

MINUTES OF MEETING

Kansas Real Estate Commission

January 14, 2014

The Kansas Real Estate Commission held its regular meeting on Tuesday, January 14, 2014 at 9:00 a.m. at the Capitol Plaza Hotel, Wheat Room, 1717 SW Topeka Blvd., Topeka, Kansas.

Commissioners Present:

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

Staff Present:

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

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Marsha McConnell
Jerry S. Weis
Colby Monnington
Lynn Channer
Larry Rickard
Kelly Ellner Leiker

Conference Hearing In the Matter of Jeffrey Franklin East, Docket No. 14-4820

A formal hearing was scheduled to be held *In the Matter of Jeffrey Franklin East*, Docket No. 14-4820, regarding the denial of Mr. East's application to renew his Kansas real estate salesperson's license pursuant to K.S.A. 58-5043(a)(5) and K.S.A. 58-3050(a)(5). Mr. East's renewal application was denied based upon his failure to comply with the Commission's October 11, 2011 Summary Proceeding Order issued in Docket No. 3839. Mr. East was not in attendance at 9:00 a.m. for his hearing.

Call to Order

Mr. Wuertz called the KOMA meeting to order at 9:09 a.m.

Applications for Salesperson's License

David Dyer

Applicant answered "yes" to Question No. 5 and self-reported a criminal offense which is still pending. Although the case has been referred to the prosecutor, no charge has been filed. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct, Applicant's lack of previous or subsequent criminal conduct and that no charges have been filed by the prosecutor to date, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license but Mr. Dyer's license is restricted to his supervising broker, Marie A. Stewart with Sterling Realty Professionals, LLC, for two years. Motion carried unanimously.

Jeffrey Mair

Applicant answered "yes" to Question Nos. 5 and 6 on his application 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 continued pattern of criminal conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to deny Applicant's application for a salesperson's license. Motion carried unanimously.

Colby Monnington

Applicant answered "yes" to Question No. 6 on his application and self-reported five criminal offenses. Mr. Monnington and a character reference were present at the meeting to respond to questions. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and Applicant's conduct since he began working as an unlicensed assistant, 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 his proposed supervising broker, Linda B. Weis with Weis Real Estate Company, for a period of two years. Motion carried unanimously. Mr. Monnington was also notified that the Commission would consider any similar criminal offenses in the future as a pattern and practice which would reflect negatively on his continued qualifications for licensure.

Dale Scott, Jr.

Applicant answered "yes" to Question No. 2 on his application and self-reported disciplinary action taken by the state of Kansas against a professional or occupational license or certificate. After review and discussion regarding the circumstances surrounding the discipline, the nature and severity of the conduct, the passage of time and Applicant's lack of other conduct that negatively reflected on Applicant's honesty, integrity, trustworthiness, and competence, motion was made by Mr. Vaught, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license. Motion carried unanimously.

Michael E. Ward

Applicant answered "yes" to Question No. 5 on his application and self-reported one criminal offense for which proof of disposition has been provided and one pending criminal offense. After review and discussion regarding the circumstances surrounding the offenses and the nature and severity of the conduct, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to table Applicant's application for a salesperson's license until the February meeting to receive the possible outcome of the pending criminal matter. Motion carried unanimously.

Applications for Broker's License

Holly Cash

The application of Ms. Cash was presented for review by the Commission. After review and discussion regarding the number of years Ms. Cash had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to deny Ms. Cash's application for a broker's license due to her lack of recent transaction experience. Motion carried unanimously.

Scott Evans

The application of Mr. Evans was presented for review by the Commission. After review and discussion regarding the number of years Mr. Evans 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. Evans' application for a broker's license. Motion carried unanimously.

George Schlagel

The application of Mr. Schlagel was presented for review by the Commission. Mr. Schlagel applied for a broker's license due to a Kansas Supreme Court case interpreting the attorney exemption. After review and discussion regarding the number of years Mr. Schlagel has been a practicing attorney and his related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Schlagel's application for a broker's license. Motion carried unanimously.

