

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
REAL ESTATE COMMISSION

MEETING MINUTES

September 15-16, 2008

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate Commission was held September 15 -16, 2008, at the Executive Conference Room in Wasilla AK.

Monday, September 15, 2008

Agenda Item 1a Call To Order

Chairman Gene DuVal called the meeting to order at 9:00 a.m. at which time quorum was established.

Roll Call

Members present constituting a quorum, were:

Brad Cole, Broker, 3rd Judicial District
David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District, Chairman
Roger Stone, Broker, 1st Judicial District
Chris Swires, Associate Broker/Broker at Large

Members Absent were:

F. Lee Sherman, Public Member
Tim Worthen, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner

Guests Present:

Traci Barickman, Broker
Ian Frazier, Surety Fund Claimant
Judy Bockman, Assistant Attorney General

Agenda Item 1b Approval of Agenda

The Commission members reviewed and discussed the revised agenda.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve the revised agenda.

All in favor. Motion passes.

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Agenda Item 2

Approval of Minutes

June 19-20, 2008

Commission members reviewed and discussed the June 19-20, 2008 meeting minutes.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve the June 19-20, 2008 meeting minutes as amended.

All in favor. Motion passes.

July 19, 2008 – Teleconference

Commission members reviewed the July 19, 2008 teleconference meeting minutes as presented.

On a motion duly made by Cole, seconded by Swires, it was

RESOLVED to approve the July 19, 2008 teleconference meeting minutes as presented.

All in favor. Motion passes.

Agenda Item 3

Public Comment

The Commission members reviewed and discussed the e-mails that were received from the members of the public.

Commission reviewed Greg Erkins e-mail received August 28, 2008 regarding exclusive right to sell v. exclusive agent. The Commission didn't respond because they weren't certain of his question.

Commission reviewed and discussed e-mail received August 19, 2008 regarding incentive questions. Can a seller offer 2 tickets to Hawaii to a buyer for buying their home? Commission responded yes this is allowed. The second question was can a seller offer the same to a licensee if one of the licensee's buyers buys the home? Commission responded yes, except that the licensee must inform their broker.

On a motion duly made by Somers, seconded by Cole, it was

NOTE: The following resolution is in question. We need

Commission members feedback for clarification.

RESOLVED to approve *that these practices are permissible.*

All in favor. Motion passes.

**Agenda Item 6(a) Licensing Examiner Report
Regulation Tracker**

Commission members reviewed and discussed the regulation tracker. The Commission will discuss the regulation tracker later on in the day.

**Agenda Item 4(a) New Business
12 AAC 64.110**

The Commission members reviewed and discussed the proposed language on regulation 12 AAC 64.110. The members agreed on leaving the regulation as is by not adding any new language. Therefore, no action was taken.

The Commission recessed for break at 10:38 a.m.
The Commission reconvened from break at 11:00 a.m.

**Agenda Item 5 Surety Fund Claims
S-28-007 Duncan v. Crawford & Garrison**

On a motion duly made by Somers, seconded by Cole, it was

RESOLVED to adopt surety fund claim S-28-007.

All in favor. Motion passes.

S-28-008 Frazier v. Dowd

On a motion duly made by Cole, seconded by Somers, it was

RESOLVED to adopt surety fund claim S-28-008.

All in favor. Motion passes.

Agenda Item 6 **Licensing Examiner Report**
Statistical Report

Ms. Smith presented the statistical report to the Commission for the period of June 4, 2008 through August 25, 2008 for their review.

There were 42 new licensees, 2375 active licensees, and 2463 total number of licensees with a January 31, 2010 expiration date. There are 475 active brokers, 415 active associate brokers, and 1480 active salespeople.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to accept the Licensing Examiner's Report as presented.

All in favor. Motion passes.

Applicant with "yes" question

The Commission members reviewed and discussed the salesperson application with a "yes" answer to a fitness question.

On a motion duly made by Somers, seconded by Swires, it was

RESOLVED to approve the application for D. Shearer.

All in favor. Motion passes.

New Renewal Notification Procedure.

