

SOUTH DAKOTA REAL ESTATE COMMISSION
OCTOBER 28 & 29, 2008
COUNTRY INN & SUITES & HOLIDAY INN CITY CENTRE
200 EAST 8TH ST & 100 2 8TH ST
SIOUX FALLS, SOUTH DAKOTA

The South Dakota Real Estate Commission convened at 8:00 a.m. on October 28, 2008 in the River Front Room of the Country Inn & Suites, Sioux Falls, South Dakota. Present for the meeting were Chairman Eileen Fischer and commission members Dennis Eisnach, Brian Jackson, Charles Larkin and Paula Lewis. Also present were legal counsel Jim Robbennolt, executive director Dee Jones Noordermeer, licensing program administrator and compliance officer Angela Madsen.

Motion made and seconded to approve the minutes of the September 8 & 9, 2008 meeting. Motion carried.

Motion made and seconded to accept the financial reports for August and September 2008. Motion carried.

The Commission reviewed the 2008-2007 biennial audit report. The Commission tabled action on the report for clarification on internal control.

The executive director informed the commission that the formal hearing scheduled for 9:00 a.m. has been continued to the next meeting.

Motion made and seconded to enter into executive session at 8:35 a.m. to review complaints. Motion carried.

Chairman Fischer excused herself from the meeting at 10 a.m. with Vice-Chairman Eisnach conducting the meeting.

Motion made and seconded to come out of executive session at 10:10 a.m. Motion carried.

Complaint #2009-009, Wight & Star vs. Century 21 Fischer Rounds & Associates/Hetland/Somsen & Mitchell Realty/Mauszycki/Kiner. Motion made and seconded to dismiss the complaint with Chairman Fischer having recused herself from the complaint. Motion carried.

Chairman Fischer returned to the meeting at 10:15 a.m.

Complaint #2007-008, Meiers vs. Harlan Ferwerda. Motion made and seconded to dismiss the complaint. Motion carried.

Complaint #2009-002, Pressman vs. 1st Choice Realty/Kirschenman/Mueller. Motion made and seconded to dismiss the complaint. Motion carried.

Complaint #2009-004, MFS Inc & Spenser Leasing vs. The Gabriel Group/Pietruszkiewicz/Seeman. Motion made and seconded to table until the December meeting. Motion carried.

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Complaint #2009-005, Daschel vs. Main Street Realty/Rothenberger & Homes in the Hills/Riley. Motion made and seconded to dismiss the complaint. Motion carried.

Complaint #2009-006, Empey vs. Realty Center/Harden/Anderson. Motion made and seconded to offer to enter into a Stipulation and Assurance of Voluntary Compliance with Karen Harden and Dave Anderson to a reimbursement of costs and the completion of continuing education to be determined. Motion carried.

Complaint #2009-008, Thorne vs. The Real Estate Group/Messner/Carlyle. Motion made and seconded to dismiss the complaint. Motion carried.

Discussion was held on the request of the Richard and Rosemary Thorne for a telephonic appeal on the commission decision on complaint #2009-003, Thorne vs. Raben Real Estate/Pigsley/Raben. Motion made and seconded to deny the Thorne request for an appeal and no further action will be taken in regard to the complaint. Motion carried.

Discussion was held on the request of Steve Folk to reverse the decision of the commission on the revocation of his license and clear his record. Motion made and seconded to deny the request of Steve Folk. Motion carried.

The executive director briefed the commission on potential complaints to be filed on licensees involved in a real estate auction and on a property manager with the hearings to be held at the December meeting.

James Clark appeared before the commission at 11:00 a.m. on his application for conditional approval. Mr. Clark left at 11:25 a.m. Following discussion, motion made and seconded to deny his application for conditional approval as he has not completed probation, he owes child support and he also has current judgments. Motion carried.

The meeting recessed at 11:40 a.m. for lunch and reconvened at 1:00 p.m.

The executive director gave the commission information she had obtained on conflicts of interest for them to review.

Discussion was held on Initiated Measure 10.

Rebecca Buck appeared before the commission at 1:25 p.m. on her application appeal for a broker associate license. Appearing with Rebecca Buck as personal references were Harry Buck, Lee Schelling, Jodi Williams and Katie Ryan-Mann. Motion made and seconded to approve the broker associate application of Rebecca Buck. Motion carried. Those appearing on Rebecca Buck's behalf left at 1:50 p.m.

Hearing Officer Leo Disburg at 2:14 p.m. convened the formal hearing on complaint #2009-001, SDREC vs. Prairie Winds REALTORS/Grave. Present for the hearing in addition to the members of the commission were legal counsel Jim Robbenolt, executive director Dee Jones Noordermeer, licensing program administrator Norma Schilling, compliance officer Angela Madsen, court reporter Pat Beck, defendant Merlyn Grave and his attorney Lisa Marso. The defendant offered to enter into a Stipulation and Assurance of Voluntary Compliance in lieu of a

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formal hearing. Motion made and seconded to agree to a Stipulation and Assurance of Voluntary Compliance. Motion carried. The hearing closed at 2:20 p.m.

Hearing Officer Leo Disburg answered questions and concerns from the commission on how formal hearings should be conducted by the commission members. Hearing Officer Leo Disburg left the meeting at 2:37 p.m.

