

NEBRASKA REAL ESTATE COMMISSION

February 16, 2012

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on February 16, 2012, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. Also present were Director Greg Lemon, 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, were present for the Show-Cause Hearing.

Notice of Meeting (Adopt Agenda)

Director Lemon 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, by mail and e-mail, 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.

Director Lemon 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 Ptak and seconded by Leisey to adopt the final agenda as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Minutes of January 19, 2012

The minutes of the Commission meeting held on January 19, 2012, were considered.

After review, a motion was made by Avery and seconded by Stange to approve the minutes as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for January

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

The cash fund balance as of January 31, 2012, was \$1,110,966.78, which compared to a cash fund balance of \$733,444.58 on January 31, 2011.

After discussion, a motion was made by Rouch and seconded by Leisey to file the January Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Renewal Report

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

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 Ptak and seconded by Stange to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Examination Report - January

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

After review, a motion was made by Ptak and seconded by Leisey to ratify the January Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange 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.

Broker-Approved Training Recognition

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes.

There was discussion regarding issues concerning continuing education and broker-approved training taken in other jurisdictions and the process of accountability for such providers who choose to offer continuing education at national conferences.

After review, a motion was made by Stange and seconded by Ptak to ratify the three reports. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange 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.

No action was necessary on this report.

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

Item A Complaint 2011-014

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 Ptak that this complaint be held in abeyance and a new complaint be filed against the respondent per the Staff recommendation. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item B Complaint 2011-015

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.

After further discussion, the pending motion was withdrawn by the mover and second.

A motion was made by Ptak and seconded by Leisey that the complaint be set for hearing on Neb. Rev. Stat. 76-2418(1)(b) and 81-885.24(29). Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item C Complaint 2011-017

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 Leisey and seconded by Dover that the complaint be dismissed without prejudice.

After further discussion the pending motion was withdrawn by the mover and second.

A motion was made by Avery and seconded by Rouch that the complaint be set for hearing on Neb. Rev. Stat. 76-2417(1)(b), (c) and 81-885.24(29). Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item D Complaint 2011-025

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 Leisey and seconded by Dover that this complaint be held in abeyance and a new complaint be filed against the Respondent on Neb. Rev. Stat. 76-2418(1)(b), (c), (c)(ii) and 81-885.24(29). Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item E Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Leisey and seconded by Avery that the licensee be allowed to renew their real estate license and be required to appear before the Commission for an informal special appearance. The amended motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item F Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Stange and seconded by Leisey that the Commission file a complaint on its own motion and set it for hearing on Neb. Rev. Stat. 81-885.24(29) and others as determined by Staff and legal counsel. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Presentation of Stipulation and Consent Orders

Complaint P2011-002, Commission vs. Jeff Rothlisberger

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint P2011-002, Commission vs. Jeff Rothlisberger. 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 Dover to enter into the Order as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Complaint 2011-003, Mark W. and Roy D. Timm vs. Craig Alan Timm

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-003, Mark W. and Roy D. Timm vs. Craig Alan Timm. 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 Rouch to enter into the Order as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Rule Hearings

There were no rule hearings scheduled to be held at the meeting.

Disciplinary Hearings

February 16, 9:30 a.m. - Show-Cause Hearing on SC2012-001, Commission vs. Gary Thomas Thompson

A Hearing was held on February 16, at 9:30 a.m., in the matter of SC2012-001. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Gary Thomas Thompson was present without Counsel.

After opening statements, Counsels Barton offered 15 Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Terry Mayrose, Greg Lemon and Gary Thomas Thompson as witnesses.

Gary Thomas Thompson offered 3 Exhibits, 2 of which were received by Chairperson Gale. Gary Thomas Thompson called himself as a witness.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made Leisey and seconded by Dover to find that in Complaint SC2012-001, Gary Thomas Thompson had not shown-cause why his license should not be sanctioned for failing to abide by specified terms and conditions of an Order of the Commission. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Chairperson Gale opened the past disciplinary action envelope, he offered and received it as Exhibit 19 and a copy was distributed to all parties including Respondent Thompson.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Dover and seconded by Ptak in Complaint SC2012-001, that Gary Thomas Thompson's license be revoked.

After discussion, a motion was made by Stange and seconded by Dover to amend the pending motion to allow for the revocation to become effective on March 15, 2012, to allow Mr. Thompson time to transition his current accounts and clients to another licensee. The motion carried with Avery, Dover, Leisey, Stange and Gale voting aye, and with Ptak and Rouch voting nay.

A vote was then taken on the pending motion, which motion carried with Dover, Ptak, Stange and Gale voting aye and with Avery, Leisey and Rouch voting nay.

