

NEVADA REAL ESTATE COMMISSION
MINUTES

March 20, 2018

Nevada State Business Center
3300 West Sahara Avenue
4th Floor - Nevada Room
Las Vegas, Nevada 89102

VIDEO CONFERENCE TO:

Department of Business & Industry
Director's Office
1830 College Pkwy. – 1st Floor
Carson City, Nevada 89706

The meeting was called to order at 9:00 AM

1-A) INTRODUCTION OF COMMISSIONERS IN ATTENDANCE

Lee Barrett, Clark County; Neil Schwartz, Clark County; Devin Reiss, Clark County; Norma Jean Opatik, Nye County; and Wayne Capurro, Washoe County
Commission Counsel: Deputy Attorney General Asheesh Bhalla

1-B) INTRODUCTION OF DIVISION STAFF IN ATTENDANCE

In Las Vegas

Administration Section: Administrator Sharath Chandra, Teralyn Thompson and Rebecca Hardin
Compliance Section: Chief Jan Holle; Daryl McCloskey and Rebecca Bruce
Education Section: Safia Anwari, Kim Smith and Carla Slater
Division Counsel: Senior Deputy Attorney General Keith Kizer
Deputy Attorney General Donald Bordelove

In Carson City

Administration Section: Deputy Administrator Sharon Jackson

5-1) NRED v FREDERICK (FRED) BRILMAN - CASE # 2018-13

This item was removed from the agenda.

5-4) NRED v CHRISTINE (CHRISSIE) FRASER - CASE # 2018-14

This item was removed from the agenda.

5-9) NRED v JULES (J.J.) LEHR - CASE # 2016-3373

This item was removed from the agenda.

5-6) NRED v JOHN ANTHONY GLASS - CASE # 2017-1473

This item was continued to the June 12-14, 2018 meeting in Carson City.

5-7) NRED v REDA MARIA GUDEN - CASE # 2016-2130

This item was continued to the June 12-14, 2018 meeting in Carson City.

2) PUBLIC COMMENT

Steven Kitnick, Steven Kitnick Seminars, stated that there were some valid reasons for allowing the use of electronic devices in the classroom.

Kelly Kuntz, Help You Sell Real Estate, submitted a letter entitled "Understanding Implied Agency and Other Various Types of Agency" and a proposed "Non-Client Referral Document in Regards to a Rental Showing" for the Commission's consideration.

5-2) NRED v ROBERT DAVID COLEMAN - CASE # 2015-3859

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.
Robert David Coleman was present.

Preliminary Matters

Mr. Kizer submitted a Voluntary Surrender in Lieu of Other Disciplinary Action to the Commission.

Mr. Kizer read the Voluntary Surrender in Lieu of Other Disciplinary Action into the record.

Mr. Coleman stated that he had read, understood and agreed to the voluntary surrender.

Commissioner Opatik moved to accept the stipulation as read. Commissioner Schwartz seconded.
Motion carried unanimously.

5-13) NRED v TOD A. WEVER - CASE # 2016-3017

Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.
Tod A. Wever was present.
Aaron Shipley was present representing Mr. Wever.

Preliminary Matters

Mr. Bordelove stated that there was a proposed stipulation, but there was not a written agreement.

Mr. Bordelove read the factual allegations into the record.

Mr. Bordelove presented the following stipulation:

- Respondent agrees to pay to the Division \$12,000.00
 - \$2,500.00 is due immediately
 - The balance of the fine is to be paid within two years.
 - The \$12,000.00 includes costs
- Respondent agrees to complete the following continuing education within three months:
 - 6 hours of property management
 - 6 hours of broker management
 - 6 hours of ethics
- There is no admission of intentional or unethical behavior.

Mr. Wever made a statement and commented that he would respect the decision of the Commission.

Commissioner Schwartz moved to administer the following discipline:

- A fine of \$7,500.00
 - \$2,500.00 to be paid within 30 days of the date of the order
 - The balance of the fine to be paid within two years of the date of the order
- Continuing education as follows within six months:
 - 6 hours of property management
 - 6 hours of broker management
 - 6 hours of ethics

Commissioner Capurro seconded. Motion carried 4-1 with Commissioner Barrett opposed.

