

**NEVADA COMMISSION OF APPRAISERS OF REAL ESTATE
MEETING
OCTOBER 03, 2023, MINUTES**

**VIA IN PERSON AND WEBEX VIRTUAL MEETING
OCTOBER 03, 2023**

Nevada State Business Center
3300 W. Sahara Avenue
4th Floor, Nevada Room
Las Vegas, Nevada 89102

The meeting was called to order at 9:08 A.M.

1. COMMISSION DIVISION BUSINESS

A) Introduction of Commissioners in Attendance

Timothy O'Brien, John Wright, John Ivey, Larry Michael Gandy Jr., and Scott Krueger.

Commission Counsel: Deputy Attorney General, Ziwei Zheng.

B) Introduction of Division Staff in Attendance

Charvez Foger, Deputy Administrator; Shareece Bates, Administration Section Manager; Christy Staffen, Appraisal Program Manager; James Silva, Compliance Audit Investigator; Kelly Valadez, Commission Coordinator; and Maria Gallo, Commission Coordinator.

Phil Su, Senior Deputy Attorney General, and Christal Keegan, Deputy Attorney General representing the Division. Jeremy Delong, Intern - Attorney General Office.

2) Public Comment

None

3) Discussion and Possible Action Regarding Advisory Review Committee Informal Conference Recommendation:

A) NRED v. BRANDON BELK, for possible action

Case No. 2021-46, AP21.026.S

License No. A.0207795-CR (Active)

Parties Present

No parties present.

President Wright read the proposed discipline into the record.

President Wright asked if the Commissioners had any questions.

Commissioner O'Brien moved to approve the settlement of disciplinary action for Brandon Belk, License No. A.207795-CR, Case No. 2021-46, AP21.026.S. Seconded by Commissioner Gandy. Motion carried.

4) DISCIPLINARY ACTION: DISCUSSION AND POSSIBLE ACTION BY THE COMMISSION:

A) NRED v. THOMAS L. WITHERBY, for possible action
Case No. 2020-492, AP21.045.S
License No. A.0001528-CR (Closed)

Parties Present

Christal Keegan, Deputy Attorney General was present representing the Division.
Thomas Witherby was not present.

Preliminary Matters

Ms. Keegan stated this case should be a default case.

Ms. Keegan read a summary of the facts into the record.

State's Witness

Maria Gallo, Commission Coordinator, testified regarding service of complaint.

Commissioner O'Brien asked Ms. Keegan to explain the process of default.

Ms. Keegan gave an overview of the default proceedings.

Ms. Keegan moved to admit state's exhibits 1-364 into the record.

Commissioner O'Brien moved to admit state's exhibits 1-364 into the record. Seconded by Commissioner Krueger. Motion carried.

Ms. Keegan moved to admit certificate of mailing and proof of service into the record.

Commissioner O'Brien moved that certificate of mailing and proof of service was given. Seconded by Commissioner Krueger. Motion carried.

Ms. Keegan stated per NAC.645C.513 the Commission can accept as true the factual allegations and legal violations in the filed complaint.

Commissioner O'Brien had questions for Division staff regarding Respondent's license status.

Commissioner O'Brien moved to accept all factual allegations as presented. Seconded by Commissioner Krueger. Motion carried.

Commissioner O'Brien moved to accept all violations of law as presented. Seconded by Commissioner Krueger. Motion carried.

Ms. Staffen stated the proposed discipline is revocation of license, fees, and costs of \$3,897.22 and \$10,000 per violation within 30 days of the effective date of the order.

Commissioner O'Brien moved that the Commission approve the recommended discipline of revocation of license, a fine of \$60,000, fees, and costs of \$3,897.22 payable within 180 days. Seconded by Commissioner Krueger.

President Wright asked for any discussion from the Commission.

Commissioners discussed the proposed discipline.

Commissioner Gandy discussed the punitive nature of the fines being proposed and potential for a decreased fine amount due to the severity of the discipline.

Commissioner O'Brien expressed his concern that the Respondent has failed to participate in both the AARC committee and the current Commission hearing. Commissioner O'Brien stated the Respondent can come back before the Commission to appeal the discipline if he chooses. Commissioner O'Brien stated that he is in favor of the proposed discipline under these circumstances.

Commissioner Krueger stated his agreement with comments made by Commissioner O'Brien.

Commissioner Ivey stated his agreement with comments made by Commissioner O'Brien.

