

MINUTES OF MEETING

Kansas Real Estate Commission

August 22, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, August 22, 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
Kelly White, Director of Licensing & Education
David Pierce, Director of Enforcement

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Luke Bell, Kansas Association of Realtors®
Karen Gehle, Kansas Association of Realtors®
Todd Woodburn, Kansas Association of Realtors®
Terri Hollenbeck
Candace Davis
Jose Garcia
Sally Davis
Derek Brown, Attorney
Jothan Schiller

Call to Order

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

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

Conference Hearing In the Matter of Jothan Schiller, Docket No. 13-4321.

A formal hearing was held *In the Matter of Jothan Schiller*, Docket No. 13-4321, regarding the denial of his application for a salesperson's license pursuant to K.S.A. 58-3039(g), K.S.A. 58-3043(a)(3)-(5), and K.S.A. 58-3050(a)(2).

Reconvene KOMA Meeting

Mr. Wuertz reconvened the KOMA Meeting at 10:30 a.m.

After deliberations *In the Matter of Jothan Schiller*, Docket No. 13-4321, motion was made by Mr. Vaught, seconded by Ms. Wenger to deny Mr. Schiller's application for a salesperson's license. Ms. Fertig will draft the Final Order.

Approval of the July 11, 2013 Meeting Minutes

Motion was made by Mr. Vaught, seconded by Ms. Wenger to approve the Minutes of the July 11, 2013 meeting. Motion carried unanimously.

Applications for Salesperson's License

William Carpenter

Applicant answered "yes" to Question Nos. 5 and 6 and self-reported a criminal offense. Applicant failed to report three other criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time, Applicant's lack of recent criminal conduct and Applicant's explanation why offenses were not disclosed, 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 proposed supervising broker, Kathryn J. Clark, Reece & Nichols Realtors, Inc., BO00000097, for two years. The motion was amended to clarify the restriction runs indefinitely and would be for a minimum of two years. Motion carried unanimously.

Ashutosh Chaturvedi

Applicant answered "yes" to Question No. 5 and self-reported a criminal offense. After review and discussion regarding the circumstances surrounding the offense, 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 Mr. Vaught to approve Applicant's application for a salesperson's license. Motion carried unanimously.

Patrick Christensen

Applicant answered "yes" to Question Nos. 5 and 6 and self-reported four criminal offenses and the Commission received a Rapback that Applicant was arrested for another criminal offense after submission of his application. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and the recent arrest, 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, Travis W. Hecht, and with the conditions that Applicant provide status reports twice each year to keep the Commission apprised of any charge that is filed, hearing dates, dispositions, and/or appeals in regard to the arrest reported in the Rapback. Motion carried unanimously.

Joanna Eibes

Applicant answered "yes" to Question No. 6 and self-reported three criminal offenses and revocation of a liquor license. After review and discussion regarding the circumstances surrounding the criminal offenses and the license revocation, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal or other relevant conduct, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve Applicant's application for a salesperson's license subject to Applicant providing, within 30 days, documentation that her Kansas taxes have been paid. Upon receipt of said documentation, Commission staff may issue Applicant's salesperson license. Motion carried unanimously.

Jose Garcia

Applicant answered “no” to Question Nos. 5 and 6 and failed to disclose a criminal offense. Applicant appeared in person (in attendance from 9:12 a.m. until 10:58 a.m.) and stated he failed to disclose the offense because he had forgotten about the matter. After review and discussion regarding the circumstances surrounding the offense, the nature and severity of the conduct, the passage of time, Applicant’s lack of additional criminal conduct, and Applicant’s explanation, 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 proposed supervising broker, Chad B. Harris, Re/Max Royal, CO00001964. Motion carried unanimously.

Callie Laue

Applicant answered “yes” to Question Nos. 5 and 6 and self-reported two 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. Wenger seconded by Mr. Vaught to approve Applicant’s application for a salesperson’s license.

Sonia Viers

Applicant answered “no” to Question No. 6. Commission staff requested an explanation regarding this answer and documentation missing from the application based upon documents already in the Commission’s possession relating to a felony conviction Applicant received that the Commission became aware of after she allowed her prior Kansas license to expire. In response, Applicant detailed the events which led to the charges and explained that the felony had been expunged. Applicant provided a copy of the Order of Expungement. The Commission’s records also reflected that Applicant had a Housing and Urban Development (HUD) disbarment. After review and discussion regarding the circumstances surrounding the conduct described in the HUD disbarment, the nature and severity of the conduct and the passage of time, motion was made by Mr. Vaught, seconded by Ms. Cook to deny Applicant’s application for a salesperson’s license due to the HUD disbarment action which relates to Applicant’s honesty, trustworthiness, integrity, and competency. Motion carried unanimously.