Ms. Smith reviewed and discussed with the Commission members the new renewal notification procedures.

Agenda Item 4(a) 12 AAC 64.111 Closing an Office

Commission members reviewed and discussed the proposed language on a new regulation 12 AAC 64.111, Closing an Office.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve regulation 12 AAC

- 64.111, Closing an Office to be read: (1)
Before closing any office or branch office a broker shall provide the commission;**
- a) a Closing Office Form**
 - b) A bank statement showing zero balance in the trust account(s) or appropriate trust fund documentation**
 - c) Name, address and phone number of the custodian of records, and the location where the transaction record of brokerage for the last three years may be accessed; and**
 - d) Transfer or change of status form.**

All in favor. Motion passes.

12 AAC 64.125 Supervision

Commission members reviewed and discussed the proposed language on regulation 12 AAC 64.125. The Commission members decided to leave regulation as is, therefore no action was taken.

On a motion duly made by Stone, seconded by Swires, it was

RESOLVED to not take any action on regulation 12 AAC 64.125(f)(1)(2).

All in favor. Motion passes.

12 AAC 64.180(a) Establishment of Trust Account

The Commission members reviewed and discussed the proposed language for regulation 12 AAC 64.180(a).

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve proposed language on regulation 12 AAC 64.180(a) to be read: Every real estate broker shall establish one or more trust accounts in a federally insured bank or credit union authorized to do business in this state, and the name of the account so established must include the words "trust account" or "trustee account"

All in favor. Motion passes.

12 AAC 64.105 Authority to Investigate and Discipline

The Commission members reviewed and discussed proposed regulation 12 AAC 64.105 and agreed to table this regulation for now.

12 AAC 64.061 License by Endorsement

The Commission members reviewed and discussed regulation 12 AAC 64.061.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to adopt new language as to be presented.

(c) For purposes of licensure by endorsement, a valid and active license is a real estate license which is issued by another state and is equivalent to a license issued by Alaska. Active means that the applicant for an Alaska license must have met standards of activity and license status in the other state that are equivalent to the Alaska standards for active licensure as provided in 12 AAC 64.080, 12 AAC 64.110, and AS 08.88.171. ~~In addition,~~ *The* applicant must have worked as a real estate licensee as a principal occupation, ~~and,~~

In Addition, within the six months preceding the Alaska application

(1) an applicant applying for a broker license or associate broker license must provide an affidavit that states that the applicant has, within those six months

(A) owned a real estate business;

(B) been employed as a broker by a corporation or partnership; or

(C) been an actively licensed broker or associate broker under another broker; and

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last three (3) of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant

has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(2) if the applicant is applying for a salesperson license, the applicant must have within those six months, been employed by or affiliated with a broker as a salesperson.

(3) Listings, sales *records* or other licensed activities may be considered by the commission in determining whether the applicant meets the qualifications.

All in favor. Motion passes.

The Commission recessed for lunch at 12:35 p.m.

The Commission reconvened from lunch at 1:35 p.m.

Agenda Item 7

Executive Branch Ethics Act

Assistant Attorney General Judy Bockman gave a presentation to the Commission on the Executive Branch Ethics Act.

The Commission recessed for break at 2:38 p.m.

The Commission reconvened from break at 2:46 p.m.

**Agenda Item 4
Cont.**

12 AAC 64.068 Professional Corporations

The Commission members reviewed and discussed proposed regulation 12 AAC 64.068 Professional Corporations. Current language:

Professional Corporations

A real estate broker licensed under this chapter may do

business as a professional corporation when incorporated under AS 10.45

Proposed language to read:

Legal Entities

A real estate broker licensed under this chapter may do business as a legal entity when organized under Alaska law.

(a) A real estate license can only be held by a natural person, but a real estate licensee licensed under this chapter may do business as a legal entity when organized under Alaska law. Fees earned by the licensee may be paid by the real estate brokerage employing the licensee to the legal entity, ~~that the~~ licensee is organized as. At all times, the licensee and ~~the~~ legal entity that the licensee is organized as must comply with the requirements of AS 08.88.401. The name of the licensee's legal entity may be used by the licensee in advertisements, contracts and other material only if the name of the licensee's employing brokerage is clearly identified.

