

NEVADA REAL ESTATE COMMISSION MINUTES

December 4, 2018

Nevada State Business Center
3300 W. Sahara Avenue, Nevada Room
Las Vegas, Nevada 89102

VIDEO CONFERENCE TO:

Division of Insurance
1818 College Parkway, Suite 103
Carson City, Nevada 89706

The meeting was called to order at 9:00 AM

1-A) Introduction of Commissioners in Attendance

Neil Schwartz, Clark County; Lee Gurr, Elko County; Devin Reiss, Clark County; Wayne Capurro, Washoe County and Lee Barrett, Clark County

Commission Counsel: Deputy Attorney General Asheesh Bhalla

1-B) Introduction of Division Staff in Attendance

In Las Vegas: Sharath Chandra, Administrator; Teralyn Thompson, Administration Section Manager; Evelyn Pattee, Commission Coordinator; Jan Holle, Chief Compliance Audit Investigator; Safia Anwari, Education Information Officer; Kimberly Smith, Education Supervisor; Deputy Attorney Generals Dennis Belcourt representing the Division.

In Carson City: Ann Angell, Compliance Audit Investigator and Jaye Lindsay, Appraiser Program Officer.

1-C) Swearing in of reappointed and newly appointed Commissioners.

Lee Gurr and Lee Barrett were sworn in.

2) Public Comment

Tiffany Banks, general counsel for Nevada Realtors, commented on the association considering the nickname issue as part of their legislative packet. Ms. Banks stated that their legislative committee met and decided to move forward with this issue on their legislative agenda.

Susan Howe, program director at the University of Nevada, Reno Cooperative Extension Nevada Radon Education Program, commented on radon health risk in homes. Ms. Howe stated that at least 33 states have a radon disclosure laws concerning radon and home purchases, but Nevada has none. Ms. Howe stated that radon is listed as an environmental hazard in the Real Estate Disclosure Guide for residential homes. Ms. Howe stated that she would encourage that the Nevada Radon Education website be included in the disclosure guide.

5-G) NRED v Kevin A. Dunlap, for possible action

Case # 2016-1833

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.
Kevin Dunlap was present.

Steven Mack was present representing Mr. Dunlap.

Preliminary Matters

Mr. Belcourt stated that a settlement had been reached. Mr. Belcourt read the settlement into the record.

Settlement

- Respondent agrees to pay restitution to the complainant the amount of \$6,500 and provide proof to the Division thereof within 120 days of the Commission's order.
- Respondent will pay to the Division \$1,250 as an administrative fine and \$500 in administrative costs within 180 days of the effective date of the Commission's order approving the stipulation.
- 3 hours of continuing education in agency and 3 hours of continuing education in ethics. All must be completed within 60 days of the effective date of the Commission's order approving the stipulation. Such continuing education may include course on and after November 19, 2018 but shall not accrue toward license renewal requirements.

Mr. Dunlap stated that he read, understands and has signed the settlement.

Commissioner Gurr stated that she has a concern that the buyers were overcharged and have been without those funds for 2 years and are only getting reimbursed almost exactly what was overcharged but no more.

Commissioner Reiss moved to accept the stipulation as entered. Seconded by Commissioner Schwartz.

Commissioner Capurro stated that he agrees with Commissioner Gurr and would like there to be some type aggravation costs when reimbursement lingers on this long for the person that was harmed.

Commissioner Reiss stated that he is glad that there is a form of repayment in the stipulation. Commissioner Reiss stated that more reimbursement would be better

Motion passed 3 to 2 with Commissioners Schwartz and Gurr opposed.

5-A) NRED v Ryan Barr, for possible action Case # 2016-1401

5-E) NRED v Ryan Bennett, for possible action Case # 2016-1402

5-K) NRED v David Howard, for possible action Case # 2016-2527

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division. Casey Quinn was present representing Mr. Barr, Mr. Bennett and Mr. Howard.

