

# NEVADA REAL ESTATE COMMISSION MINUTES

September 10, 2018

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

## VIDEO CONFERENCE TO:

Department of Business and Industry Director's Office  
1830 College Parkway  
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; Norma Jean Opatik, Nye 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; Jan Holle, Chief Compliance Audit Investigator; Susan Clark, Licensing Manager; Deputy Attorney Generals Donald Bordelove and Peter Keegan representing the Division.

In Carson City: Deputy Administrator Sharon Jackson

### **2) Public Comment**

Deputy Attorney General Donald Bordelove commented on Senior Deputy Attorney General Keith Kizer's retirement from the State of Nevada Attorney General's Office. Mr. Bordelove stated that Deputy Attorney General Dennis Belcourt will be taking over Mr. Kizer's duties. Mr. Bordelove thanked Mr. Kizer for his dedication to the Attorney General's Office and the Real Estate Division.

Tiffany Banks, general counsel for Nevada Realtors, commented on agenda item 4 regarding the petition to amend NAC 645.610(1)(e). Ms. Banks stated that Nevada Realtors has been looking at several options to address this issue. Ms. Banks stated that Nevada Realtors is contemplating this issue as part of their overall legislative package. Ms. Banks stated that when the package is finalized, she will be happy to come and brief the Commission on its substance.

### **7-F) NRED v Jose Espinosa, for possible action**

**Case# 2016-2964**

#### Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Jose Espinosa was present by telephone.

#### Preliminary Matters

Mr. Bordelove read the stipulation into the record.

- Voluntary surrender license and agrees not to apply for any real estate license or permit in Nevada for 5 years from the effective date of the order.
- Should respondent wish to apply for any license thereafter, respondent must appear before the Commission.
- \$750.00 in administrative costs due within 90 days of the effective date of the order.

Mr. Espinosa stated that he has read and understands the settlement.

Commissioner Barrett moved to accept the stipulation as presented. Seconded by Commissioner Schwartz. Motion passed.

### **7-C) NRED v Neil Arby Dickinson Jr., for possible action**

**Case# 2018-57**

#### Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Neil Arby Dickinson, Jr. was present.

#### Preliminary Matters

Mr. Bordelove read the stipulation into the record.

- Respondent agrees to voluntary surrender his license and not apply for any real estate license or permit in Nevada for 5 years from the effective date of the order. Should respondent wish to apply for any license thereafter, respondent must appear before the Commission.

Mr. Dickinson stated that he had read and understands the settlement.

Commissioner Schwartz moved to accept the stipulation as presented. Seconded by Commissioner Barrett.

Commissioner Opatik asked about the investigative costs.

Mr. Bordelove stated that there were some costs but since the respondent properly notified the Division of the guilty plea as opposed to the last case heard by the Commission, costs weren't necessary.

Mr. Dickinson stated that he does not have an excuse for what he did and takes full responsibility for his actions.

Motion passed.

### **7-K) NRED v Reda Maria Guden, for possible action**

**Case# 2016-2130**

#### Parties Present

Deputy Attorney General Peter Keegan was present representing the Division.

Reda Maria Guden was present.

#### Preliminary Matters

Mr. Keegan stated that Ms. Guden agreed to stipulate to the admission of documents from the notice of documents. Mr. Keegan stated that the request for reconsideration is already part of the record. Mr. Keegan requested that the notice of documents be admitted.

President Reiss agreed to admit those documents.

Mr. Keegan went through the complaint and identified the factual allegations that have already been admitted in the answer filed by Ms. Guden on April 10, 2018.

- Paragraphs 1 and 2 were admitted
- Paragraph 4 was admitted
- Paragraph 7 was admitted
- Paragraphs 9 and 10 were admitted
- Paragraph 12 was admitted
- Paragraphs 14 and 15 were admitted
- Paragraphs 17-19 were admitted
- Paragraphs 21-28 were admitted

#### Opening Statements

Mr. Keegan gave an opening statement.

Ms. Guden gave an opening statement.

#### State's Witness

Reda Maria Guden testified.

Mr. Keegan requested to correct the complaint on page 2 where account number 5702 is referenced. Mr. Keegan stated that it should state 5072.