Mr. Wuertz declared a five-minute break at 11:15 a.m.

Mr. Wuertz reconvened the meeting at 11:20 a.m.

Applications for Broker’s License

Jeff Ashby

The application of Mr. Ashby was presented for review by the Commission. After review and discussion regarding the number of years Mr. Ashby had been licensed, his transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Ashby’s application for a broker’s license subject to a restriction to the company Auction.com. Applicant may not open another company other than Auction.com offices in Kansas. In addition, staff should send a cover letter addressing the specified contract items that did not comply with Kansas law, but state otherwise the disclosures in the contracts provided by Applicant comply with Kansas law. Motion carried unanimously.

Candace Davis

The application of Ms. Davis was presented for review by the Commission at its July 11, 2013 meeting. After review and discussion regarding the number of years Ms. Davis had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, a motion was made by Ms. Wenger, seconded by Ms. Cook to table Ms. Davis' application for a broker's license until the August 22, 2013 meeting, instructing staff to write to Ms. Davis requesting additional information regarding her understanding of brokerage relationships and requesting her presence at the August 22, 2013 meeting.

Ms. Davis submitted an explanation regarding her function as a seller's agent for For Sale By Owner (FSBO) transactions and running the FSBO transactions through her brokerage. Ms. Davis appeared in person (in attendance from 9:12 a.m. until 11:50 a.m.). After review and discussion of Ms. Davis' response to the Commission's questions regarding her transaction experience, related experience, and knowledge of Kansas brokerage relationships, a motion was made by Ms. Bittenbender, seconded by Ms. Wenger granting Commission staff the authority to grant Ms. Davis' application for a broker's license subject to Commission staff review of documentation regarding four seller agent transactions that Ms. Davis acted as a FSBO. If the documentation supported Ms. Davis' explanation of the transactions provided to the Commissioners, staff may issue a restricted and conditioned license. Issuance of the license would be subject to Ms. Davis completing a salesperson/broker core course within 90 days and Ms. Davis would be restricted for a minimum of one year to having no affiliated licensees other than her husband. Ms. Davis would need to request that the restriction be lifted and appear before the Commission at that time to explain and provide documentation of transactions she and her husband completed. Motion carried unanimously.

Sally Davis

The application of Ms. Davis was presented for review by the Commission. Ms. Davis was in attendance from 9:12 a.m. until 11:55 a.m. and was available for questions. Ms. Davis informed the Commission that she consulted with an educator and she now understands the brokerage relationships issues that raised concerns and she has developed a new contract and listing form. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Ms. Davis' application for a broker's license. Ms. Davis' request to use the company name of Davis Real Estate was also approved. Motion carried unanimously.

Application for Renewal

Terri Hollenbeck

Applicant answered "Yes" to Question No. 1 on her application for renewal and self-reported disciplinary action taken by the South Dakota Real Estate Commission. The Commission's disciplinary committee had also referred the South Dakota disciplinary action issue to be considered by the Commission at renewal. Ms. Hollenbeck was in attendance from 9:12 a.m. until 12:13 p.m. and was available for questions. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct for a supervising broker and Ms. Hollenbeck's understanding and recognition of the gravity of her conduct, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for renewal of her broker's license subject to a \$500 fine and a 60-day suspension; however, another broker in the firm acceptable to the Commission could take over supervision of both offices for the period of suspension. Ms. Cook abstained from voting on the motion. Motion carried unanimously.

At 12:14 p.m., Karen Gehle, Todd Woodburn and Luke Bell left the meeting.

Mr. Wuertz declared a lunch break at 12:14 p.m.

Mr. Wuertz reconvened the meeting at 12:40 p.m.

Applications for a Broker's License cont'd.

Luke Hansen

The application of Mr. Hansen was presented for review by the Commission. After review and discussion regarding the number of years Mr. Hansen had been licensed, his transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Hansen's application for a broker's license. While Mr. Hansen lacked active real estate experience, because he lives in a county with a shortage of brokers, his application was approved pursuant to K.S.A. 58-3039(d)(2) subject to the condition that his license is restricted to having no affiliated licensees for a period of one year. Mr. Hansen may petition the Commission to lift the restriction prior to the one-year timeframe if he can show sufficient transactions. Because Mr. Hansen will not be permitted to have affiliated licensees while his license is restricted, the Commission requested staff to include in the cover letter that ringmen must be licensed to participate in auctions. Motion carried unanimously.