5-12) NRED v JAY ROSEN - CASE # 2016-3479

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.
Jay Rosen was present.
Benjamin Rosen was present in support of the respondent.
Maxwell Rosen was present in support of the respondent.

Preliminary Matters

Mr. Kizer and Mr. Rosen submitted documents into evidence which were accepted without objection.
Commissioner Barrett recused himself due to a prior discussion with the respondent.

Hearing

Mr. Kizer made his opening statement.
Mr. Rosen made his opening statement.

State's Witness

Mr. Rosen testified.
The Commission questioned Mr. Rosen.
Mr. Kizer gave his closing statement.
Mr. Rosen gave his closing statement.

Commissioner Schwartz moved that the factual allegations and violation of law were proven.
Commissioner Opatik seconded. Motion carried 4-0 with Commissioner Barrett abstaining.

Recommendation for Discipline

Chief Investigator Jan Holle stated that the Division recommended the following discipline:

- \$1,500.00 fine plus the costs of the hearing and investigation of \$836.76 payable within 30 days of the effective date of the order.
- 6 hours of ethics to be completed within 60 days of the effective date of the order.

Commissioner Capurro moved to impose the following discipline:

- \$3,000.00 fine plus costs of \$836.76 payable within 30 days of the effective date of the order.
- 6 hours ethics continuing education to be completed within 60 days.

Commissioner Schwartz seconded. Motion carried 3-1 with President Reiss opposed and Commissioner Barrett abstaining.

The Commission authorized Mr. Kizer to take the \$300.00 owed by the respondent to Judith Sullivan and return it to Ms. Sullivan.

5-3) NRED v BENJAMIN M. DONLON - CASE # 2017-628

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.
Benjamin M. Donlon was present.

Preliminary Matters

Mr. Kizer submitted documents into evidence which were accepted without objection.
Commissioner Barrett recused himself due to a prior discussion with the respondent.

Hearing

Mr. Kizer made his opening statement.

Mr. Donlon made his opening statement.

The Commission questioned Mr. Kizer.

The Commission questioned Mr. Donlon.

Mr. Kizer made his closing statement.

Mr. Donlon made his closing statement.

Commissioner Opatik moved that factual allegations and violation had been proven. Commissioner Barrett seconded. Motion carried unanimously.

Recommendation for Discipline

Chief Investigator Jan Holle stated that the Division recommended the following discipline:

- \$5,000.00 fine plus the costs of the hearing and investigation of \$670.03 payable within 30 days of the effective date of the order.
- 6 hours of ethics to be completed within 60 days of the effective date of the order.

Commissioner Opatik moved to impose the following discipline:

- \$5,000.00 fine plus costs of \$670.03 payable within 90 days of the effective date of the order.
- 12 hours ethics continuing education to be completed within 90 days.

Commissioner Barrett seconded. Motion carried 4-1 with Commissioner Capurro opposed.

5-11) NRED v DARYLL S. REESE - CASE # RES 15-07-56-056

Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Daryll S. Reese was not present.

State's Witness

Rebecca Hardin testified regarding proof of service.

Commissioner Capurro moved that the Commission, pursuant to NAC 645.860, find that the Real Estate Division had proven service of notice. Commissioner Barrett seconded. Motion carried unanimously.

Hearing

Mr. Bordelove submitted documents into evidence which were accepted without objection.

Mr. Bordelove read the jurisdiction, factual allegations and violations into the record.

Commissioner Capurro moved that the factual allegations and violations had been proven.

Commissioner Schwartz seconded. Motion carried unanimously.

Division's Recommendation for Discipline

Chief Investigator Jan Holle stated that the Division would recommend the following:

- Fine of \$20,000.00.
- Revocation of the real estate license and property manager permit.
- All effective within 30 days of the effective day of the order

Commissioner Opatik moved to impose the following discipline:

- \$20,000.00 fine plus costs of \$1,233.34 payable within 90 days of the effective date of the order.
- Revocation of the real estate license and property manager permit, effective within 90 days of the effective date of the order.

Commissioner Barrett seconded. Motion carried unanimously.

5-5) NRED v WILLIAM A. GAYLER - CASE # 2016-3930

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division. William A. Gayler was not present.

State's Witness

Rebecca Hardin testified regarding proof of service.