Ms. Guden agreed to amend the complaint to correct the account number from 5702 to 5072.

Mr. Keegan continued his examination of the witness.

Mr. Keegan requested to correct the complaint on page 2 paragraph 11 which states the account number as 3028 to 3082.

Ms. Guden testified that the account number is 3082.

Mr. Keegan continued his examination of the witness.

Mr. Keegan stated that the Division would be willing to stipulate that there have been refunds of 8 properties as identified in the petition for rehearing. Mr. Keegan stated that the Division has evidence of that.

President Reiss agreed.

Mr. Keegan continued his examination of the witness.

Mr. Keegan closed his case.

Ms. Guden presented her case.

The Commission questioned Ms. Guden.

Mr. Keegan cross-examined Ms. Guden.

The Commission questioned Ms. Guden.

The Commission questioned Mr. Keegan.

### Closing Statements

Mr. Keegan gave a closing statement.

Ms. Guden gave a closing statement.

Teralyn Thompson read the order approved by the Commission filed on September 21, 2017 into the record.

Commissioner Capurro stated that the Commission made an error by finding all fifty-one of the violations proven. Commissioner Capurro commented on violation 30. Commissioner Capurro stated that it has been established that eight of the fourteen people got their money back and the Commission doesn't know if the other six got their money back.

Commissioners Barrett and Schwartz stated that they are not in favor of changing the decision of the Commission made a year ago.

Commissioner Opatik stated that the Commission needs to reduce the violations to forty-two.

President Reiss stated that he is not inclined to change the Commission's order. President Reiss stated that the burden to ask for a re-hearing is solely on Ms. Guden. President Reiss stated there was nothing presented that would make him want to overturn the Commission's decision.

Commissioner Opatik asked for the costs of the hearing including the costs from the previous hearing.

Ms. Thompson stated that the total costs were \$1,674.32. Ms. Thompson stated that the costs from the previous hearing were \$720.63.

Commissioner Opatik moved to fine Ms. Guden \$420,000.00 plus the total costs of \$2,395.95 to be due and payable 90 days from the effective date of the order and revocation of the license. Seconded by Commissioner Barrett.

Commissioner Opatik amended her motion for the costs to be \$1,674.32. Commissioner Barrett agreed to the amendment.

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

### **7-B) NRED v Joseph Dicello, for possible action**

**Case# 2017-582**

#### Parties Present

Deputy Attorney General Peter Keegan was present representing the Division.

Joseph Dicello was present.

#### Preliminary Matters

Mr. Keegan read the stipulation into the record.

- Respondent admits all factual allegations.
- Respondent admits all alleged violations of law.
- Respondent agrees to reimburse the Rupes for the remaining \$1,600.00 and provide proof of payment to the Division within 30 days of the date of the Commission's order approving the stipulation.

- Respondent agrees to pay \$5,000.00 to the Division within 180 days \$4,500.00 of the total shall be payable as a fine and the remaining \$500.00 shall be payable to the Division as reimbursement towards costs.
- Respondent agrees to take 3 hours of live course continuing education credits covering the area of ethics and 3 hours of live continuing education credits covering the area of agency. These 6 hours shall not be counted toward the respondent's continuing education requirements and must be completed within 90 days of the effective date of the Commission's order.

Mr. Keegan stated that there is a copy September 5, 2017 letter reflecting full payment of the \$2,100.00. Mr. Keegan stated that the letter states \$1,400.00 but it is Mr. Keegan understands that the respondent has made full payment at this time in advance to show good faith.

Mr. Dicello stated that he read and understands the stipulation.

Commissioner Schwartz moved to accept the stipulation as presented. Seconded by Commissioner Capurro. Motion passed.

**7-G) NRED v Jason Farrant, for possible action**  
**Case# 2017-1167**

Parties Present

Deputy Attorney General Peter Keegan was present representing the Division.  
Mr. Farrant was not present.

Mr. Keegan stated that the Division would submit that there was proper service upon Mr. Farrant.

State's Witness

Teralyn Thompson, Administration Section Manager, testified regarding service of the complaint.