On a motion duly made by Cole, seconded by Swires, it was

RESOLVED to approve regulation 12 AAC 64.068 new language as read.

Those in favor were: Ms. Swires, Mr. DuVal, Mr. Stone, and Mr. Cole.

Those opposed were: Mr. Somers.

The Commission members had further discussion for the proposed language for regulation 12 ACC 64.068.

On a motion duly made by Somers, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.068 changing the title from Professional Corporations to Legal Entities.

All in favor. Motion passes.

The Commission recessed for break at 3:42 p.m.
The Commission reconvened from break at 3:50 p.m.

Agenda Item 10 **Investigative Report**

Statistical Report

The Commission members reviewed and approved the Investigative Statistical Report.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve the investigative report.

All in favor. Motion passes.

Chairperson DuVal discussed with the Commission the possible issues surrounding energy ratings. The Commission recommended that this information be placed on the web site under Best Practices in the category of Risk Management.

Agenda Item 4 **Energy Ratings Issues**

the caveat, "when built" because the energy rating system ~~has been restructured~~ *guidelines have changed, and the energy rating of a building may change as it ages or if changes are made to the building.*

Agenda Item 9 **Executive Administrator's Report**

Ms. Walsh reviewed and discussed with the Commission the surety fund tracker, surety fund balance report, and revenue and expenditure report.

On a motion duly made by Somers, seconded by Cole, it was

RESOLVED to accept the Executive Administrator's Report as presented.

All in favor. Motion passes.

Agenda Item 11 **Election of Officers**

Nomination of Chair:

Mr. Somers nominated Brad Cole as the new Real Estate Chairperson.

On a motion duly made by Somers, seconded by DuVal, it was

RESOLVED for Brad Cole to be the new

Real Estate Chairperson.

All in favor. Motion passes.

Nomination of Vice Chair:

Mr. DuVal nominated Dave Somers to remain as Vice Chair.

On a motion duly made by DuVal, seconded by Stone, it was

RESOLVED for Dave Somers to remain as Vice Chair.

All in favor. Motion passes.

Nomination of Education Liaison

Mr. Somers nominated Roger Stone to remain as the Education Liaison.

On a motion duly made by Somers, seconded by Swires, it was

RESOLVED for Roger Stone to remain as Education Liaison.

All in favor. Motion passes.

Agenda Item 12 **Old Business**

Ms. Walsh reviewed and discussed with the Commission the letter that was sent out to all brokers which was requested at the June meeting.

Commission members set dates for the 2009 quarterly meetings.

March 12-13, 2009: Juneau
June 18-19, 2009: Fairbanks
September 16-17, 2009: Fairbanks
December 10-11, 2009: Anchorage

Meeting room location and time will be determined at a later date.

On a motion duly made by Somers, seconded by Cole, it was

RESOLVED to approve the calendar for 2009.

All in favor. Motion passes.

Agenda Item 13 Mr. Stone discussed the disclosure of compensation with the Commission.

Re-adoption of 12 AAC 64.580

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to re-adopt regulation 12 AAC 64.580.

All in favor. Motion passes.

The Commission recessed at 4:42 p.m. until September 16, 2008 at 10:00 a.m.

Tuesday, September 16, 2008

Call To Order

Chairman Gene DuVal called the meeting to order at 9:00 a.m at which time quorum was established..

Roll Call

Members present constituting a quorum, were:

Brad Cole, Broker, 3rd Judicial District

David B. Somers, Broker at Large, Vice Chairman

Gene DuVal, Associate Broker, 4th Judicial District, Chairman

Roger Stone, Broker, 1st Judicial District

Chris Swires, Associate Broker/Broker at Large

Members Absent were:

F. Lee Sherman, Public Member

Tim Worthen, Public Member

Staff Present:

Sharon Walsh, Executive Administrator

Beata Smith, Licensing Examiner

Guests present via teleconference:

Nancy Harris, Project Assistant

Ms. Walsh briefed the Commission about Ms. Pedlow whose broker was Mary Power who recently passed away. The Commission members listened to Ms. Pedlow's concerns via teleconference.