Applications for Renewals

Daniel Madrigal

Applicant answered "yes" to Question No. 2 on his renewal application and self-reported a criminal offense. The criminal offense has not been prosecuted as of this time. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct, the passage of time, Applicant's lack of prior or subsequent criminal conduct and that no charges had been filed by the prosecutor, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Applicant's application to renew his salesperson's license. Motion carried unanimously.

Carolyn French

Applicant filed a late renewal application for her broker's license and reported unlicensed activity. The Commission had also received a complaint regarding a Federal tax lien that the Disciplinary Committee requested be reviewed at renewal. After review and discussion regarding the circumstances surrounding the nature and severity of the conduct and whether Ms. French was functioning as an associate broker or a supervising broker, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve the renewal of Ms. French's broker's license subject to the condition that Ms. French must provide a letter to the Commission acknowledging she understands the gravity of her conduct in allowing her license to expire and taking full responsibility for same, assuring the Commission that she will timely file future renewals, and acknowledging that it is her responsibility alone to ensure her future renewal applications are timely filed. In addition, Ms. French's conduct would be referred to the Disciplinary Committee for investigation and possible disciplinary action for operating on an expired license. A friendly amendment to said motion, made by Ms. Wenger, seconded by Mr. Vaught, was made to add to the letter that Ms. French's

supervising broker, Trent Brown with Signature Partners, LLC, can be held responsible for her unlicensed activity as well. Motions carried unanimously.

At 9:51 a.m., Mr. Monnington and Mr. Weis left the meeting.

At 9:52 a.m., Mr. Rickard left the meeting. Mr. Rickard returned to the meeting at 9:55 a.m.

Robert McBride, Jr.

Applicant failed to respond to an audit request. As a result, his application to renew his broker's license on inactive status was not processed by staff pending Commission review. After review and discussion regarding the circumstances surrounding the failure to respond to an audit request and the nature and severity of the conduct, motion was made by Mr. Vaught, seconded Ms. Bittenbender to deny Applicant's application to renew his broker's license. Motion carried unanimously.

Darryl Muhammad

Applicant answered "yes" to Question No. 1 on his renewal application and self-reported a pending suspension of his Missouri real estate license due to unpaid taxes. The suspension commenced in 2011. After review and discussion regarding the circumstances surrounding the suspension, the nature and severity of the conduct and the time passed without any attempt to dispute or resolve the taxes owed, motion was made by Mr. Vaught, seconded by Ms. Cook to deny Applicant's application to renew his salesperson's license. Motion carried unanimously.

Consider request of Harry Chet Meierarend, III to change company name

The Commission considered the request of Harry Chet Meierarend, III to change his company name from Chet Meierarend and Associates, LLC to Re/Max Premier Properties because a brokerage with a similar name exists in the same market area. Chet Meierarend's brokerage had been operating under the name Re/Max Premier Properties for many years until 2011. Due to an error in Mr. Meierarend's paperwork and miscommunication in 2011, Mr. Meierarend's company name was changed from Re/Max Premier Properties to Chet Meierarend and Associates, LLC. This error in Mr. Meierarend's paperwork was not caught by staff in 2012 when Mr. Meierarend submitted another company name change request where he appeared to attempt to correct the mistake. After review and discussion, motion was made by Ms. Bittenbender, seconded by Ms. Wenger that Commission staff can approve the business name or trade name of Re/Max Premier Properties and staff would issue a letter explaining why the change was allowed and encouraging Mr. Meierarend to ensure future paperwork reflects the correct company name. Motion carried unanimously.

Consider Request of Teddy J. Yoder to Modify and/or Lift Restriction

The Commission considered Teddy J. Yoder's request to modify the restriction on his license. Mr. Yoder's license has been restricted since the Commission took disciplinary action against Mr. Yoder following a Missouri Real Estate Commission decision. Mr. Yoder wishes to transfer from Diamond Partners, Inc. to Yoder Realty, a company he proposes to open. After review and discussion regarding Mr. Yoder's stated reasons for wanting to open Yoder Realty, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to grant Mr. Yoder's request to modify the restriction on his license so that he may serve as the supervising broker of Yoder Realty, but he cannot have any affiliated licensees and cannot open any branch offices or serve as a supervising broker or branch broker of any other office. Once the restriction is modified, Commission staff will approve the new company name and transfer request. Motion carried unanimously.