Commissioner Capurro moved that the Commission pursuant to NAC 645.860 find that the Real Estate Division has proven service of notice to the respondent. Seconded by Commissioner Barrett. Motion passed.

Mr. Keegan read the complaint into the record.

Commissioner Capurro moved that pursuant to NAC 645.860 the factual allegations and violations of law have been proven. Seconded by Commissioner Opatik. Motion passed.

Division's Recommendation for Discipline

Chief Compliance Audit Investigator Jan Holle presented the Division's recommendations for discipline.

- Fine of \$5,000.00 plus the costs of the investigation and hearing in the amount of \$835.19 to be payable within 30 days and all of the normal customary collection language.

Commissioner Capurro moved to accept the Division's recommendation for discipline. Seconded by Commissioner Opatik. Motion passed.

**7-A) NRED v Talon Michael Bedjohn, possible action**  
**Case# 2016-3634**

Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Talon Michael Bedjohn was present.

Preliminary Matters

Mr. Bordelove stated that parties have reached a settlement for approval. Mr. Bordelove stated that he does not have a written stipulation because the settlement was reached today. Mr. Bordelove read the complaint into the record. Mr. Bordelove stated the settlement as follows:

- Respondent agrees to pay the Division the \$500.00 fine plus \$463.77 in costs due within 90 days of the effective date of the Commission order.
- Standard collection language applies. No grace period permitted. If payment is not received by the Division on or before its due date, it shall be construed as a default by respondent. In the event of default, respondent agrees that unpaid balance of the administrative and costs together with any attorney's fees or costs that may have been assessed shall be due in full within 10 calendars of the date of default.

Mr. Bedjohn stated that he understands the stipulation and agrees to the terms.

Commissioner Barrett moved to accept the stipulation as read into the record. Seconded by Commissioner Capurro.

Commissioner Opatik stated that she has difficulty when a licensee ignores a fine that has been imposed by the Division. Commissioner Opatik stated that she is not happy with the amount of the fine.

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

**7-H) NRED v Marcus Fitzgerald, for possible action**  
**Case# 2018-897**

Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Mr. Fitzgerald was not present.

Mr. Bordelove stated he would like to move for an entry of default.

State's Witness

Teralyn Thompson, Administration Section Manager, testified regarding service of the complaint.

Commissioner Capurro moved that the Commission pursuant to NAC 645.860 find that the Real Estate Division has proven service of notice to the respondent. Seconded by Commissioner Opatik. Motion passed.

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

Commissioner Capurro moved that pursuant to NAC 645.860 the factual allegations and violations of law have been proven. Seconded by Commissioner Barrett. Motion passed.

Division's Recommendation for Discipline

Chief Compliance Audit Investigator Jan Holle presented the Division's recommendations for discipline.

- Revocation of the real estate license
- \$10,000.00 fine and \$452.22 investigative costs to be paid within 30 days of the effective date of the order and all of the normal customary collection language.

Commissioner Barrett moved to accept the Division's recommendation for discipline. Seconded by Commissioner Schwartz. Motion passed.

President Reiss stated that the previous broker was present this morning.

**7-I) NRED v David F. Gorski, for possible action**  
**Case# 2018-468**

President Reiss stated this case has been continued.

**7-J) NRED v David Gorski, for possible action**  
**Case# 2018-854**

President Reiss stated this case has been continued.

**7-L) NRED v Ronald Memo, for possible action**  
**Case# 2017-2245**

This case was withdrawn by the Division prior to the meeting.

**7-M) NRED v Tracy R. Reidy, for possible action**  
**Case# 2016-4090**

Parties Present

Deputy Attorney General Donald Bordelove was present representing the Division.

Ms. Reidy was not present.

Mr. Bordelove stated he would like to move for an entry of default.

State's Witness

Teralyn Thompson, Administration Section Manager, testified regarding service of the complaint.

Commissioner Barrett moved that the Commission pursuant to NAC 645.860 find that the State have proven sufficient service in the notice to the respondent. Seconded by Commissioner Schwartz. Motion passed.

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

Commissioner Capurro moved that pursuant to NAC 645.860 the factual allegations and violations of law have been proven. Seconded by Commissioner Schwartz. Motion passed.

