

MINUTES OF MEETING

Kansas Real Estate Commission

November 14, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, November 14, 2013 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

Errol Wuertz, Chairperson
Sue Wenger, Vice Chairperson
Marilyn Bittenbender, Member
Shirley Cook, Member
Joseph Vaught, Member

Staff Present:

Sherry Diel, Executive Director
Jay D. Befort, Attorney
Kelly White, Director of Licensing and Education
David Pierce, Director of Enforcement
Wendy Alkire, Compliance Supervisor
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

None

Call to Order

Mr. Wuertz called the meeting to order at 9:12 a.m.

Ms. Diel reported to the Commission that she had one item to add to the agenda. She would report on plans for the January 14, 2014 meeting at the end of today's meeting.

Mr. Vaught arrived at 9:14 a.m.

Mr. Wuertz recessed the KOMA meeting at 9:13 a.m. in order to address the scheduled KAPA proceedings.

Formal Hearing In the Matter of Andres Briseno Montoya, Docket No. 13-4683

A formal hearing was held *In the Matter of Andres Briseno Montoya*, Docket No. 13-4683, regarding the denial of his application for a broker's license pursuant to K.S.A. 58-3039(f) and (g), K.S.A. 58-3043(a)(4), (a)(5) and (d), and K.S.A. 58-3050(a)(4).

At 9:50 a.m., Mr. Montoya and his witness, Sergio Salas, left the meeting.

At 9:52 a.m., the Commission entered into confidential deliberations to discuss the matter. Those in attendance were the Commissioners, Ms. Diel, and Ms. Fertig.

Reconvene KOMA Meeting

Mr. Wuertz reconvened the KOMA Meeting at 10:10 a.m.

After deliberations *In the Matter of Andres Briseno Montoya*, Docket No. 13-4683, motion was made by Ms. Cook, seconded by Ms. Wenger to reaffirm the Summary Proceeding Order denying Mr. Montoya's application for a broker's license. Ms. Fertig will draft the Final Order.

Approval of the August 22, 2013 Meeting Minutes

Motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve the Minutes of the August 22, 2013 meeting. Motion carried unanimously.

Applications for Salesperson's License

Joshua Atkinson

Applicant answered "yes" to Question No. 5 and self-reported a 2012 criminal offense, but failed to report a 2002 criminal offense. The Commission also received a Rapback that Applicant was arrested for another criminal offense after submission of his application. After investigation, no evidence existed that charges were filed for the arrest reflected in the Rapback. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time, Applicant's explanation of the offenses, and the letters of support submitted on behalf of Applicant, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license subject to an indefinite restriction to his proposed supervising broker, Jerome H. Reilly (BR00003074), with Reilly & Sons (CO90010560). Clarification was made that the restriction would be indefinite, but for a minimum of two years. Applicant can petition the Commission to request the restriction be lifted after the minimum period of restriction. Motion carried unanimously.

Randy Bortz

Applicant answered "yes" to Question Nos. 5 and 6 and self-reported four criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license subject to a restriction to his supervising broker, Don Burns (BR00228947), with Reece & Nichols Realtors, Inc. (BO90022844), for a minimum of two years. Applicant can petition the Commission to request the restriction be lifted after the minimum period of restriction. Motion carried unanimously.

Virginia Franzese

Applicant answered "yes" to Question No. 6 and self-reported a criminal offense. After review and discussion regarding the circumstances surrounding the offense, the nature and severity of the conduct and the passage of time, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license subject to a restriction to her proposed supervising broker, Reed C. Brinton (BR00218817), with Re/Max Legacy (CO00001579), for a minimum period of two years. Applicant can petition the Commission to request the restriction be lifted after the minimum period of restriction. Motion carried unanimously.

Michael E. Ward

Applicant answered "yes" to Question No. 5 and self-reported a 2011 criminal offense but failed to disclose a pending criminal offense. After review and discussion regarding the circumstances surrounding the criminal offenses, the nature and severity of the conduct and Applicant's explanation, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Applicant's application for a salesperson's license until such time as he can report the outcome of the pending criminal case and provide evidence of completion of the probation in the 2011 case. Should appropriate documentation be timely provided concerning these two matters, Applicant's application for a salesperson's license will be reviewed at the Commission's January 14, 2014 meeting. Motion carried unanimously.