Preliminary Matters

Mr. Belcourt stated that these three settlements are identical and requested that one settlement be read to represent all three cases.

Settlement

- Respondent agrees to pay \$10,233 within 60 days of the effective date of the Commission's order. The amount includes \$500 to cover the Division's investigatory costs and attorney's fees.
- Respondent agrees that he will not conduct any activity requiring a real estate license in Nevada until such time as he obtains a real estate license.

Mr. Quinn stated that the respondents have read to the stipulations and have signed them. Mr. Quinn stated that his clients did not obtain a certificate of cooperation with the Real Estate Division. Mr. Quinn stated that his clients had every intention of abiding by the rules. Mr. Quinn stated that Mr. Chamberlain was confused about the provision of the statute that allows a broker to share a commission and did not know about the cooperative certificate.

Commissioner Schwartz asked if the \$500 to cover the investigative costs was enough.

President Barrett requested the costs from Teralyn Thompson.

Ms. Thompson stated that the prehearing costs for each case was \$742.35.

Commissioner Schwartz stated that he would like to see the Division's actual investigative costs paid.

Mr. Quinn asked that the Commission not change the settlement due to the work put into coming to the agreement.

Commissioner Capurro moved to accept stipulations for all three cases as presented. Seconded by Commissioner Reiss. Motion passed.

5-F) NRED v Lyle D. Chamberlain, for possible action
Case # 2016-2012

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division. Casey Quinn was present representing Mr. Barr, Mr. Bennett and Mr. Howard.

Preliminary Matters

Mr. Belcourt stated that a settlement had been reached. Mr. Belcourt read the settlement into the record.

Settlement

- Respondent agrees to pay \$2,500 to the Division within 60 days of the date of the Commission's order approving the stipulation. The amount includes \$500 to cover the Division's investigatory costs and attorney's fees.
- Respondent agrees to complete 6 hours of broker management continuing education not to be counted toward license renewal requirements within 90 days.
- Respondent agrees that he will not conduct any activity assisting unlicensed persons in conducting activities for which a license is required under NRS 645.

Mr. Belcourt stated that Mr. Chamberlain is a broker.

Commissioner Gurr requested that the word "salesperson" be stricken from page 1 line 20 of the stipulation.

Commissioner Capurro moved to accept the stipulation with amendments as stated. Seconded by Commissioner Schwartz. Motion passed 4 to 1 with President Barrett opposed.

5-M) NRED v Arthur Tangora, for possible action
Case # 2016-3715

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.

Mr. Tangora was present.

Preliminary Matters

Mr. Belcourt stated that he reached a settlement with Mr. Tangora on December 3rd but does not have it in writing. Mr. Belcourt read the complaint into the record.

Settlement

- Respondent will pay \$15,000 which includes \$14,000 as a fine and \$1,000 for costs
 - \$7,500 on or before February 15, 2019 and \$7,500 on or before March 15, 2019
- Respondent will within 60 days of the finalized order complete 12 hours of continuing education which will include 6 hours of law and legislative, 3 hours of ethics and 3 hours of agency not to be counted toward renewal requirements.

Commissioner Gurr asked the costs of the investigation.

Teralyn Thompson stated that the prehearing costs were \$1,365.45.

President Barrett asked Mr. Tangora if he would pay the investigation costs of \$1,365.45.

Mr. Tangora agreed to pay the \$1,365.45. Mr. Tangora stated that the settlement was fair and agreed.

Commissioner Reiss stated that he is concerned about the amount of the fine, costs and continuing education. Commissioner Reiss stated that practicing real estate without a license and earn \$434,545 worth of commission does not match the discipline.

Commissioner Capurro agreed with Commissioner Reiss. Commissioner Capurro asked if Mr. Tangora was aware that his license was expired at that time.

Mr. Tangora stated that he was not aware that his license was expired. Mr. Tangora stated that his broker was not aware that his license was expired for six months.