Division's Recommendation for Discipline

Chief Compliance Audit Investigator Jan Holle presented the Division's recommendations for discipline.

- \$500.00 fine and \$674.20 investigative costs to be paid within 30 days of the effective date of the order and all of the normal customary collection language.

Commissioner Capurro moved to accept the Division's recommendation for discipline. Seconded by Commissioner Barrett. Motion passed.

**7-N) NRED v Karen C. Xiao, for possible action**  
**Case#'s 2017-1190 & 2017-1286**

Parties Present

Deputy Attorney General Peter Keegan was present representing the Division.

Ms. Xiao was present.

## Preliminary Matters

Mr. Keegan read the stipulation into the record.

- Respondent admits all factual allegations.
- Respondent admits all alleged violations of law.
- Respondent agrees to pay \$6,000.00 to the Division within 180 days to be applied as follows:
  - Respondent shall pay \$3,000.00 to the Division to settle Case# 2017-1190. \$2,500.00 of that \$3,000.00 shall be payable as a fine and the remaining \$500.00 shall be payable to the Division as reimbursement for its investigative costs.
  - Respondent shall pay \$3,000.00 to the Division to settle Case# 2017-1286. \$2,500.00 of that \$3,000.00 shall be payable to the fine and the remaining \$500.00 shall be payable to the Division as reimbursement for its investigative costs.
- Respondent agrees to take 3 hours of live course continuing education credits covering the area of property management, 3 hours of live course continuing education credits covering the area of contracts and 3 hours of live course continuing education covering the area of ethics. These 9 hours shall not count towards respondent's continuing education requirements and must be completed within 180 days of the effective date of the Commission's order approving the stipulation.

Ms. Xiao stated that she read and understands the terms of the stipulation. Ms. Xiao stated that she would like to lower the fine. Ms. Xiao stated that it was a lot of money for someone who did not hurt other people.

Commissioner Barrett moved to reject the stipulation. Seconded by Commissioner Capurro.

Commissioner Capurro stated that Ms. Xiao is not happy with the stipulation. Commissioner Capurro stated that Ms. Xiao brought up some points that may need to be heard during a hearing.

Motion failed 2 to 3 with Commissioners Schwartz, Opatik and President Reiss opposed.

Ms. Xiao stated that she will take the stipulation.

Commissioner Barrett moved to accept the stipulation as presented. Seconded by Commissioner Opatik. Motion passed 4 to 1 with Commissioner Barrett opposed.

### **5-A) For possible action: Discussion and decision regarding respondent's request for reconsideration of disciplinary action:**

**NRED v Dennis J. Wilson, Jr.**

**Case# REN 14-03-01-27**

Dennis J. Wilson, Jr. was present. Mr. Wilson provided the Commission with his written request for a new payment plan. Mr. Wilson stated that he would like to pay the fine but it is unlikely, given his current income, that he would be able to pay the fine in full. Mr. Wilson requested a new payment plan and to get his license back.

Commissioner Capurro stated that when Mr. Wilson's case came before the Commission, Commissioner Capurro recused himself because he had a financial arrangement with Mr. Wilson. Commissioner Capurro stated that he no longer has a financial arrangement with Mr. Wilson. Commission Capurro stated that he does not feel the need to recuse himself for this agenda item.

Commissioner Barrett stated that he remembers when Mr. Wilson's case was before the Commission. Commissioner Barrett stated that the Commission tried to make sure that Mr. Wilson's payment arrangements were affordable at that time because it was a rather large amount. Commissioner Barrett

stated that he supports the reconsideration of the payment amount. Commissioner Barrett stated that he was concerned about the potential to pay back the debt being possible.

Commissioner Barrett moved to reconsider the payment of debt as agreed to in Mr. Wilson's petition. President Reiss read Mr. Wilson's payment schedule into the record.

- Months 1-8 will be paid at \$250.00 per month
- Months 9-32 will be paid at \$500.00 per month
- Months 33-until full payment will be at \$1,000.00 per month

Seconded by Commissioner Capurro.