Applications for Broker's License

Kristie Kovar

The application of Ms. Kovar was presented for review by the Commission. After review and discussion regarding the number of years Ms. Kovar had been licensed, her transaction experience, related business experience and education and knowledge of Kansas brokerage relationships, motion was made by Ms. Wenger, seconded by Ms. Bittenbender to approve Ms. Kovar's application for a broker's license. Motion carried unanimously.

Leanna Jo Robertson

The application of Ms. Robertson was presented for review by the Commission. It was noted that there were questions surrounding a letter submitted to the Commission. There was discussion concerning the roles Ms. Robertson and Sandra Green currently fill or will fill with Reece & Nichols Alliance, Inc. Because Reece & Nichols Alliance, Inc. is an approved company, it must have a supervising broker even if there are no licensees affiliated with that company. Ms. Robertson will serve in the role of franchise manager/supervising broker and will have no affiliated licensees. After review and discussion regarding the number of years Ms. Robertson had been licensed, her transaction experience, related business experience and education and knowledge of Kansas brokerage relationships, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Ms. Robertson's application for a broker's license. Motion carried unanimously.

Steven J. Stollman

The application of Mr. Stollman was presented for review by the Commission. Mr. Stollman was in attendance from 9:12 a.m. until 10:32 a.m. and was available for questions. Mr. Stollman was asked why he needed a license to sell his own house. Mr. Stollman indicated he needed a license so that he could place his house on the Multiple Listing Service (MLS). After review and discussion regarding the number of years Mr. Stollman had been licensed, his related business experience and education, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Stollman's application for a broker's license subject to the restriction that he have no affiliated licensees. Mr. Stollman may petition the Commission for the restriction to be lifted. Motion carried unanimously. Mr. Stollman inquired whether the order would be ready for him to sign before he left the Commission's offices. He was told orders must be drafted by staff and would be sent to him when it was completed.

Mr. Wuertz declared a 10-minute break at 10:32 a.m.

Mr. Wuertz reconvened the meeting at 10:45 a.m.

Applications for Renewal

Adam Kedish

Applicant answered "Yes" to Question No. 2 on his application for renewal and self-reported two criminal charges currently pending against him in the state of Missouri. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Mr. Kedish's evidence of rehabilitation, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for renewal of his salesperson's license subject to the condition that Applicant provide to the Commission an update on his pending criminal case after the December 10, 2013 scheduled hearing. If the case is resolved at the hearing, Applicant shall provide the Commission a copy of the final disposition. If the case is not resolved on or before December 10, 2013, Applicant shall provide semiannual updates of any charges, dismissals, disposition, sentencing and satisfaction of sentencing requirements until the case is closed. Motion carried unanimously.

Austin Ray Kinzle

Applicant answered "Yes" to Question No. 3 on his application for renewal and self-reported a criminal offense. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Mr. Kinzle's evidence of rehabilitation, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Applicant's application for renewal of his broker's license. Motion carried unanimously.

Jerome "Jerry" Lechtenberg

Applicant self-reported a Missouri suspension due to tax obligations with his 2011 renewal application. Currently, only a federal tax obligation remains outstanding. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for renewal of his broker's license subject to the conditions that Applicant provide the Commission quarterly status reports until such time that his tax issue is resolved by payment, settlement or dismissal and that all returns are timely filed. Motion carried unanimously.

Violet Liem

Applicant answered "Yes" to Question No. 2 on her application for renewal and self-reported a criminal offense. After review and discussion regarding the circumstances surrounding the conduct and the nature and severity of the conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for renewal of her salesperson's license. Motion carried unanimously.