Mary Pedlow: I just want to make sure from what I understand is this never happened before, where a realty office is privately owned and operated by one person. We chose Mary Powers as our realtor, she passed away in the middle of a transaction and unfortunately all kinds of things happened. I talked to a lawyer Greg Oskus, he said that we were entitled to representation, but the biggest problem with this happening was we could not find representation. If we called another realtor and the first thing they said was that they would like to be paid. I understand that because of the commission. We were lucky enough to have the co-lister help us through the transaction, but if we didn't know this person and trust this person, it got kind of hard. We spent about a week trying to find someone to help us, not that we didn't feel comfortable with Terri Pisa (licensee representing seller). I just don't want this to happen again and I think that the regulations need to be addressed and then finally when we went to the closing Friday, it came up again, where the commission was suppose to go. It puts you in an uncomfortable position because "yes" you have the right to be represented, but who represents you? You either have to pay a private lawyer, nothing was clear to us. We had to get another realtor, we had to pay them on top of the other money that the other person was going to get. If we were to stop the current deal because she passed away, then we would have to go back to the table, well then we could have lost the deal. There's all kinds of issues that came up and I basically said "I feel good about this. Mary and I worked good on this. I felt good with Terry." But in the future, I sure don't want this to happen to anyone else.

Gene DuVal: Mrs. Pedlow. Who was it, who helped you bring the transaction to a closing?

Mary Pedlow: His name is Joe Miller, he's with Re/Max.

Gene DuVal: Okay

Mary Pedlow: He was a co-listing agent.

Gene DuVal: Okay, do you have any thoughts, any proposals to suggest to us to consider?

Mary Pedlow: I think that Prudential was very adamant that Mary Powers' estate receive the commission and I have a little problem with that. Mary filled out the paperwork and I wished Joe could do something, but what I understand from talking to someone at the real estate commission was that any realtor that comes along and wanted to help, could fight for that. Put a lien against the estate, but again, I don't know what powers you can have or what you can set up to address this in the future. I'm just giving you all kinds of avenues to try to help the next person that may have this happen to.

Brad Cole: Do you know if in this transaction, did anyone say what the relationship was between Joe Miller, as a co-listing agent and your representative?

Mary Pedlow: We started talking to...don't quote me on his name, I think his name is Gregg, he's head of Prudential. We kind of went back and forth with letters from them and Tim and I personally spoke with Sharon from the Real Estate Commission. It was all good information but first of all, one side it was Prudential and second side really knows the regulations and nothing made us feel any better about what we were doing to ourselves. We were asked to fill out these papers, I don't feel comfortable doing that. You have what they call a dual agent. I guess it's okay if you don't know the realtor and the realtor knows the other people really well. That puts the person that's purchasing the property in an uncomfortable position.

Brad Cole: Reason why I'm asking that question is that, usually whenever a property is co-listed with someone else, whoever the listing licensees are, they have the written agreement or verbal agreement or maybe it's even written into the listing agreement itself as to what their percentages are if one person can't step into to complete the transaction then the other one does.

Mary Pedlow: Mary was our realtor and she was her own broker, own agent and she was it for one side of the transaction and Terri Pisa was with Prudential with the other side. They co-listed the property in Seldovia Re/Max and Prudential. That's what all I understand. When we went to Seldovia to look at the property, Joe was actually the person to show us the property and we are going to work with him from now on until whenever. The whole situation just stopped dead in the water. We were suppose to close on the first. Talking to Terri stopped. I couldn't talk to her any more because she was representing the sellers completely. You get left in the water. I called everybody and it basically came down to the commission. Joe does not make any money on this deal and it's great that he even stepped up.

Gene DuVal: So, is your house successfully closed now?

Mary Pedlow: Yes, it's a coffee shop home in Seldovia and it closed Friday, but even on the closing Friday the Stewart Title called me and said "Mary, who get's the commission?" I was like "I don't believe this." The whole thing was kind of hard to believe. I started making phone calls and saying "Is this regulation through you guys or does this go actually to people like Senator Wielechowski?" I don't want this to ever happen again to someone.