Vicki Hunt

The application of Ms. Hunt was presented for review by the Commission. After review and discussion regarding Ms. Hunt's application, her equivalent experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Ms. Hunt's application for a broker's license. Motion carried unanimously.

Brian Reed

The application of Mr. Reed was presented for review by the Commission. Mr. Reed answered "yes" to Question No. 2 and self-reported disciplinary action taken against his Kansas and Missouri appraiser's licenses as well as disciplinary action taken against his Kansas real estate license; however, Mr. Reed did not report the Missouri disciplinary action within 10 days nor did he report it on his 2012 renewal application. After review and discussion regarding previous disciplinary actions, the number of years Mr. Reed had been licensed, his transaction experience, related experience, knowledge of Kansas brokerage relationships and his failure to disclose disciplinary action, motion was made by Ms. Cook, seconded by Ms. Bittenbender to deny Mr. Reed's application for a broker's license. Motion carried unanimously.

Douglas Shafer

The application of Mr. Shafer was presented for review by the Commission. Mr. Shafer's Missouri broker's license was suspended from November 10, 2012 to December 5, 2012 and federal taxes have not been paid. After review and discussion regarding the number of years Mr. Shafer had been licensed, his transaction experience, related experience, knowledge of Kansas brokerage relationships and his tax status, motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve Mr. Shafer's application for a broker's license subject to conditions that Mr. Shafer provide quarterly reports on the status of his Missouri tax payments, Internal Revenue Service (IRS) tax payments and any payment plan reached with the IRS and that he is current on filing his tax returns. Motion carried unanimously.

Kristin Van Voorst

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

Cameron Ward

The application of Mr. Ward was presented for review by the Commission. After review and discussion regarding Mr. Ward's previous conduct that was considered when Mr. Ward's salesperson's license was approved, his continued evidence of rehabilitation, the number of years he had been licensed, his transaction experience and knowledge of Kansas brokerage relationships, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve Mr. Ward's application for a broker's license. Motion carried unanimously.

Applications for Renewal cont'd.

Curtis Filer

Applicant answered "Yes" to Question No. 1 on his application for renewal of his broker's license and self-reported disciplinary action taken by the Missouri Real Estate Commission. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Applicant's lack of additional conduct, motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve Applicant's application for renewal of his broker's license. Motion carried unanimously.

Staff Request regarding Guidance Documents 13-01 and 13-02

After review and discussion, motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve revisions made regarding the approval of applications as well as the approval of applications with restrictions and/or conditions in Guidance Document 13-01 and 13-02. Motion carried unanimously.

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

Staff requested this item be deleted from the agenda until additional information is received.

Staff Request regarding Employee of the Quarter Award

The Commission reviewed a draft proposal of the Employee Awards guidelines. It was the consensus of the Commission that this matter be tabled for consideration at a later date.

Executive Session to discuss Personnel Matters

At 1:47 p.m., Ms. Bittenbender, seconded by Mr. Vaught, 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 1:56 p.m.

Executive Session to discuss an Attorney-Client Privileged Matter

At 1:57 p.m., Ms. Bittenbender, seconded by Ms. Wenger, 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 2:22 p.m.

Mr. Wuertz instructed staff to dismiss the Summary Proceeding Orders against Derek Espeer and Sonya Williams and grant licenses to both individuals.

Mr. Wuertz declared a ten-minute break at 2:24 p.m.

Mr. Wuertz reconvened the meeting at 2:32 p.m.

Executive Session to discuss an Attorney-Client Privileged Matter

At 2:32 p.m., Ms. Bittenbender, seconded by Mr. Vaught, moved to enter into an executive session to discuss an attorney-client privileged matter for 20 minutes. Those in attendance include the Commissioners, Ms. Diel, and Ms. Fertig.

Mr. Wuertz reconvened the meeting at 2:53 p.m.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reported that advertising was likely the number one complaint made against licensees but other licensees are generally the complainants. Ms. Diel stated the complaint statistics report was not run for the correct date range and was not pertinent.

Education Report

The Education Report was received by the Commissioners. Ms. Diel informed the Commissioners that data could now be reported by fiscal year instead of by calendar year and asked the Commissioners for their preference. The Commissioners indicated they preferred the calendar year report.