Wichita Area Association of Realtors (WAAR) request for course approval

Ms. Diel reported to the Commission on a request for course approval from the WAAR. Originally, WAAR submitted an inquiry concerning a request for course approval for distance education in a live-streaming format. At a later time, WAAR inquired into having all students at a WAAR centralized location using live-stream to connect the class to an off-site instructor. Questions from the students during the class could be texted or emailed to the instructor by the students or through a WAAR facilitator. The Commission was asked to address whether this was a distance education or an in-person course. The distinction is important for several reasons, including: individual certificates versus rosters, exam requirements, pass rates, proctoring, etc. Education offerings in this format could offer a quality learning experience in a cost-effective manner.

After discussion, it was the consensus of the Commission to approve the live-stream format as an in-person course under the following conditions: 1) The students must be able to interact with the live instructor; 2) a coordinator must be present in the classroom to monitor and facilitate questions and answers between the students and instructor; 3) there must be a sign-in/sign-out sheet for the proctor; and 4) IT connectivity must be satisfactory to offer the live-stream program and properly tested in advance of each class.

Staff Request regarding Guidance Document 2013-03

After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve revisions made to discontinue the practice of issuing closure letters when a complaint or docket file are closed. If a complaint is closed with no docket number assigned and an inquiry is submitted regarding the complaint status, staff can advise of the outcome verbally or in writing. If a complaint is closed with a docket number assigned and an inquiry is submitted regarding the complaint status, staff can advise that a Kansas Open Records Act request may be made. Commission staff may then provide a copy of the order, but cannot interpret the order for any of the parties or for anyone requesting information on the complaint or docket. Licensure cases would follow the same procedure. Motion carried unanimously.

2014 Legislative Agenda

The Commission received a report from Ms. Diel concerning the upcoming 2014 Legislative agenda.

House Bill (HB) 2122 and HB 2125 passed the House and were recommended favorably for passage by Senate committee. Both bills remain pending before the Senate.

HB 2122, commonly referred to as the Commission's Technical Amendment Bill, amends five statutes, including Kansas Statutes Annotated (K.S.A.) 58-3046a(e)-(f), (h)(2), (h)(6) and (k), K.S.A. 58-3050(a), K.S.A. 58-3062(f), K.S.A. 58-30,103(p) and K.S.A. 58-30,106(j).

HB 2122 also proposes giving the Commission authority to approve providers that offer only continuing education courses in Kansas. Providers offering pre-licensure or pre-application courses would remain under the authority of the Kansas Board of Regents as private postsecondary educational institutions, but the providers offering only continuing education courses in Kansas would fall under the Commission's jurisdiction. Under HB 2122, the Commission could not charge a fee to approve such providers. The Commission does currently have authority to charge fees for approval of courses. The issue will be monitored for consideration for the Commission's 2015 or 2016 Legislative Agenda.

Increasing the course renewal fee, currently \$15, was also discussed. If a decision is made to pursue a fee for approval of continuing education only providers, the Commission may consider a reasonable increase of the course renewal fee as part of the 2015 or 2016 Legislative Agenda.

HB 2125, commonly referred to as the Commission's Fee Increase Bill, would raise the statutory cap on license fees by \$50 for salespersons and brokers so that the maximum broker's license fees would increase from \$150 to \$200 and the maximum salesperson's fees would increase from \$100 to \$150. The Commission would pursue a \$25 fee increase by regulation commencing in Fiscal Year (FY) 2015 so that salesperson's license fees would increase to \$125 and broker's license fees would increase to \$175. It is uncertain how the Commission can submit a balanced budget without this requested fee increase.

Due to the fee fund balance shortage, the Commissioners wanted to discuss the option of retaining fines collected as a viable solution to funding Commission operations. It was noted, however, that some jurisdictions that retain fines have reported allegations are made that the agency cites violations solely for the purpose of funding the agency's operations, a possible conflict of interest.

Ms. Bittenbender inquired whether the Commission generally brings in more than \$50,000 in fines each fiscal year. Ms. Diel said it is difficult to estimate due to the impact of the Audit by Mail Program, but the Commission currently appears to be on track to collect more than \$50,000 in FY 2014. The Commission has collected more than \$100,000 in fines for the past two fiscal years. Ms. Bittenbender suggested requesting legislation that allows the Commission to retain only the first \$50,000 of fines each fiscal year and the balance would continue to go to the State General Fund (SGF) to ease the concerns about conflict of interest. It was the consensus of the commissioners to ask Ms. Diel to draft such legislation for submission to the Revisor for a bill draft.