Roger Stone: Question that I have is...Who was insisting that the deceased broker still gets the commission?

Mary Pedlow: Prudential.

Roger Stone: Prudential? Why were they insisting that?

Mary Pedlow: That's just what they were insisting. I have that in my documentation.

Roger Stone: Was there a personal representative for the estate appointed prior to this transaction closing?

Mary Pedlow: Yes, it's her son. I don't know if he has received any money. I heard at one point that money was going into escrow, but I don't know. I believe that Mary should be entitled because she filled out the paperwork. The earnest money was never deposited. There's nothing in clearer definition of what could happen in this case.

Gene DuVal: Any further questions from the Commission?
Thank you Mrs. Pedlow.

Mary Pedlow: No problem, I appreciate it.

The Commission members discussed the conversation between them and Mrs. Pedlow. The Commission does not have any jurisdiction, no basic information nor haven't seen the contract. There is nothing that the Commission can do at this time.

The Commission members reviewed and discussed the e-mail received from Attorney Mr. Hough regarding Mr. Harvey. A Surety Fund case was presented to the Commission at the September 2007 meeting in Girdwood regarding Mr. Harvey. Mr. Harvey has appealed, the Commission found out that due to Statutes of Limitations, Mr. Harvey was not liable if misrepresentation has occurred, moneys have been already dispersed out to the claimant Mrs. Dyar. Previous Real Estate Commission found that there was a claim in 2003. The money was dispersed back to Mr. Harvey. Ms. Walsh stated to the Commission that

the case went to the Superior Court and the court sent it back to the Office of Administration Hearing. The question was whether the statutes of limitations were the purpose of the surety fund, it starts from discovery or upon the actual action. The Commission's interpretation is that it started on the actual action on the basis of that his title of limitation had expired and Mr. Harvey was not comfortable for that reason, so he's in the process of receiving the Surety claim payment that was initially paid to the Dyer's.

Gene DuVal: Mr. Harvey a licensee... This is a case we heard in Girdwood, which was a surety fund case that he had appealed. We found out that due to statutes of limitations that he was not liable if misrepresentation had occurred. Monies had already been dispersed out to the claimant who was Mrs. Dyar. A previous Real Estate Commission had found that there was a claim in 2001. Do we have a letter from Mr. Harvey?

Sharon Walsh: We have a letter from his attorney. Mr. Harvey's attorney is asking that... when he asked for a refund, because he paid out and then we found that he wasn't liable. The surety fund paid out Mrs. Dyar in 2003, the case was opened in 2001. They paid out a check to her for \$10,000, the claimant. Then last year in 2007, it went to the Superior Court and they determined, they sent it back to the Office of Administrative Hearings. Judge Kennedy brought it in front of you and that's when you decided to accept his proposed decision that although there may have been a misrepresentation, the timing exceeded the 24 months.

Gene DuVal: The ones who weren't there, the issue that came to head was, we had an Assistant Attorney General and Judge Kennedy, who had two different opinions. The question was whether the statutes of limitations were the purpose of the surety fund; it starts upon discovery or upon the actual action. The statutes of limitations and the surety fund is somewhat different because it's statutory. The question that came up to the Commission is for us to interpret the statute and decide whether it started upon discovery or upon the actual action. Our interpretation was that it started upon the actual action on the basis that Statute of limitations had expired and Mr. Harvey was found not comfortable for that reason, so that he brought his surety fund back.

Sharon Walsh: He is in the process. Prior to this, he paid the state so he could continue practicing. He reimbursed the surety fund and he reimbursed it \$12,000. I think the \$2000, I'm not certain of this because we only have a check going to the Dyers for \$10,000. I think that the \$2000 was for a fine that was part of the memorandum of Agreement that he had. The attorney sent us a check in 2003 so he can continue practicing for \$12,000. What he's asking for is... I said "I have a check in my file for you for \$10,000 for the claim that was made." But he's now

asking that he be reimbursed the interest on that in addition to the \$10,000. I said "I couldn't make a determination on that. That's not in my purview, I need to take that to the Commission."