Due to a typographical error, Commissioner O'Brien amended his motion that the Commission accept the Division's recommendation of revocation of license, a fine of \$60,000 and fees and costs of \$3,897.22 to be paid within 180 days. Seconded by Commissioner Krueger. Motion carried 4:1 Commissioner Gandy opposed.

5) No agenda item 5

6) COMMISSION DIVISION BUSINESS

A) Discussion regarding the Administrator's report.

Charvez Foger stated the Division continues to work on obtaining a licensing software vendor. Mr. Foger stated Division staff meet weekly to discuss the progress of the project. Mr. Foger stated the Appraisal sub-Committee (ASC) federal audit has concluded, and the Division has responded to audit findings. Some of the main concerns of the audit were needed and required regulatory changes, disposition of cases and consistency in discipline. Mr. Foger stated the key issues that the Division is reviewing regarding regulatory changes are the ASC recommended changes to the experience requirement to align with their requirements, and the incorporation of the Practical Application of Real Estate Appraisal (PAREA).

President Wright asked about the Division's anticipated timeline to address the regulatory changes, and asked whether there would be workshops.

Mr. Foger stated there are going to be workshops, and the Division is currently working on regulation changes now. Mr. Foger stated it will depend on when the proposed changes are sent out to the Legislative Counsel Bureau (LCB). Mr. Foger stated he could not give an estimate of the time for the workshops.

Commissioner Gandy asked if there were any workshops for the regulatory changes currently being worked on by the Division.

Shareece Bates explained that proposed regulation changes will be workshopped and adopted prior to any language submission to LCB.

Commissioner O'Brien asked Mr. Foger to clarify whether the Commission has the authority to adopt PAREA or if legislative intent is required.

Mr. Foger stated it will require legislative intent.

Commissioner O'Brien stated it is important for the Commission to remain educated and connected to the industry, PAREA is something that is going to be in the Division's hands.

B) Discussion regarding the Disciplinary Report

Shareece Bates presented this report. The Commission was provided with the report in the meeting packet.

C) Discussion regarding Appraisal Program Manager's Report on the compliance caseload.

Christy Staffen presented this report. The Commission was provided with the report in the meeting packet.

Commissioner Gandy asked how the Standard 3 Reviews are funded.

Ms. Staffen explained the Standard 3 Review process and budget.

D) For possible action: Discussion and possible action to approve the minutes of the July 18-20, 2023, meeting.

Chairman Wright moved to approve the minutes for the July 18, 2023, meeting. Seconded by Commissioner Gandy. Motion carried 3-0, Commissioners O'Brien and Krueger abstained.

E) Discussion regarding Practical Applications of Real Estate Appraisal (PAREA) – Presentation by the Appraisal Foundation, Gerald "Jerry" Yurek Vice Chair of Appraiser Qualifications Board (AOB).

Mr. Yurek gave a presentation regarding the Appraisal Foundation's PAREA program.

Commission questioned Mr. Yurek about PAREA.

Mr. Foger stated after doing some research, PAREA does not need a legislative session, PAREA can be implemented through a regulation change. Mr. Foger stated that NRS.645C.330 allows the Commission the ability to adopt regulations on the education and experience requirements pursuant to NAC.645C.065.

F) Discussion regarding NRS/NAC 645C.

Chairman Wright asked Mr. Foger if there is a general timeframe to approve PAREA.

Shareece Bates explained the steps taken by the Division to present proposed regulation to the Commission.

Administrator Sharath Chandra spoke about previously proposed regulations regarding experience and education requirements. Mr. Chandra discussed the ASC recommendation that the previously adopted language regarding the 5-year licensing requirement be amended and/or removed. Mr. Chandra stated that due to the number of states adopting PAREA, Nevada will need to adopt some form of the language. Mr. Chandra stated the Division would work to have a workshop within the upcoming months. Mr. Chandra stated that the Division may provide some bullet points on potential language at the upcoming meeting.

Commissioner Gandy stated many years ago there was an additional fee added to the renewal fee to fund Standard 3 Reviews.

Mr. Chandra stated in 2001 there was an increase in fees to fund additional mandates for a database and

to provide additional resources for staff to outsource Standard 3 Reviews to a third party. Mr. Chandra stated the legislature gave the Division \$22,000 a year to fund Standard 3 Reviews, however that money would sunset. Mr. Chandra stated when he became Administrator, he had a discussion with the Governor's office about continual funding instead of one-time funding for the Reviews. Mr. Chandra stated the current battle is that the number of Appraisers has increased and \$22,000 a year is no longer adequate.