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

Chairperson Gale notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent 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 11:45 a.m.

Informal Special Appearances

L Scott Momsen – Broker Licensee

Director Lemon presented exhibits which included: correspondence regarding Mr. Momsen's special appearance; and a Notice of Intent to Suspend License issued by the Iowa Real Estate Commission. A copy of said exhibit is attached to and made a part of these minutes. Mr. Momsen was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Momsen explained that he recently received an email from the Iowa Department of Revenue who indicated that they would work on getting his account cleared. Chairperson Gale asked when Mr. Momsen would be cleared from the Iowa Real Estate Commission. Mr. Momsen indicated that he believed that once his account had been cleared with the Iowa Department of Revenue they would notify the Iowa Real Estate Commission.

A motion was made by Stange and seconded by Leisey that the complaint be dismissed without prejudice once notification had been received from the Iowa Real Estate Commission that Mr. Momsen's license was no longer suspended. Motion carried with Avery, Dover, Leisey, Rouch, Stange and Gale voting aye, and with Ptak voting nay.

Dawn Bierman - Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Bierman's special appearance; a summary of her criminal convictions; and trial court cases from the State of Nebraska on Ms. Bierman's cases. A copy of said exhibit is attached to and made a part of these minutes. Ms. Bierman was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Bierman distributed letters of reference. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14b1.

Ms. Bierman explained the situations regarding her past criminal history.

A motion was made by Leisey and seconded by Rouch to allow Ms. Bierman to sit for the examination after making proper application and to have a license issued upon passing provided that nothing appears on her criminal background report that the Commission was not aware of.

An amendment was offered by the mover to also include in the motion that if anything should appear on Ms. Bierman's criminal background report other than what the Commission has knowledge of than Ms. Bierman would need to reappear before the Commission. The amendment was accepted by the second. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Citation System Subcommittee Report

Director Lemon presented a proposed citation system or expedited stipulation and consent order process report. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that as discussed previously, the Commission had been interested in researching the use of a citation system. He reviewed the process recommended by the subcommittee as set forth in the report.

Commission Ptak indicated that the process would allow the staff to more efficient to the public who file a complaint. Chairperson Gale felt that the subcommittee report was well written and technically reasonable and would expedite the complaints involving minor violations.

Commissioner Ptak indicated that while the process would allow for Commission staff to present any complaint to the Commissioners should they desire advice and would not take away the Commissioners responsibility. Director Lemon indicated that should the citation system be utilized, the Commissioners would be presented a report which is subject to final approval by the Commission. Director Lemon also noted that violations would continue to be reflected on the licensee's record and be published in the Commission Comment newsletter as currently recorded should the citation system be utilized.

A motion was made by Ptak and seconded by Rouch to approve and implement the use of the Citation System as set forth in the report. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Legislative Matters

LB 818 - Director Lemon reported that it had been placed on General File.

LB 1013 - Director Lemon reported that while this bill related to the Administrative Procedure Act, if passed it could affect the Commission's Rules and Regulations and that disciplinary action could only be taken if it was based upon the agency's Rules and Regulations. The hearing would be held on February 23, 2012.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report - Fourth Quarter 2011

Director Lemon presented the Trust Account Examination Evaluation Report - Fourth Quarter 2011. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled.

No action was necessary on this report.

Errors and Omissions Loss Report – Fourth Quarter 2011

Director Lemon presented the Errors and Omissions Loss Report – Fourth Quarter 2011. A copy of said exhibit is attached to and made a part of these minutes.

There was discussion regarding the report and it was the consensus of the Commission that a comparison of the current and previous errors and omissions insurance carrier be brought back for review at the next meeting.

No action was necessary with regard to this matter.

Future Meeting Dates

March 15-16, 2012 - Staybridge Suites, Lincoln

April 19-20, 2012 - Staybridge Suites, Lincoln

May 17-18, 2012 - Staybridge Suites, Lincoln

June 21-22, 2012 - Staybridge Suites, Lincoln

Recesses and Adjournment

Commissioner Dover joined the meeting at 9:04 a.m.

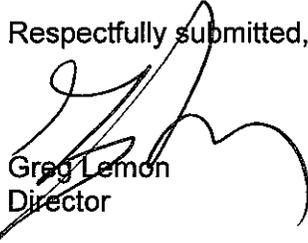
At 11:45 a.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 12:30 p.m.

At 1:23 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 1:25 p.m.

At 2:20 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Avery that the meeting adjourn. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the February 16, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on February 23, 2012, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Judy Burford, CBSHOME Real Estate, Omaha
Susan Geschwender, Randall School, Omaha