Gene DuVal: How about the fine? Do we know for a fact that he paid \$2000 extra for the fine?

Sharon Walsh: I don't know.

Gene DuVal: Do we have copies of the letter from the attorney?

Sharon Walsh: He's saying that, he sent over a check and he made it out to the State of Alaska for \$12000. Said some is paid under protest...this is in 2003. This is what he sent me and I received it August 25, 2008. It's a copy of his attorney's correspondence.

Dave Somers: What interest rate are they asking for?

Sharon Walsh: He's not saying, he's not specifying. He wants interest though.

Gene DuVal: So this is the letter from 2003?

Sharon Walsh: He's asking...He said "I respectfully request that I be refunded all monies and interest at the statutory rate."

Roger Stone: We are not obligated to pay interest on the refund, this is an exceptional situation. As I recall, this was dealt with as a case prior to the time we came on the commission and then we dealt with it again as a surety fund claim and basically is a refund issue. We never discussed whether or not...the issue is whether or not there was any misrepresentation.

Gene DuVal: What was the fine for?

Sharon Walsh: This is from Administrative Hearing Officer David Stebings and this is a recommendation back in 2003 when they paid out to Mrs. Dyar, the claimant. "The claimants are entitled to an award from the surety fund in the amount of \$10,000. Harvey should also pay hearing expenses of \$2000." So that's where the \$2000 comes from.

Dave Somers: We only control the \$10,000? Is that correct? I don't think that we have any control over the \$2000.

Sharon Walsh: They do come out of the fund though, the surety fund.

Dave Somers: So where do they go though, so that they are reimbursed to the fund.

Sharon Walsh: I don't know where they went. I would assume they went back to the Real Estate surety fund but I can't go on record and say that they didn't.

Gene DuVal: The other part that you all should know, that what happens here is that Mr. and Mrs. Dyar...Mr. Dyar passed away, Mrs. Dyar will be asked to reimburse the surety fund \$10,000 and if she doesn't, will the judgment be placed against her?

Sharon Walsh: We would have to seek a judgment.

Gene DuVal: So also that would be our call whether to seek a judgment or not.

Sharon Walsh: Margo informed me awhile back, after the Girdwood meeting that Mrs. Dyar has since lost her house, is an elderly woman on a fixed income.

Gene DuVal: So this is another one of those bad case scenarios.

Dave Somers: I don't know if we have any choice but to reimburse the \$10,000.

Sharon Walsh: That I have a check for.

Dave Somers: Perhaps we should take the approach, if he'll sign off on this now; we'll reimburse the \$10,000. If we need to investigate, if we are allowed to do anything with the interest, then we'll refer this to somebody else, another department to review. In addition the other \$2000 that were owned as fines, we don't know if we have jurisdiction over those monies anymore and we have to turn that over to another department.

Gene DuVal: So the question is. Was the \$2000 a wrongful fine?

Roger Stone: No, it was for the hearing expenses.

Gene DuVal: It was allocated to him because he was found guilty?

Sharon Walsh: Correct, at that time.

Roger Stone: The only reason he's not off the hook here, is because the statute ran. As I recall.

Sharon Walsh: But he appealed it and they sent, they remanded it back to the OAH (Office of Administrative Hearing).

Gene DuVal: So the interpretation of the first commission was that when it went to hearing, more than two years have passed.

Roger Stone: Right, but they took that approach rather than the deal for whatever reason. It's perfectly valid, they didn't deal with the issue on that case. I think that if he agrees to this settlement, we will not require any more fees or interest or anything else. If he wants to pursue his claim for interest or anything else, then we'll have to refer this to department of administration or department of law and no settlement will be made after that determination.

Gene DuVal: Further discussion on this?

Dave Somers: He's probably entitled to all that, it's just a matter of finding it and getting. I'm not sure where to go for it.

Roger Stone: I'm not sure if he's entitled to it. That would be an issue, decision outside of our purview.

Gene DuVal: Let me have a motion please.

