reconvening in open, public session, a motion was made by Dover and seconded by Leisey that Chairperson Gale and Acting Director Hoffman proceed with the reclassification of Teresa Hoffman's position to Deputy Director for Education and Licensing. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

At 1:10 p.m., on May 22, a motion was made by Grady and seconded by Griess to go into closed session for discussion of personnel matters and to receive legal advice regarding personnel matters. Motion carried with Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer and Dover not participating or voting, being absent and excused.

Chairperson Gale again indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters. Jerry Pigsley, Special Assistant Attorney General and Counsel to the Commission, was present to discuss personnel matters and offer legal advice in this matter.

At 1:45 p.m., a motion was made by Grady and seconded by Leisey to reconvene in open session. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

After reconvening in open, public session, a motion was made by Dover and seconded by Leisey that Teresa Hoffman receive an increased yearly salary of \$65,000.00 beginning July 1, 2009. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Chairperson Gale indicated that there had been confusion as to Ms. Hoffman's title and that should be clarified with State Personnel. Commissioner Grady felt that Ms. Hoffman's title should be recognized on the record.

A motion was made by Grady and seconded by Rouch that Teresa Hoffman holds the position of Deputy Director of the Real Estate Commission and Education and Licensing. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Future Meeting Dates

July 9-10, 2009 – Atrium Building, Lincoln
August 13-14, 2009 – Staybridge Suites, Lincoln
September 10-11, 2009 – Staybridge Suites, Lincoln
October 15-16, 2009 – Hampton Inn-Airport, Lincoln

Recesses and Adjournment

At 9:22 a.m. on May 21, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 11:00 a.m. on May 21, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:14 a.m.

At 12:07 p.m. on May 21, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:05 p.m.

At 2:45 p.m. on May 21, Chairperson Gale declared a brief recess, and reconvened the meeting at 2:55 p.m.

At 3:30 p.m. on May 21, Chairperson Gale recessed the meeting.

At 9:00 a.m. on May 22, Chairperson Gale reconvened the meeting.

On May 22, all of the members of the Real Estate Commission were present, with the exception of Bohrer, who was absent and excused.

At 9:25 a.m. on May 22, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:31 a.m.

At 10:35 a.m. on May 22, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:50 a.m.

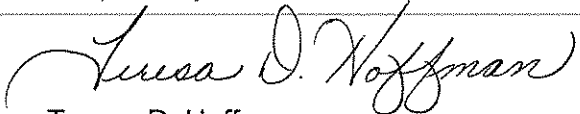
At 12:00 p.m. on May 22, Chairperson Gale declared a brief recess, and reconvened the meeting at 12:10 p.m.

Commissioner Dover was briefly excused from the meeting at 1:09 p.m., and rejoined the meeting at 1:11 p.m.

At 2:08 p.m., there being no further business to come before the Commission, a motion was made by Grady and seconded by Leisey that the meeting adjourn. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

I, Teresa D. Hoffman, Deputy Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the May 21-22, 2009, meeting of the Nebraska Real Estate Commission were available for inspection on June 5, 2009, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Teresa D. Hoffman
Deputy Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Stacy Jo Wilson, Papillion
Susan Napolitano, Lincoln
Craig Larabee, Lincoln
Beth Lube, Re/Max Real Estate Group, Omaha