Commissioner Opatik moved that the Commission, pursuant to NAC 645.860, find that the Real Estate Division had proven service of notice. Commissioner Barrett seconded. Motion carried unanimously.

Hearing

Mr. Kizer submitted documents into evidence which were accepted without objection.

Mr. Kizer read the factual allegations and violations into the record.

Commissioner Barrett moved that the factual allegations and violations had been proven. Commissioner Opatik seconded. Motion carried unanimously.

Division's Recommendation for Discipline

Chief Investigator Jan Holle stated that the Division would recommend the following:

- Fine of \$20,000.00 plus \$461.59 for the cost of the investigation and hearing
- Revocation of the broker license
- All effective within 90 days of the order.

Commissioner Barrett moved to impose the following discipline:

- \$20,000.00 fine plus costs of \$461.59 payable within 90 days of the effective date of the order.
- Revocation of the broker license.

Commissioner Opatik seconded. Motion carried unanimously.

3-A) DISCUSSION REGARDING ADMINISTRATOR'S REPORT

Administrator Sharath Chandra presented this report. Administrator Chandra stated that agency goals for the 2019-2021 budget would focus on issues the agency expects to face, such as working on technological investments and how processes can be improved within the Division's budgetary authority. Administrator Chandra stated that LCB File No. R004-16 that the Commission adopted had been passed.

3-B) DISCUSSION REGARDING THE DISCIPLINARY REPORT.

Teralyn Thompson presented this report and pointed out changes since the last Commission meeting.

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 summarized the report and listed the current issues under investigation.

3-D) DISCUSSION REGARDING THE ADMINISTRATIVE SANCTION REPORT.

Jan Holle presented this report.

3-F) DISCUSSION REGARDING THE PROPERTY MANAGEMENT WORK GROUP MEETINGS CONDUCTED ON JANUARY 30, 2018 AND MARCH 12, 2018.

Forrest Barbee stated that the work group had focused on creating a property management resource guide, which could be started soon and would be a work in progress. Mr. Barbee stated that the work group also agreed that there should be reasonable barriers to entry into property management and beefed up education. Mr. Barbee stated that representatives from the Nevada Association of Realtors attended the meetings and the work group asked them to forward the ideas of the work group to their leadership and legislative committee for review and possible legislative and code changes.

Commissioner Barrett stated that the resource guide would not be a cure-all, but would just be some general best practices that would hopefully be online.

Commissioner Schwartz suggested that the work group look into requiring property managers to be bonded and licensed.

3-E-1) DISCUSSION REGARDING CONTINUING EDUCATION SUPERVISOR'S REPORTS ON CONTINUING EDUCATION COURSE AUDIT PROGRAM 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.

Continuing Education Program Supervisor Kimberly Smith presented and summarized these reports.

Commissioner Schwartz suggested that internet classes be evaluated prior to approval by a committee of industry professionals prior to Division approval.

Commissioner Opatik asked that the Commission be informed of the outcome of these reports.

5-10) NRED v TODD R. MANNING - CASE # 2017-2079

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.

Todd R. Manning was present.

Patrick McDonald was present representing Mr. Manning.

Jill Rowe was present representing Mr. Manning

Preliminary Matters

Mr. Kizer submitted documents into evidence which were accepted without objection.

Ms. Rowe submitted documents into evidence which were accepted without objection.

Mr. Kizer questioned whether Ms. Rowe had authorization to represent Mr. Manning in the State of Nevada, as Ms. Rowe had in the cases heard in December 2017.

Ms. Rowe objected that the question had not been raised earlier and stated that she had reached out to the Commission, in writing, asking if there were any procedural requirements for her to be allowed to appear before the Commission. Ms. Rowe stated that she did not receive a response to her inquiry.

President Reiss noted Mr. Kizer's and Ms. Rowe's statements.

Ms. Rowe moved for a continuance of Todd Manning's case.

President Reiss denied the motion.

President Reiss stated that Mr. Kizer and Ms. Rowe would be allotted five minutes each for their opening statements. Ms. Rowe objected to the time restraint.

President Reiss granted ten minutes for each party for opening statements.

Hearing

Mr. Kizer gave his opening statement.

Ms. Rowe gave her opening statement.

State's Witness

Todd Manning testified.

The witness was dismissed.

Respondent's Witness

Jan Holle testified.