Commissioner Schwartz stated that he agrees with Commissioner Reiss.

Commissioner Reiss moved to accept the stipulation as amended with the \$14,000 fine and the investigative costs of \$1,365.45. Commissioner Reiss stated that the rest of the presented settlement would remain the same. Seconded by Commissioner Gurr.

Commissioner Capurro stated that there is a broker supervision problem. Commissioner Capurro stated that the stipulation is fining the bare minimum. Commissioner Capurro stated that \$14,000 is too low.

Commissioner Schwartz stated that the fine is not severe enough and that the Commission should not have to wait 75 days to get the full amount of the fine and costs.

President Barrett stated that he has reservation accepting the stipulation.

Motion failed with 1 to 4 with Commissioners Barrett, Gurr, Schwartz and Capurro opposed.

President Barrett stated that this case will be heard at the next scheduled Commission meeting.

5-L) NRED v Mary E. McQuattie, for possible action Case # 2017-2014

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.
Ms. McQuattie was not present.

Mr. Belcourt read the factual allegations and violations of law into the record.

State's Witness

Teralyn Thompson, Administration Section Manager, testified regarding proof of service.

Commissioner Reiss moved that sufficient service was proven. Seconded by Commissioner Schwartz. Motion passed.

Commissioner Capurro stated that he will recuse himself from discussions and voting regarding this matter. Commissioner Capurro stated that he recused himself from other proceedings regarding Ms. McQuattie.

Commissioner Reiss stated that the factual allegations and violations of law were proven. Seconded by Commissioner Gurr. Motion passed with Commissioner Capurro abstaining.

Commissioner Reiss stated that it is the Commissioner purview to revoke Ms. McQuattie's license.

Commissioner Schwartz agreed with Commissioner Reiss.

Mr. Holle stated that Ms. McQuattie's license is not active.

Division's Recommendation for Discipline

Jan Holle presented this:

- Impose additional costs

Teralyn Thompson stated that the hearing costs was \$510.77.

President Barrett stated that Commission Counsel recommended not adding additional costs at this time.

Commissioner Reiss moved that the Commission revoke Ms. McQuattie's real estate license and property manager permit. Seconded by Commissioner Schwartz. Motion passed 4 to 1 with Commissioner Capurro abstaining.

5-J) NRED v Daniel Hayes, for possible action

Case # 2017-128

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.

Mr. Hayes was not present.

Mr. Belcourt read the factual allegations and violations of law into the record.

State's Witness

Teralyn Thompson, Administration Section Manager, testified regarding proof of service.

Commissioner Capurro moved that service was proven. Seconded by Commissioner Reiss.

Commissioner Capurro moved that the factual allegations and violations of law were proven. Seconded by Commissioner Reiss. Motion passed.

Division Recommendation for Discipline

Jan Holle presented this:

- \$5,000 fine
- Costs of the hearing and investigation
- Fine and costs to be payable within 30 days of the effective date of the order

Teralyn Thompson stated that the costs were \$867.17.

Commissioner Reiss moved that a fine be imposed of \$5,000 plus costs of \$867.17 due and payable within 30 days of the effective date of the order. Seconded by Commissioner Capurro. Motion passed.

5-H) NRED v David F. Gorski, for possible action

Case # 2018-468

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.
Mr. Gorski was present.

Opening Statements

Mr. Belcourt gave his opening statement.
Mr. Gorski gave his opening statement.

Mr. Gorski stated that he is stipulating to all the facts within the complaint and would like to pay the fine.

Commissioner Reiss moved that the factual allegations and violations of law were proven. Seconded by Commissioner Schwartz. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- Pay the fine of \$500 plus any additional costs payable within 30 days of the effective date of the order

Teralyn Thompson stated that the costs were \$880.88.

Commissioner Capurro moved for a fine of \$500.00 plus costs of \$880.88 to be paid within 30 days of the effective date of the order. Seconded by Commissioner Reiss. Motion passed.