Commissioner Schwartz commented on the portion of Mr. Wilson's request in which he is asking for his license to be reinstated. Commissioner Schwartz stated that it doesn't mention in Mr. Wilson's license being taken away.

Mr. Wilson stated that because he could not pay the fine, he's license was suspended pending payment.

President Reiss asked if Mr. Wilson's license will be reinstated after he makes a payment.

Teralyn Thompson, Administration Section Manager, stated that Mr. Wilson's license can be reinstated after he makes a payment but Mr. Wilson would need to go through the reinstatement process by submitting the reinstatement form and possibly submitting continuing education. Ms. Thompson requested that Mr. Wilson contact her after the meeting adjourns.

Mr. Wilson stated that he understood.

Commissioner Opatik stated that she is having a problem with payments of \$250.00 per month. Commissioner Opatik stated that at \$250.00 per month, even with the increase, it will not be paid off in 20 months.

Commissioner Barrett stated that he believes that everyone has the right to have a second chance. Commissioner Barrett stated that it is a large amount of money but if Mr. Wilson works hard, the fine will get paid.

President Reiss and Commissioner Schwartz stated that they would support the motion to reconsider Mr. Wilson's payment arrangement.

Motion passed 4 to 1 with Commissioner Opatik opposed.

**6-A) For possible action: License Denial Appeal for Decision  
Shannon Leon, for possible action  
File No. S-LDA-18-012**

Shannon Leon was present.

Susan Clark, Licensing Manager, was present.

Ms. Leon requested that the Commission go into closed session.

Commissioner Barrett moved to go into closed session. Seconded by Commissioner Schwartz. Motion passed.

The Commission went back into open session.

Commissioner Barrett moved to grant Ms. Leon her real estate license. Seconded by Commissioner Schwartz.

Commissioner Capurro stated that he is in favor of the motion.

Motion passed.

Commissioner Opatik stated that Ms. Leon should not be allowed to get a property manager permit until her license has been active for two years.

Commissioner Schwartz amended the motion to include that Ms. Leon cannot receive her property manager permit for two years. Seconded by Commissioner Capurro. Motion passed.

**6-B) For possible action: License Denial Appeal for Decision  
Vangjush Xhurka, for possible action  
File No. S-LDA-18-011**

Vangjush Xhurka was not present. The Commission upheld the Division's decision.

**4-A) Discussion to amend NAC 645.610(1)(e) regarding use of name under which licensee is licensed submitted by Amy Keith-Lessinger on July 2, 2018.**

Commissioner Schwartz stated that the Nevada Association of Realtors is working on this issue for the next legislative session. Commissioner Schwartz stated that he would like to hold discussion on this matter until a later date.

President Reiss stated that the Commission has heard comments from licensees regarding this matter.

Commissioner Capurro stated that the Commission should take a stand on this matter. Commissioner Capurro stated that this regulation affects thirty percent of licensees.

Commissioner Barrett requested that this item be placed on the next meeting agenda.

Sharath Chandra, Administrator, stated that he would prefer that changes to be made to statute and then the Commission can amend regulations. Mr. Chandra suggested that the Commission wait until the Nevada Association of Realtors has completed their legislative package.

Commissioner Schwartz requested that the Nevada Association of Realtors keep the Commission informed.

President Reiss requested that this agenda item stay on the agenda for possible updates.

**3-A) Discussion regarding Administrator's report.**

Sharath Chandra presented this report to the Commission. Mr. Chandra discussed the Division's budget process and Division personnel updates.

**3-B) Discussion regarding the disciplinary report.**

Teralyn Thompson presented this report.

**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.

**3-D) Discussion regarding the administrative sanction report.**

Jan Holle presented this report.

**3-E) Discussion regarding Continuing Education Supervisor's report on:**

- 1. Continuing education course audit program report**
- 2. Continuing education certificate issues and midterm education record-keeping**
- 3. Continuing education and post education roster upload submittals issues.**

Kimberly Smith, Continuing Education Supervisor, presented this report.

**3-G) For possible action: Discussion and decision regarding the Education and Information Manager's FY20 Education and Research Fund projects budget plan for Commission approval pursuant to NRS 645.842.**

Sharath Chandra presented this report.