The witness was dismissed.

Respondent's Witness

Sharath Chandra testified.

The witness was dismissed.

Ms. Rowe called Commissioner Opatik to testify.

Mr. Kizer objected.

President Reiss sustained the objection.

Ms. Rowe called Commissioner Schwartz to testify.

Mr. Kizer objected.

President Reiss sustained the objection.

Ms. Rowe called President Reiss to testify.

Mr. Kizer objected.

President Reiss sustained the objection.

Ms. Rowe made a motion that the commissioners recuse themselves based upon conflict of interest.

Mr. Kizer objected.

President Reiss sustained the objection.

Ms. Rowe stated that she had requested depositions from Commissioners Opatik, Schwartz and Reiss as well as from Richard Johnson.

Mr. Kizer objected.

President Reiss sustained the objection.

Respondent's Witness

Todd Manning testified.

Mr. Kizer questioned Mr. Manning.

Ms. Rowe questioned Mr. Manning.

The Commission questioned Mr. Manning.

The case was continued to the next day due to time constraints.

6. PUBLIC COMMENT

There was no public comment.

7) ADJOURNMENT

The meeting was recessed at 4:30 p.m. on Tuesday, March 20, 2018.

DRAFT

March 21, 2018

Nevada State Business Center
3300 West Sahara Avenue
4th Floor - Nevada Room
Las Vegas, Nevada 89102

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1-A) INTRODUCTION OF COMMISSIONERS IN ATTENDANCE

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1-B) INTRODUCTION OF DIVISION STAFF IN ATTENDANCE

In Las Vegas

Administration Section: Administrator Sharath Chandra, Teralyn Thompson and Rebecca Hardin

Compliance Section: Chief Jan Holle and Daryl McCloskey

Division Counsel: Senior Deputy Attorney General Keith Kizer

In Carson City

Administration Section: Deputy Administrator Sharon Jackson

2) PUBLIC COMMENT

There was no public comment.

5-8) NRED v JULES (J.J.) LEHR - CASE # 2016-2164

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.

Jules (J.J.) Lehr was present.

Andrew Pastwick was present representing Mr. Lehr.

Preliminary Matters

Mr. Kizer stated that there was a proposed stipulation for settlement of disciplinary action to present to the Commission for consideration.

Mr. Kizer read the Summary of Factual Allegations Set Forth in the Complaint, Summary of Violations of Law Alleged in the Complaint, and Settlement into the record.

Settlement:

- Respondent agrees he will not apply for a permit to engage in property management in the State of Nevada for a period of five years from the effective date of the Order Approving Settlement Agreement. Moreover, any such application would need the approval of the Commission.
- Respondent agrees to pay to the Division \$1,500.00 in an administrative fine plus costs of \$500.00 for a total of \$2,000.00, payable within 90 days of the effective date of the Commission's Order Approving Stipulation.
- Respondent agrees to complete the following continuing education within 90 days of the effective date of the Commission's Order Approving Stipulation.:
 - 3 hours of contracts
 - 3 hours of agency
 - 6 hours of ethics

Mr. Lehr stated that he had read, understood and agreed with the stipulation.

Commissioner Opatik suggested substituting three hours of law and legislation for the three hours of contracts.

Commissioner Opatik moved to accept the stipulation as presented with a correction of two typographical errors and changing the contracts continuing education to law and legislation. Commissioner Barrett seconded. Motion carried unanimously.

5-10) NRED v TODD R. MANNING - CASE # 2017-2079...CONTINUED

Parties Present

Senior Deputy Attorney General Keith Kizer was present representing the Division.

Todd R. Manning was present.

Patrick McDonald was present representing Mr. Manning.

Jill Rowe was present representing Mr. Manning

Respondent's Witness

Todd Manning testified.

The Commission questioned Mr. Manning.

Ms. Rowe questioned Mr. Manning.

Mr. Kizer questioned Mr. Manning.

The witness was dismissed.

Respondent's Witness

Ms. Rowe called Alan Wallace to testify.

Mr. Kizer objected to the witness on the grounds that his testimony was not relevant to the case at hand.

Ms. Rowe gave her offer of proof for the validity of this witness.

President Reiss sustained Mr. Kizer's objection and the witness was dismissed.