Employee Awards Program

During the November 2013 Commission meeting, Commissioners requested this item be re-visited at the next in-person Commission meeting. Ms. Diel reported while the Governor's Office encourages each agency to initiate an Employee Awards Program, the Administration realizes such programs do not work for all agencies due to limited staffing and budgets. Therefore, such programs are not mandatory and awards can be monetary or non-monetary. Currently, the KREC has one award in place whereby employees are recognized for years of service with a plaque.

An Employee of the Quarter Award is a new type of award. During the third quarter of 2013, the State of Kansas recognized 46 employees as Employees of the Quarter. Should agencies choose to offer an Employee Awards Program, guidelines must be established. Ms. Diel drafted guidelines for a KREC Employee Awards Program based on the Department of Administration's program. A representative from the Division of Personnel Services, Ms. Diel, and a Commissioner would serve on a committee to receive nominations for various awards. Kansas statutes set a cap of \$3,500 per employee per year for each employee, which would come out of the agency's budget. Commissioners suggested a \$250 quarterly award for the Employee of the Quarter Award.

Several other Employee Awards are available including Distinguished Accomplishment, Meritorious Service, and Innovation. Awards can be monetary or non-monetary. The Commissioners directed that Ms. Diel include a maximum monetary award in the guidelines at the statutory amount of \$3,500 for these awards. Ms. Diel will bring amended guidelines of the Employee Award Program before the Commission at its February 2014 meeting.

At approximately 10:20 a.m., Ms. McConnell left the meeting.

At approximately 10:25 a.m., Ms. Channer and Ms. Ellner Leiker left the meeting.

Mr. Wuertz declared a 10 minute break at 10:26 a.m.

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

Mr. Wuertz recessed the KOMA meeting at 10:46 a.m. in order to address the scheduled KAPA proceedings.

Reconvene KOMA Meeting

Mr. Wuertz reconvened the KOMA Meeting at 11:07 a.m.

Robert Mirich

Applicant answered "yes" to Question No. 3 on his renewal application 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 table Applicant's application to renew his broker's license. Commission staff will request Mr. Mirich to provide the documents discussed in the confidential KAPA proceedings. Motion carried unanimously.

Public Comments

Mr. Rickard was present and offered public comments. Mr. Rickard addressed the Commission by providing informational documents for the Commissioners and instructing the Commissioners on brokerage relationships using a dry erase board. The informational documents included a revised BRRETA handout for the Commissioners to consider as part of Mr. Rickard's course renewal application, but otherwise Mr. Rickard's presentation did not address his pending course renewal application. Mr. Rickard was not finished with his presentation within the allotted 10 minute timeframe so motion was made by Mr. Vaught, seconded by Ms. Cook to grant Mr. Rickard another 10 minutes to finish his presentation. Motion carried unanimously.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Ms. Cook, seconded by Mr. Vaught, Mr. Wuertz recessed the KOMA meeting at 11:37 a.m. for 15 minutes to enter into an executive session to discuss an attorney-client privilege matter. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig. Ms. White was invited into the session to answer technical questions by the Commission and left the session at 11:42 a.m.

Mr. Wuertz reconvened the KOMA meeting at 11:52 a.m.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 12:15 p.m. for 30 minutes to enter into an executive session to discuss an attorney-client privilege matter. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig. Ms. White was invited into the session to answer technical questions by the Commission.

Mr. Wuertz reconvened the KOMA meeting at 12:52 p.m.

At 12:53 p.m., a motion was made by Mr. Vaught, seconded by Ms. Bittenbender to extend the executive session for 10 minutes to continue discussing the attorney-client privilege matter.

Ms. White left the session at 12:58 p.m.

Mr. Wuertz reconvened the KOMA meeting at 1:03 p.m.