The Commission was provided with a memorandum from Safia Anwari, Education and Information Officer, regarding projects being funded which includes an increase in courses provided by the Division, funding for the continuing education audit program, funding for instructor development training, funding to update the residential disclosure guide and the Nevada law and reference guide.

Mr. Chandra pointed out that the material and information from the property manager workgroups, chaired by Commissioner Barrett, would be used for a class provided by the Division regarding property management best practices.

**3-F) Discussion regarding the Property Management Work Group recommendations.**

Commissioner Barrett stated that he is happy that the Division is creating a course for best practices for property managers. Commissioner Barrett stated that he would like for there to be a property manager reference guide similar to the residential disclosure guide.

**3-H) For possible action: Discussion and decision to approve minutes of the June 12-14, 2018 meeting.**

Commissioner Barrett moved to approve the minutes as presented. Seconded by Commission Opatik. Motion passed.

**3-I) For possible action: Discussion, nomination and election of officers for FY 19 pursuant to NRS 645.110.**

Commissioner Schwartz moved for Commissioner Barrett to be president. Seconded by Commission Capurro. Motion passed 4 to 1 with Commissioner Barrett abstaining.

Commissioner Schwartz moved for Commissioner Capurro to be vice-president. Seconded by Commission Opatik. Motion passed 4 to 1 with Commissioner Capurro abstaining.

Commissioner Capurro moved for President Reiss to be secretary. Seconded by Commissioner Barrett. Motion passed 4 to 1 with President Reiss abstaining.

**8) Public Comment**

No public comment.

**9) Adjournment**

Meeting recessed at 4:17 p.m. on September 10, 2018

September 11, 2018

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3300 W. Sahara Avenue, Nevada Room  
Las Vegas, Nevada 89102

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**1-A) Introduction of Commissioners in Attendance**

Neil Schwartz, Clark County; Norma Jean Opatik, Nye 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; Jan Holle, Chief Compliance Audit Investigator; Susan Clark, Licensing Manager; Deputy Attorney General Peter Keegan representing the Division.

In Carson City: Deputy Administrator Sharon Jackson

**2) Public Comment**

No public comment.

**7-E) NRED v Gavin Ernstone, for possible action**

**Case# 2017-1239**

Parties Present

Deputy Attorney General Peter Keegan was present representing the Division.  
Gavin Ernstone was present.  
Frank Perez was present representing Mr. Ernstone.

Preliminary Matters

Mr. Perez stated that he spent hours with former Senior Deputy Attorney General Keith Kizer negotiating the facts of the case. Mr. Perez stated that a stipulation was presented to the Commission to resolve the matter but the stipulation was rejected. Mr. Perez stated that he took to heart some of the comments made by the Commission. Mr. Perez stated that the Commission had indicated that the fine amount was too low. Mr. Perez stated that he would like to resubmit the stipulation and provide the Commission with any additional answers. Mr. Perez stated that he is willing to leave the amount of the fine to be determined by the Commission up to the maximum amount.

Mr. Keegan stated that he has not received a copy of the stipulation. Mr. Keegan stated that there was last minute discussion prior to Mr. Ernstone's hearing.

The Commission was provided with copies of the stipulation rejected by the Commission.

Mr. Keegan stated that the parties have reached a stipulation to present to the Commission. Mr. Keegan stated the respondent would admit to the facts and violations in the original complaint. Mr. Keegan stated that the respondent would pay the \$56,000.00 commission as a fine within 90 days. Mr. Keegan stated that the respondent would agree to 6 hours of contracts, 6 hours of ethics and 3 hours of agency live continuing education within 180 days. Mr. Keegan stated that the \$56,000.00 would be more than the maximum fine that could be administered by the Commission.

Commissioner Barrett moved to reject the stipulation and move forward with the case. Seconded by Commission Capurro.

Commissioner Schwartz stated that he would support the motion.

Commissioner Capurro stated that he voted against a stipulation when it was originally presented because he wanted to hear the case. Commissioner Capurro stated that he wanted to hear the case because he thinks it will have ramifications that go beyond just this case.