On a motion duly made by Somers, seconded by Swires, it was

RESOLVED to contact Mr. Harvey and offer him the \$10,000 refund with an understanding that we release him from any further liability. Also to inform Mr. Harvey that if he wants to pursue the interest and reimbursement on the fines the Commission will refer this to another department and let them make the decision.

The Commission members further discussed the motion on the table.

Gene DuVal: We would need legal counsel. In my mind, his \$2000 expenses are reimbursable but it's not interest.

Roger Stone: For further discussion, the problem I have with this whole thing is that there was never any adjudication made to whether there was a problem and yet we proceeded to make a payout which is an error. A payout never should have been made. The point where the determination was made, that statutes would run should have been the payout. So we made an error, he made an error, whether he was guilty of any fraud or misrepresentation has never been adjudicated.

Gene DuVal: The previous commission and we don't know the facts, we weren't there. I can rule against him, there was no adjudication

made and then it went to Superior Court. We have a different opinion, our interpretation was different.

Roger Stone: But we can't go back and correct every error that was done here.

Dave Somers: I think I was on way back then and the question of statutes of limitations never came up. It wasn't an issue back then. I don't think anybody ever looked at it.

All in favor. Motion passes.

Mr. Stone proposed another motion based on the circumstances of this case from the time that the present Commission picked the case up until now. The questionable circumstances of the pay out based on the errors made by both the previous Commission and this Commission. Mr. Stone moves that no further recovery action be taken against Mrs. Dyar. The motion failed for lack of a second (sponsor) to actually bring it to a vote.

The Commission members take a short recess.

12 AAC 64.061 License by Endorsement

The Commission members reviewed and discussed proposed changes on regulation 12 AAC 64.061 License by Endorsement.

12 AAC 64.068 Legal Entities

The Commission members reviewed and discussed the language *on the typed draft* on regulation 12 AAC 64.068 Legal Entities. Motions have been made on these regulations on September 15, 2008.

08.88.331 Making of Transactions

The Commission members were concerned about the clarification of 08.88.331. The members discussed the wordage on 08.88.331.

New regulation 12 AAC 64.961 Licensees Personal Transactions, to be read:

12 AAC 64.961 Licensees Personal Transactions
Notwithstanding AS 08.88.331, a real estate licensee may utilize the services of a licensee from another brokerage to represent or give specific assistance to the licensee in personal real estate transactions.

On a motion duly made by Somers, seconded by

Stone, it was

RESOLVED to propose regulation 12 AAC 64.961 as stated above.

All in favor. Motion passes.

12 AAC 64.580 Licensee who Performs Community Association Management.

Commission members reviewed and discussed new regulation 12 AAC 64.580 Licensee who Performs Community Association Management to be sent out to Mr. Maiquis, regulation specialist. Regulation 12 AAC 64.580 was readopted.

The Commission member reviewed and discussed regulations 12 ACC 64.050, 12 AAC 64.110 12 AAC 64.110(a), 12 AAC 64.115, 12 AAC 64.128, 12 AAC 64.905, 12 AAC 64.940, 12 AAC 64.940(b) There was no action required on these regulations. Ready for public comment.

Agenda Item 4b

New Consumer Information for Web Site

Ms. Harris discussed with the Commission members the New Consumer Information for the web site.

Agenda Item 8

Education Statistics and Web Site Update

Ms. Harris presented to the Commission the education statistics and web site updates.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve education report.

All in favor. Motion passes.

Agenda Item 4a

Mandatory Errors and Omissions Insurance.

Chair DuVal reviewed and discussed with the Commission the Mandatory Errors and Omissions Insurance. Commission members were encouraged to review other jurisdictions regulations for Errors and Omissions ideas.

Teleconference will be scheduled for October 10, 2008 at 10 a.m. for further discussion on Mandatory Errors and Omissions Insurance.


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Meeting adjourned at 11:41 a.m.

Next meeting is December 11-12, 2008 in the Atwood Building, 550 W.
7th Ave. Ste. 602, Anchorage, AK

Prepared and submitted by Beata Smith,
Division Staff.

Approved:



Brad Cole, Chairperson
Real Estate Commission

Date: 12/17/2008