Following discussion, motion made and seconded to offer to enter into a Stipulation and Assurance of Voluntary Compliance with Merlyn Grave to the following: (1) Mr. Grave reimburse the commission for costs associated with the complaint; (2) Pay a penalty of \$1,000; (3) Complete the 15 hour responsible broker course; (4) Notify the commission within 4 weeks of completing the responsible broker course; (5) Must comply with the requirements of SDCL 36-21A-80, shall not disburse funds from his trust account without compliance with the requirements of the provisions of SDCL 36-21A-80, and shall reconcile his trust account at least monthly; (6) Provide monthly a trust account reconciliation statement to the Commission for the next 6 months and thereafter provide such a statement once every 6 months for the following 18 month period; (7) In February of 2009 and 2010, licensee shall have an independent audit of his trust account undertaken and shall thereafter provide to the Commission a copy of a report from the auditor regarding whether his trust account is reconciled. If at any time during the term of this agreement complaints of misconduct are filed against licensee, other than the matters now know to the Commission, and which conduct in the opinion of the Commission is of sufficient gravity to cause formal disciplinary proceeds to be initiated against licensee, and notwithstanding whether the misconduct occurred before or after the date of this agreement, the Commission may in its discretion terminate this agreement and immediately cause formal proceedings to be initiated, which proceedings may include the violations to which licensee has admitted in this agreement. Motion carried.

Chairman Eileen Fischer at 3:10 p.m. convened the formal hearing on complaint #2009-007, SDREC vs. Nicholas Caspers. Present for the hearing in addition to the members of the commission were legal counsel Jim Robbennolt, executive director Dee Jones Noordermeer, licensing program administrator Norma Schilling, compliance officer Angela Madsen and defendant Nicholas Caspers. The hearing closed at 3:25 p.m.

Following discussion, motion made and seconded to offer to enter into a Stipulation and Assurance of Voluntary Compliance with Nicholas Caspers to a reimbursement of costs associated with the complaint. Motion carried.

The meeting moved to the new Sioux Falls office location at 3:35 p.m. and the commission was given a tour of the building.

The meeting recessed at 4:30 p.m. and reconvened at 8:00 a.m. on October 29, 2008 in the Embassy I meeting room of the Holiday Inn City Centre.

Discussion was held on the commission forms and the possibility of having a caravan on the use of the forms.

Following discussion, motion made and seconded to Dave Anderson completing the 15 hour responsible broker course and Karen Harden completing 6 hours of continuing education in

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agency and 6 hours of continuing education in license law to be held in a classroom setting other than through Dave Anderson School of Real Estate. Motion carried.

The executive director informed the commission that she had visited with Paul Vander Woude of East, Vander Woude, Grant & Co., P.C. on the biennial audit and that the exception on the audit involved a new federal requirement that certain financial statements and notes to those financial statements now need to be prepared by the state agency instead of the auditing firm. These then become a part of the auditor's final report.

A telephonic conference was held at 8:30 a.m. with Dr. Larry Fabrey of AMP on the score reports for the broker exam and the possibility of having separate score reports for the National and State portions of the broker exam. Dr. Fabrey will research to see if additional costs will be involved in implementing another report.

Motion made and seconded to enter into executive session at 9:18 a.m. Motion carried.

The informal consultation on complaint #2008-020, Johnson vs. APlus Realty Center & A+ Rentals/Johnsen/Dougherty was convened at 9:20 a.m. Present for the consultation in addition to the members of the commission were legal counsel Jim Robbennolt, executive director Dee Jones Noordermeer, licensing program administrator Norma Schilling, compliance officer Angela Madsen, complainant Donald Johnson and respondents Mark Johnsen and Rose Dougherty. The consultation concluded at 9:50 a.m.

Motion made and seconded to come out of executive session at 10:10 a.m. Motion carried.

Motion made and seconded to a letter of reprimand to Mark Johnsen and emphasize that he pay more attention to documents. Motion carried.

Sherry Bren who is the executive director of the South Dakota Appraiser Certification Program, Craig Steinly, Ryan Moore and Bev Luke who were representing the Professional Appraisers Association of South Dakota, and Jim Dunlap who was representing the South Dakota Chapter of Farm Managers and Rural Appraisers joined the commission at 10:15 a.m. to present proposed legislation to prohibit improper influence regarding real estate appraisals and to establish certain penalties. Ms. Bren, Mr. Steinley, Mr. Moore, Ms. Luke and Mr. Dunlap left the meeting at 11:15 a.m.

A telephonic conference was held with education director Karen Callahan on the proposed legislation of the South Dakota Association of REALTORS for post licensing education.

Discussion was held on FBI audits of criminal background checks and the possibility of using electronic fingerprints. The executive director was instructed to research to see if other agencies use this method and the cost involved.

License recognition/reciprocity was tabled to the December meeting.

Discussion was held on options for going paperless on complaint information given to the commission members for commission meetings. The commission tabled this matter until the March meeting and instructed the executive director to research this further.

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Legal counsel Jim Robbennolt left the meeting at 11:50 a.m.

Commission member Paula Lewis gave an update on the ND/SD REALTORS Convention that was held in Minot, September 17-19, 2008.

Discussion was held on the office space of the new Sioux Falls office location. The executive director was instructed to visit with Jim Dunham, the owner of the new location, to see if more options are available to meet the commission needs.

The executive director briefed the commission on the possibility of online services. She will give an update at the December meeting.

The executive director and the commission members gave an update on the Commissioner's College and ARELLO Annual Conference they attended in Indianapolis, IN October 17-20, 2008.

The executive director informed the commission on the ARELLO Leadership Conference to be held January 15-17, 2009 in Charlotte, North Carolina. Motion made and seconded to approve the executive director to attend the conference unless her legislative schedule prohibits travel. Motion carried.

The next meeting of the commission will be December 17 & 18, 2008 in Pierre.

There being no further business, motion made and seconded to adjourn at 12:30 p.m. Motion carried.

Eileen Fischer, Chairman

Dee Jones Noordermeer, Executive Director

I, Dee Jones Noordermeer, hereby certify that the above is a true and correct copy of the minutes of the South Dakota Real Estate Commission meeting held on October 28 & 29, 2008.

Dee Jones Noordermeer, Executive Director