Continuing Education Courses

The Commission considered various continuing education courses offered by Realty School of Kansas. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to direct staff to approve four finance classes and decline approval for the Pre-licensure Broker courses, the Kansas Practice courses, the Principles of Real Estate courses and the Kansas Law courses. In addition, staff will work with Ms. Fertig to advise the instructor the corrections that need to be made to the materials for approval, including the courses must comply with Kansas law, ensure there are no references to outdated materials, the materials must not be confusing and the materials must accurately reflect those jurisdictions where he currently holds a real estate license. The Commission would like to review the updated materials at the February 2014 meeting. Motion carried unanimously.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 1:08 p.m. for 10 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners. Ms. Diel was invited to attend the session at 1:20 p.m.

Mr. Wuertz reconvened the KOMA meeting at 1:24 p.m.

Ms. Channer returned to the meeting at approximately 1:25 p.m.

Consider Request from Kent Welch to Open a Company Named Skeet Real Estate

Kent Welch requested to open a company named Skeet Real Estate. Steve Skeet, a salesperson, wants Mr. Welch to serve as the supervising broker of Mr. Skeet's company, Skeet Real Estate, until such time as Mr. Skeet can obtain his broker's license. This is the first time that staff is aware that a company is being named after the owner, who is a salesperson, so that advertising might be confusing to the public. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught, that the open company request be tabled until the February 13, 2014 meeting. The Commission directed staff to obtain additional information from Mr. Skeet about his plans for becoming the supervising broker of the company. In the alternative, it was suggested that Mr. Skeet might wish to choose an alternative company name to prevent confusion to the public.

Budget Report

The Commissioners discussed meeting with legislators regarding budget matters.

The Governor's budget should be coming out in the next day or two. Ms. Diel had filed an appeal on behalf of the agency.

Ms. Diel reported that the Division of the Budget recommended using \$100,000 of the Recovery Fund for replacement of the agency's electronic management system. If this expenditure is approved by the Governor and throughout the Legislative process, the \$100,000 will be specifically used for this purpose. This option was preferential over using Recovery Fund monies to pay for general operating costs.

The Budget Report was received by the Commissioners. Ms. Diel reported the following:

Expenditures

At six months into the FY 2014 budget, the agency continues to do well at saving in light of the impending fee fund deficit. Specifically, without travel expenses, KREC is staying below its budgetary limits for FY 2014. At halfway through the fiscal year, total expenditures should be about 50% of the total appropriation. Total expenditures are at 40.5%. There were two large line item expenses for Fees/Other Services for December 2013. The monumental building charge is paid by all Shawnee County, Kansas state agencies and the money is used for upkeep on the Capitol Building, Governor's Mansion and Judicial Center. KREC paid a monumental building charge of \$7,145 in December. This was a reduction from the \$13,000+ charged to KREC in FY 2013. Another large expenditure of about \$5,300 was paid for the annual fee for the cost of SMART.

Ms. Diel reported it is important to realize how much expenditures have been reduced. For the current reporting period, expenditures are \$91,000 lower than FY 2013 and \$72,000 lower than FY 2012.

Revenues

Ms. Diel explained that revenues are not increasing. They have been level or below FY 2012 levels, which would correlate with the same renewal groups. Included in the budget were 27 cuts and efficiencies that have been implemented by the Commission, but a long term solution to the revenue shortfall is needed.

Encumbrances

Total encumbrances are \$67,570. According to SMART, the Fee Fund is at \$360,246. However, the available Fee Fund balance is \$291,793 if the encumbrances (\$67,570) are subtracted.

Ms. Diel reported that certain encumbrances (those noted in yellow) would be closed out after January 13, 2014 because they were not fully used and no further billings are expected. Those encumbrances will not be on the January 2014 report and will be returned to the Fee Fund as available funds.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or approximately \$50,600, to the State General Fund and retained approximately 90%, or \$455,750, for the KREC Fee Fund.

To date, KREC has collected approximately \$56,750 in fines.

To date, fee receipts collected are approximately \$46,000 higher than FY 2013 levels and approximately \$2,000 higher than FY 2012 levels. Normally, comparisons are made even-number to even-number years and odd-number to odd-number years. It is good that fee receipts are staying even with FY 2012 but the budget was built based upon a slight increase in revenue. Flat funding would have resulted in a deficit. Fee receipts were running about \$50,000 lower earlier in the year.