Ms. Diel reported that fee generating agencies, such as the Commission, are statutorily required to split revenues, with 90% going to the agency and 10% going into the SGF. Elimination of the 10% transfer for a period of time is also a way of generating revenue. Any change to that split would either require a statutory request or an appropriations proviso.

The Department of the Budget (DOB) provided its response to the Commission's budget submission. The DOB did not recommend a fee increase, but did suggest the agency appeal that decision to the Governor.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reported that there were three summaries presented: 1) all complaints for the fiscal year; 2) all complaints closed with no violations found during the fiscal year; and 3) all complaints that are currently open.

Ms. Diel and Mr. Pierce discussed the "handling" category as a complaint about a licensee's handling of the transaction that does not fit under a more specific category.

Education Report

The Education Report was received by the Commissioners. Ms. Diel informed the Commissioners that the first section of the report identifies classes approved this past month by Ms. White.

The second section of the report indicates that 29 brokers and 174 salespersons took the licensure exams in October 2013. The pass rates for these exams were 55% for brokers and 67% for salespersons.

The third section of the report shows that 139 brokers and 1,391 salespersons have taken the licensure exams this Calendar Year. The pass rates for these exams were 69% for brokers and 71% for salespersons.

Director's Report

The Commissioners received the Director's report and Ms. Diel noted that as of November 1, 2013, there are 13,454 licensees.

Ms. Diel reported that the agency was contacted by the Kansas Insurance Department (KID) in October 2013. The KID was requesting assistance to create a consumer guide on title insurance in conjunction with

the National Association of Insurance Commissioners (NAIC) Title Insurance Task Force. Staff referred the KID representative to Mr. Bell with the Kansas Association of Realtors® (KAR). Mr. Bell reported that he has not been contacted about the project.

Ms. Diel reported that she has the annual Agricultural Foreign Investment Disclosure Act report available, should the Commissioners wish to have a copy.

Ms. Diel reported that staff was almost to the point of setting up outside testing for online programs. Scripts need to be developed for use by the outside testers. Ms. Wenger's office and ex-commissioners Tim Holt and Kathy Copeland have volunteered to act as testers.

Ms. Diel reported that the Better Business Bureau (BBB) has warned real estate professionals about a real estate scam in which con artists posing as BBB investigators demand financial information about real estate professionals' companies. While brokers and salespersons from across the country have received emails indicating their failure to provide the information could result in legal action, it appears Clearwater, Florida is a specific target. The emails link to web sites that may launch viruses or other malware. This information will be sent out in an e-mail blast to all licensees.

Ms. Diel noted several articles included in the *ARELLO Boundaries* reports. The October 2013 report contains an article about a Kansas buyer's agent who failed to pass on information about a damn needing repairs. This article will be referred to in the next Commission newsletter. The November 2013 report provides information about the Nebraska Real Estate Commission pursuing an action against an out of state unlicensed person for conducting activities that require a license.

Mr. Wuertz declared a lunch break at 12:11 p.m.

Mr. Wuertz reconvened the meeting at 12:43 p.m.

Executive Session to discuss an Attorney-Client Privileged Matter

At 12:44 p.m., Ms. Wenger, seconded by Mr. Vaught moved to enter into an executive session to discuss an attorney-client privileged matter for 10 minutes. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig.

Mr. Wuertz reconvened the meeting at 12:55 p.m.

Mr. Vaught, seconded by Ms. Wenger, moved to ratify an Order Granting an Extension of Time issued in the matter of William Fair, Docket No. 11-3701. Motion passed unanimously.

Mr. Vaught, seconded by Ms. Bittenbender moved to grant Ms. Diel the authority to render routine procedural decisions. Motion passed unanimously.

Executive Session to discuss an Attorney-Client Privileged Matter

At 12:53 p.m., Ms. Wenger, seconded by Ms. Bittenbender moved to enter into an executive session to discuss an attorney-client privileged matter for 15 minutes. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig. Mr. Pierce presented information the Commission needed, but left before the attorney-client discussions began.