Commissioner Gandy stated having the funding "sunset" is unwise for professions the State regulates.

Mr. Chandra stated that was probably by design so agencies would have to ask and justify to the legislature each biennial the funds they are requesting.

7) FOR POSSIBLE ACTION: DISCUSSION AND DECISION ON DATE, TIME, PLACE, AND AGENDA ITEMS FOR UPCOMING MEETING(S) INCLUDING SETTING THE MEETING CALENDAR FOR 2024.

- January 16-18, 2024
- April 23-25, 2024
- July 23-25, 2024
- October 8-10, 2024

8) Public Comment:

None

6-F) Discussion regarding NRS/NAC 645C Continued.

Commissioner Gandy stated he wanted to start the conversation to see where the Commission needs to go regarding property data collectors and whether they perform unlicensed activity under NRS/NAC 645C or if they violate sections of the Uniform Standards of Professional Appraisal Practice (USPAP). Commissioner Gandy stated data collectors are stepping over things that require a license and taking pieces that require experience and expertise. Commissioner Gandy stated the largest holder of mortgages Fannie Mae, does not monitor data collectors and they do not have any quality or educational requirements, they only require that their vendors maintain an annual background check on those they hire. Commissioner Gandy stated there was a case where an Appraisal Management Company (AMC) hired a convicted felon awaiting sentencing on an armed robbery charge. Commissioner Gandy stated the data collectors are unvetted and going into people's homes.

President Wright stated he understood Commissioner Gandy's issue with property data collectors however it is the client who is hiring the data collectors.

Commissioner O'Brien stated AMCs are going to use the most profitable method available to them. Commissioner O'Brien asked if data collectors are incompetent, who oversees them? Commissioner O'Brien stated it appears to be a significant loophole in terms of the AMC's not being accountable for their work. Commissioner O'Brien asked if the public is damaged, what is their recourse against the property data collectors? Commissioner O'Brien stated it has become a gray area.

Commissioner Gandy asked if a legal opinion on where property data collectors fall within the NRS is needed?

Mr. Chandra stated the issue is unclear and the Division can request an advisory opinion from the Attorney General's (AG's) office, it may not be in the scope of the Commission to request one. Mr. Chandra stated with previous items like the Dodd-Frank Act, the Division waits to see if any lawsuits are brought forward or sees if there is a consensus with other states or commissions. Mr. Chandra stated he welcomes anyone from the public or any other interested parties weighing in on the discussion in the future. Mr. Chandra stated the Appraisal Program Manager can look at other states and see how they are handling property data collectors. Mr. Chandra stated the Commission needs to be neutral on this matter because there may be cases on this subject in the future.

Commissioner Gandy stated this issue needs to be addressed and he will respect the process.

President Wright stated the Commission oversees appraisal practice in Nevada and when an appraisal does not comply with USPAP a case will be brought before the Commission. President Wright stated if they have an issue, that is a general violation of USPAP, he prefers that some information be put out to the appraisal profession before someone gets disciplined for doing something while running their business and serving their client that may be in a gray area. President Wright stated he would rather get ahead of the issue if they can, on a general sense.

Mr. Chandra stated it may not be within the scope or roll of the Commission to do that. Mr. Chandra stated the Division is asked questions all the time and we have to say, "seek legal counsel", we do not interpret items, we tell them what the statute says. Mr. Chandra stated the Division will want to get involved when there is more clarity in the situation. Mr. Chandra stated if there are over-arching issues, that it becomes a legislative question or issue.

President Wright stated he wants to ask the AG's office if property data collectors fall under NRS 645.

Mr. Chandra stated they were not there yet. Mr. Chandra stated it would be best to wait and let the Division get more clarification.

Commissioner O'Brien stated property data collectors were a hot topic. Commissioner O'Brien stated the Commission oversees appraisal practice and AMC services, however, there does seem to be a gray area. Commissioner O'Brien stated the Commission may not want to have something in stone, the issue will be tested when complaints are received, then they will go through the legal process. Commissioner O'Brien stated there has not been any public comment and no complaints have been brought forward. Commissioner O'Brien questioned, is the public being harmed? Commissioner O'Brien stated it may impact the Commissions ability to hear future cases if there is something in stone.

9) For Possible action: Adjournment

The meeting adjourned at 12:10 PM.

Minutes Prepared by: _____
Maria Gallo, Commission Coordinator