Budget Report

FY 2014 – FY 2015 Budget Report

The Budget Report was received by the Commissioners. Ms. Diel explained the steps required in the FY 13 – FY 15 budget proposal process.

KREC's budget is approved through FY 15, so the budget submission must not exceed the budget approved by the Legislature for FY 14 through FY 15.

Ms. Diel will provide budget-related testimony starting sometime in January 2014. Bills that were not killed during the 2013 session are still active for consideration during the 2014 session. During the 2013 Legislative session, the fee bill authorizing a fee increase went through the House and made it through Senate committee where it was recommended for passage. However, it was never allowed to be debated on the Senate floor. The bill is still active for the 2014 session.

In FY 13, the State did not extend the ability for KREC to encumber funds past July 1st to pay FY 13 invoices that are received the first 10 days of July. Instead, KREC had to close out all invoices by June 27 or 28, 2013 and then estimate any amounts due for outstanding invoices. Purchase orders were then prepared for those outstanding invoices. The staff had to be extremely careful not to miss any invoices or

the invoice would have to be paid with FY 14 funds, which were significantly cut because of the fee fund shortage.

Expenditures and Real Estate Receipts as of July 2013

Ms. Diel reported the appropriations for each line item were not complete, as the budget will not be submitted until September 16, 2013.

KREC's fee fund balance is \$303,210. The available cash balance is \$241,754, which is the Commission's current fee fund balance less encumbrances.

KREC has transferred 10% of receipts to the State General Fund in July 2013 or \$7,686 and kept 90% or \$69,200 for the KREC fee fund for the current fiscal year.

Two of the encumbrances for Webelan will be paid out when testing for the RELs and OLMs systems are completed. There is \$32,000 of FY 13 funds encumbered for maintenance of RELs and OLMs. Unused funds can be released if the services are not needed.

The Commissioners discussed proposing keeping fines instead of raising fees. Ms. Diel noted the Commission collected \$150,000 in fines in FY 13, \$81,400 in FY 12 and \$48,000 in FY 11. KREC has paid almost \$27,000 in fines to the State General Fund for FY 14 so far. The Revolving Recovery Fund balance is \$312,790.

Comparing fee receipts to date on a year over year basis, receipts are up \$51,780 from FY 13 and receipts are down \$67,880 from FY 12.

Director's Report

The Commissioners received the Director's report and Ms. Diel noted that there are currently 13,671 licensees.

Ms. Diel reported that Commission staff had discussed livescan fingerprints with Pearson Vue and Kansas Bureau of Investigation (KBI) staff. The KBI had previously reported to Commission staff that MorphoTrust is already working with the State. However, following a second inquiry with Pearson Vue, it was discovered that MorphoTrust is not yet set up for electronic submissions with the KBI. To utilize MorphoTrust would require \$40 - \$50 more per candidate to be fingerprinted because Kansas' utilization/testing rates are low. Because the cost for livescan printing is so high, it will be listed in the specifications for the Request for Proposal as a preferred requirement, not a mandatory requirement, for electronic fingerprints to be taken at exam centers and submitted directly to the KBI.

Ms. Diel reported on the Audit by Mail Program. From July 1 through August 15, 2013, 55 affidavits were returned. A broker signs an affidavit if the company has done no business. Out of 25 audits, four had no violations, seven warning letters were issued, and 15 Summary Proceeding Orders were issued.

Commissioners discussed the situation where relocation firms will not sign required documents nor reply to requests for information required by Kansas law regarding brokerage relationships. It was suggested that Kansas licensees keep a copy in the transaction file of their attempt(s) to acquire the needed signature or documentation.

Ms. Diel reported that the October 10, 2013 Commission meeting will not be held in Kansas City, but will be a regular meeting by conference call. The Commission's HUD fraud training was scheduled for one hour at the same time as two continuing education courses, so attendance would not be strong. Commission staff will try to coordinate the training with the Kansas Association of Realtors® for possibly the January meeting and possibly expand the training to three hours for elective credit if there is no opposition.

Ms. Diel reported that due to budget preparation and staffing issues, the approval checklist had not been completed. The checklist, as well as information for the Commissioners to distribute to legislators, will hopefully be ready to distribute to the Commissioners by the end of September/early October.

Public Comment

There was no public comment.

Mr. Wuertz noted there is no meeting scheduled in September, the October meeting will be held by teleconference, and the November meeting will be held in Topeka.

Adjournment

Mr. Wuertz adjourned the meeting at 3:29 p.m.