Mr. Wuertz reconvened the meeting at 1:15 p.m.

At 1:16 p.m., Ms. Bittenbender, seconded by Mr. Vaught motioned to extend the executive session to discuss an attorney-client privilege matter for an additional 15 minutes. Motion passed unanimously.

Mr. Wuertz reconvened the meeting at 1:38 p.m.

Executive Session to discuss an Attorney-Client Privileged Matter

At 1:39 p.m., Ms. Wenger, seconded by Mr. Vaught moved to enter into an executive session to discuss an attorney-client privileged matter for 15 minutes. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig.

Mr. Wuertz reconvened the meeting at 1:52 p.m.

Executive Session to discuss Personnel Matters

At 1:59 p.m., Ms. Bittenbender, seconded by Ms. Wenger moved to enter into an executive session to discuss personnel matters for 10 minutes. Those in attendance include the Commissioners and Ms. Diel.

Mr. Wuertz reconvened the meeting at 2:12 p.m.

Budget Report

Ms. Diel reported that the DOB recommendations had been received. The DOB did not recommend the fee increase, but suggested the agency appeal that finding.

The DOB normally recommends taking money out of the Recovery Fund for Commission operations. Ms. Diel proposed using the Recovery Fund for replacement of the obsolete electronic storage system rather than using the Recovery Fund for general agency operations. The DOB adopted the Commission's request and recommended using Recovery Fund monies to upgrade the agency's electronic storage system software and services as follows: \$25,000 in FY 2014 and \$75,000 in FY 2015. It is estimated that these amounts should cover the cost to upgrade the system.

Expenditures as of October 31, 2013

KREC's fee fund balance is \$301,000. The available cash balance is \$231,600, which is the Commission's current fee fund balance less encumbrances.

At this point, approximately 33% into the FY, expenditures for all line items are at 26%, which is 7% under budgeted expenditures. The salaries line item is running at 32% of appropriations.

To date in FY 2014, expenditures are \$247,000. At this time in FY 2013, expenditures were \$407,700 and at this time in FY 2012, expenditures were \$319,500. These savings were realized through reductions in attorney fees, travel expenses, staff costs, a decrease in rent, and other reductions.

Receipts as of October 31, 2013

KREC has transferred 10% of receipts to the SGF through October 2013, or \$35,243, and kept 90%, or \$317,200. At this time in FY 2013, receipts were at \$350,000 and at this time in FY 2012, receipts were at \$307,000. Ms. Diel voiced concern that the FY 2014 receipts were lower than FY 2013 receipts because odd year's receipts are generally lower than even years due to the size of the renewal groups.

Ms. Diel reported when comparing the average receipts per month to the average monthly expenditures, for the four-month period of July – October 2013, averages totaled \$79,307 for receipts and \$61,687 for expenditures, leaving an average increase of \$17,619. As the agency's expenditures usually run between \$11,000 and \$13,000 more than its receipts, a positive effect is being realized as a result of the massive FY 2014 cuts put into place.

Addition to the Agenda

Ms. Diel reported several options for the January 2014 Commission meeting. Commissioners thought conducting the meeting in conjunction with a continuing education offering would draw more visitors to the Commission meeting, allowing those attendees to see and understand Commission operations.

Ms. Diel took a break and confirmed schedules with KAR representatives. The Commission meeting would be held January 14, 2014 at the Capitol Plaza in Topeka. The mortgage fraud course that KREC had planned would be scheduled for January 16, 2014 in Topeka. A Housing and Urban Development (HUD) trainer located by KREC would present a three-hour continuing education course on mortgage fraud. Ms. Diel advised there would be a \$30 fee for the mortgage fraud training class. KAR would provide the room, food, coffee and audio-visual equipment for the January 16, 2014 mortgage fraud training class.

Ms. Diel inquired whether any hearings should be conducted during the January 14, 2014 Commission meeting. Commissioners left the decision on whether or not to schedule hearings on January 14, 2014 to Ms. Diel.

Public Comment

There was no public comment.

Adjournment

Mr. Wuertz adjourned the meeting at 2:30 p.m.