5-I) NRED v David F. Gorski, for possible action

Case # 2018-854

Parties Present

Deputy Attorney General Dennis Belcourt was present representing the Division.
Mr. Gorski was present.

Opening Statements

Mr. Belcourt gave his opening statement.
Mr. Gorski gave his opening statement.

State's Witness

David Morris testified.

Mr. Belcourt requested that bates stamped documents numbered 000027-000033 be admitted.

President Barrett stated that those documents would be admitted as State's Exhibit 1.

Mr. Belcourt continued his examination of the witness.

Mr. Gorski cross examined Mr. Morris.

Mr. Belcourt requested that the notice of documents with bates stamped documents numbered 000001-000026 be admitted.

President Barrett stated that those documents would be admitted as State's Exhibit 2.

Mr. Belcourt re-examined Mr. Morris.

Mr. Belcourt requested that the color picture of a broken door jam be admitted.

President Barrett stated that picture would be admitted as State's Exhibit 3.

Respondent's Witness

Clyde Matt testified.

The Commission questioned Mr. Gorski.

Closing Statements

Mr. Belcourt gave his closing statement.

Mr. Gorski gave his closing statement.

Factual Allegations

Commissioner Reiss stated that he would like to hold out Factual Allegations 8 and 10.

Commissioner Reiss moved that Factual Allegations 1-7, 9 and 11-13 were proven. Seconded by Commissioner Schwartz. Motion passed 4 to 1 with Commissioner Gurr opposed.

Commissioner Capurro stated that Factual Allegation 8 was proven but Factual Allegation 10 was not proven. Commissioner Capurro stated that he believes that Mr. Gorski was in the property inappropriately.

Commissioner Reiss stated that he believes that Factual Allegation 11 was proven in its entirety because he saw that information in the response from the broker.

Commissioner Reiss moved that Factual Allegation 8 was proven. Seconded by Commissioner Schwartz. Motion passed

Commissioner Reiss moved that Factual Allegation 10 read "On or about June 17, 2018, respondent accessed the home without authorization or permission of Morris or the owner." Seconded by Commissioner Schwartz. Motion passed.

Violations of Law

Commissioner Reiss moved that violations 14 and 15 were proven. Seconded by Commissioner Capurro. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- Fine of \$10,000 plus cost of hearing and investigation to be payable within 6 months of the effective date of the order.
- Modification to the license such as a suspension for a period of time.

Teralyn Thompson stated that the costs are \$1,121.29. Ms. Thompson stated that \$510.90 of that total are attorney's fees.

Commissioner Capurro stated that the costs of \$1,121.29 is appropriate. Commissioner Capurro stated that he would be in favor of reducing or eliminating the fine and revoking the license for at least 2 years.

Commissioner Gurr stated that she would rather see the license revoked rather than suspended. Commissioner Gurr stated that she does not feel that the transgression was egregious. Commissioner Gurr stated that she does not think there was any malice.

Commissioner Schwartz stated that he would not be in favor of revocation and no fine.

Commissioner Reiss stated that he would be in favor of suspension instead of revocation. Commissioner Reiss stated that he would be in favor of ordering cost and a fine but not as high as \$10,000.

Commissioner Reiss moved that a fine of \$1,000 be imposed plus the costs of \$1,121.29 payable within 6 months of the effective date of the order and that Mr. Gorski's license be suspended for a period of one year. Seconded by Commissioner Capurro.

Commissioner Gurr requested that the motion be amended to state that the costs of the hearing in the amount of \$1,121.29 includes attorney's fees of \$510.90. Seconded as amended by Commissioner Schwartz.

Motion passed.

3-A) Discussion regarding Administrator's report.

Sharath Chandra presented this report.