Mr. Kizer gave his closing statement,

Ms. Rowe gave her closing statement.

Commissioner Opatik moved that the factual allegations were proven. Commissioner Barrett seconded. Motion carried unanimously.

Commissioner Schwartz moved that Respondent violated of NRS 645.252(2) was proven. Commissioner Barrett seconded. Motion failed 1-4 with President Reiss, Commissioners Barrett, Capurro and Schwartz opposed.

Commissioner Schwartz moved that Respondent violated NRS 645.235(1)(b). Commissioner Capurro seconded. Motion carried 4-1, with President Reiss opposed.

Division's Recommendation for Discipline

Chief Investigator Jan Holle stated that the Division would recommend the following:

- Fine of \$2,500.00 plus \$1,947.52 for the cost of the investigation and hearing, payable within 30 days of the effective date of the order.
- 6 hours of broker management continuing education to be completed within 60 days of the effective date of the order:

Commissioner Capurro moved to impose the following discipline:

- Costs of \$1,947.52 payable within 60 days of the effective date of the order.
- Continuing education as follows within 60 days of the effective date of the order.
 - 3 hours of law and legislation
 - 3 hours of broker management

Commissioner Schwartz seconded. Motion carried 4-1 with Commissioner Barrett opposed.

3-G) DISCUSSION REGARDING EXPANDING CONTINUING EDUCATION CREDITS FOR ATTENDING COMMISSION MEETINGS BEYOND BROKER MANAGEMENT AND ETHICS

The Commission discussed the merits and disadvantages to expanding the number of hours and designations allowed for attending Commission meetings. The Commission agreed that expanding the hours allowed from six to nine and expanding the designations to include agency and law/legislation would be beneficial.

Teralyn Thompson stated that expanding the number of hours would require a change in regulation and explained the steps required. Ms. Thompson stated that the first step would be to place this item back on the agenda as a discussion item.

Administrator Chandra stated that it would be easier and faster to change the mix of the currently allowed hours by allowing the designations to include agency and law/legislation.

President Reiss stated that two items should be placed on the next agenda, one for the additional designations and one for the increase of allowable hours.

Ms. Thompson suggested that any other changes to regulation be discussed at the same time so there would be just one file.

3-H) DISCUSSION REGARDING NAC 645.4438 AND REAL ESTATE DIVISION INFORMATIONAL BULLETIN #002 CONCERNING THE USE OF CELL PHONES AND ELECTRONIC DEVICES IN THE CLASSROOM

Commissioner Barrett stated that with increased use of technology some electronics should be allowed in the classroom as long as students don't abuse the privilege.

The Commission discussed several ways to modify Informational Bulletin # 002 to allow instructors discretion in determining what electronic devices would be allowed in their individual classrooms without causing disputes with other instructors.

President Reiss stated that the Commission should make some suggestions to the Administrator, work together and have something next meeting so the Commission/Division could take some action.

Administrator Chandra stated that the third point of the first paragraph and the NAC 645.4438(1)(b) section on the bulletin supported each other so both could be eliminated without problem.

3-I) DISCUSSION AND DECISION TO APPROVE MINUTES OF THE DECEMBER 5-6, 2017 MEETING

Commissioner Capurro moved to approve the December 5-6, 2017 Real Estate Commission meeting minutes. Commissioner Barrett seconded. Motion carried unanimously.

3-J) DISCUSSION AND DECISION ON DATE, TIME, PLACE & AGENDA ITEMS FOR UPCOMING MEETINGS

The next Real Estate Commission meeting will be held on June 12-14, 2018 in Carson City.

4-1) ADVISORY REVIEW COMMITTEE APPLICATION - JULIA A. GRAMBO

Commissioner Capurro moved to approve Ms. Grambo's application. Commissioner Barrett seconded. Motion carried unanimously.

4-2) ADVISORY REVIEW COMMITTEE APPLICATION - SHARON SWANSON

Commissioner Capurro moved to approve Ms. Swanson's application. Commissioner Barrett seconded. Motion carried unanimously.

6) PUBLIC COMMENT

Elfriede Akers objected to comparing attending Commission meetings to online classes and endorsed expanding the designations for attending Commission meetings.

7) ADJOURNMENT

The meeting was adjourned on March 21, 2018 at 12:05 p.m.