Recovery Fund

The balance in the Recovery Fund is \$315,233.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the current month and fiscal year reports. The first report lists all cases closed and the outcome of the cases. The second report lists those complaints closed with no legal docket being opened. The third report lists the 83 complaints that are currently open. It was noted that a good percentage of the complaints relate to misrepresentation.

Education Report

The Education Report was received by the Commissioners. Ms. Diel presented a list of the new courses that have been approved and a summary from Pearson Vue.

Ms. Diel reported on the current month and calendar year education statistics. In December 2013, 12 brokers and 91 salespersons took the licensure exams. All 12 of those taking the broker's exam passed, for a passing rate of 100%, and a total of 66 passed the salesperson's exam, for a passing rate of 73%. For Calendar Year 2013, 162 brokers and 1,615 salespersons sat for the licensure exams. A total of 116

passed the broker's exam, for a passing rate of 72%, and a total of 1,136 passed the salesperson's exam, for a passing rate of 70%.

Director's Report

The Commissioners received the Director's report.

Ms. Diel recommended the Commissioners read an article in *ARELLO Boundaries*® that reports the Federal Sixth Circuit Court of Appeals declined deference to the Department of Housing and Urban Development's (HUD) affiliated arrangements policy. The Court held HUD's policy created an additional requirement beyond the statutory requirements and that the statute was clear and nothing more was required.

Ms. Diel reported a reduction in licensees, for a total count of 13,378 licensees.

Ms. Diel informed the Commission that there is an issue with license applications backing up. When an applicant has responded "Yes" to specific questions on the application, the application requires an initial review and a summary is prepared. This first step of summarizing applications is where the backlog begins. Ms. Diel said the staff were constantly fielding calls on the status of applications as well as issues that are readily available on the website, which keeps staff from working files. Ms. Diel contacted the Governor's Office for suggestions. Staff can have messages informing callers that a response to their inquiry should be expected within 48 business hours and, for a quicker answer to questions, staff's messages may advise the individual they are welcome to visit the KREC web site. In addition, staff may set aside two hours each day to work uninterrupted. Staff will meet and decide whether letting calls go to voice mail is the most efficient use of their time because of the number of calls that come in.

Ms. Diel reported the HUD-sponsored training, Recognizing and Avoiding Mortgage Fraud, would be held in the Manor River Room at the Capitol Plaza Hotel from 9 a.m. until 12 noon on Thursday, January 16, 2014. This training will be presented by three HUD investigators and the course is approved for three hours of continuing education credit.

In the Matter of Jeffrey F. East, Docket No. 14-4820

Mr. Befort reported that Mr. East still had not appeared for the hearing scheduled to begin at 9:00 a.m. in Docket No. 14-4820. Mr. Befort verified Mr. East was not at the Capitol Plaza Hotel. Ms. Diel had contacted the KREC office to see if Mr. East had appeared at that location instead, but she was told he had not appeared or called. Mr. Befort asked the Commission to take note that Mr. East failed to appear and had not requested a continuance for the scheduled hearing. Mr. Befort asked the Commission to admit one additional exhibit, Exhibit 5, Mr. East's Renewal Application and Late Renewal Addendum received at the KREC office on September 26, 2013. After review and discussion, Ms. Bittenbender, seconded by Ms. Wenger moved to enter Exhibit 5 as part of the record in Docket No. 14-4820 and because Mr. East failed to appear for the scheduled hearing, that a Proposed Default Order be issued upholding the Summary Proceeding Order denying Mr. East's license. Motion passed unanimously.

Upcoming Commission Meetings

Ms. Diel reported the February 13, 2014 meeting can be held via conference call as there is no longer a hearing scheduled for the February 2014 meeting. The March 2014 meeting will be held via conference call. Ms. Bittenbender reported she will not be available for the March 2014 meeting. The April 2014 meeting will be held in person.

Upon a motion from Mr. Vaught, seconded by Ms. Wenger the meeting was adjourned. Motion carried unanimously.

Ms. Channer and Mr. Rickard left the meeting at approximately 2:04 p.m.

Adjournment

Mr. Wuertz adjourned the meeting at 2:04 p.m.