- Proposed in the upcoming budget to add a position in the northern office for limited licensing services.
- Proposed in the upcoming budget to convert the part time compliance audit investigator position in the northern office to a full-time position to increase resources. Making the case that there has been tremendous growth in the last 5 years.
- Proposed in the upcoming budget is a technology proposal. Provide an online presence for renewals and functions that do not require licensees to come to the Division. Technology upgrade would improve Division processes.
- Bill Draft Requests-Limited in the number provided to the Division. One bill draft request to address NRS 645C to conform with federal requirement changes. One bill draft request to address NRS 116 regarding background checks for community managers and reserve study specialist.
- Director for the Department of Business and Industry has changed. C.J. Manthe was the director and moved to the Public Utilities Commission. Terry Reynolds was the deputy director and is currently the interim director.
- Proposed in upcoming budget to increase education regarding the Division's property management courses, What Every Licensee Should Know and others.

3-B) Discussion regarding the Disciplinary Report.

Teralyn Thompson presented this report. Ms. Thompson provided the Commission with a written report and summarized the highlighted items.

3-C) Discussion regarding the Compliance Section's current caseload report, including a summary of recent topics of complaints filed.

Jan Holle presented this report. Mr. Holle provided the Commission with a written report and summarized.

3-D) Discussion regarding the Administrative Sanction Report.

Jan Holle presented this report. Mr. Holle provided the Commission with a written report and summarized.

3-E-1) Discussion regarding Continuing Education Supervisor's reports on continuing education course audit program report.

Kimberly Smith presented this report. Ms. Smith provided the Commission with a written report.

3-E-2) Discussion regarding Continuing Education Supervisor's reports on continuing education certificate issues and midterm education record-keeping.

3-E-3) Discussion regarding Continuing Education Supervisor's reports on continuing education and post education roster upload submittals issues.

Kimberly Smith presented this report for September 2018 there were 901 roster uploads and 113 midterm certificates. Ms. Smith stated that for October 2018 there were 1,037 roster uploads and 106 midterm certificates. Ms. Smith stated that for November 2018 there were 898 roster uploads and 132 midterm certificates.

3-E-4) Discussion regarding Continuing Education Supervisor's reports on online registration for real estate licensees to receive continuing education credits for attending Real Estate Commission meetings.

Kimberly Smith presented this report. Ms. Smith stated that when licensees are registering online to attend Commission meetings for continuing education credits; licensees need to use their legal names and not nicknames, real estate license number and not public ID numbers.

3-F) Discussion regarding the 2018 ARELLO Conference.

Commissioner Schwartz presented this report. Commissioner Schwartz stated that in September 2018 he and Commissioners Capurro and Barrett attended the Association of Real Estate License Law Officials (ARELLO) conference.

Commissioner Schwartz provided the Commission with two written reports and summarized.

Commissioner Schwartz stated that Nevada is far ahead of a lot of other states. Commissioner Schwartz thanked the Nevada Association of Realtors for supporting the commissioners going to these conferences at no cost to the Division.

Commissioner Capurro thanked Commissioner Schwartz for his summary. Commissioner Capurro stated that this conference should be offered to new commissioners. Commissioner Capurro stated that the ARELLO conference teaches commissioners how to be commissioners.

President Barrett presented Commissioner Capurro with his certificate of completion from the ARELLO Commissioners College.

3-G) For possible action: Discussion and decision to approve minutes of the September 10-11, 2018 meeting.

Commissioner Capurro moved to approve the minutes as presented. Seconded by Commissioner Reiss. Motion passed 4 to 1 with Commissioner Gurr abstaining.

3-H) For possible action: Discussion and decision on date, time, place & agenda items for upcoming meetings, including setting meeting dates for 2019.

The Commission agreed to the follow dates for 2019 Commission meetings:

- March 26-28, 2019 in the South
- June 11-13, 2019 in the South
- August 20-22, 2019 in the North
- November 5-7, 2019 in the South

6) Public Comment

No public comment.

7) For Possible Action: Adjournment

The meeting adjourned on December 4, 2018 at 2:38pm.