Motion passed.

#### Opening Statements

Mr. Keegan gave his opening statement.

Mr. Perez gave his opening statement.

State's Exhibit 1 admitted. Notice of documents bates stamped 000001-000050, 000069, 000144-000148, 000157-000168, 000182, 000227-000228, 000249-000254, 000276-000278, 000285, 000313 and 000323-000324.

Mr. Perez stated that he has one document stating that the purchase price was not inclusive of paying off the mortgage.

Respondent's Exhibit A admitted. Grant Bargain Sale Deed and Declaration of Value for APN 164-14-313-003.

#### State's Witness

Gavin Ernstone testified.

Mr. Perez cross-examined Mr. Ernstone.

Mr. Keegan re-examined Mr. Ernstone.

The Commission questioned Mr. Ernstone.

Mr. Keegan re-examined Mr. Ernstone.

#### Closing Statements

Mr. Keegan gave a closing statement.

Mr. Perez gave a closing statement.

Commissioner Barrett stated that his concern regarding this transaction was silence in the deliberation between the buyer and seller. Commissioner Barrett stated that silence meaning that the county lost out on tax ramifications. Commissioner Barrett stated that there wasn't a lot of documentation explaining

the recourse of things unless all the people were extremely knowledgeable about what was going to happen in that neighborhood. Commissioner Barrett stated that silence was done intentionally to make the transfer easier.

Commissioner Opatik stated that the multiple listing service is an advertisement avenue that goes to all Realtors, Zillow and all over the internet. Commissioner Opatik stated that anything that a Realtor puts in goes through to the internet and Realtors have the onus to use proper wording. Commissioner Opatik stated that a home that includes furniture or artwork, it is indicated that it is included. Commissioner Opatik stated that it should not be indicated as available unless it is meant that it is available for additional purchase. Commissioner Opatik stated that she does not believe that she is the only one who understands the distinction between “included” and “available”.

Commissioner Opatik stated that recorded transactions can be audited. Commissioner Opatik stated that the declaration of value is a document that can be audited. Commissioner Opatik stated that when that is audited, and it is found that market value was not paid, the buyer or seller could be responsible to the additional transfer tax. Commissioner Opatik stated that between 2014 and 2017; prices on real estate has increased not decreased. Commissioner Opatik stated that when the Commission looks at what was testified, and the documents provided, it would indicate that the property in the complaint lost \$425,000 in value in those 3 years. Commissioner Opatik stated that she finds it difficult to believe. Commissioner Opatik stated that it has been stated that the Hughes Corporation didn't lose anything, but the corporation lost, depending on the true value of the property, they lost in the private transfer fee.

Commissioner Opatik stated that if the Hughes Corporation approved of the whole transaction, why did the corporation file a complaint shortly after the transaction closed. Commissioner Opatik stated that by the time the transaction closed, the corporation saw the assessor information and found out that the property sold for \$250,000 recorded but then learned of the transaction that the corporation wasn't aware of.

Commissioner Capurro stated that from January of 2012 until now, there have been one of the largest numbers of valuation and the three-year period when the transaction took place in the in the middle of that timeframe. Commissioner Capurro stated that it is not believable that this lot lost value. Commissioner Capurro stated if someone leaves personal property in the house, the furniture is included by the licensee shouldn't collect commission. Commissioner Capurro stated that Mr. Ernstone collected at least \$36,000 of his commission on architectural plans that Mr. Ernstone believed were personal property. Commissioner Capurro stated that Mr. Ernstone should not have been a party to the naming of false consideration. Commissioner Capurro stated that the State has proven that violation.

President Reiss stated that the Commission may have been hung up on the multiple listing service versus contract. President Reiss stated that information is placed in the multiple listing service but when it comes to the contract, the contract rules. President Reiss stated that the wording in the multiple listing service does not bother him. President Reiss stated that the allegations in the complaint filed with the Commission are correct in supporting the violations. President Reiss read the violations of law. President Reiss stated that the documentation alone supports all of the violations have been proven.

#### Factual Allegations

Commissioner Opatik moved that factual allegations 1-8 were proven. Seconded by Commissioner Schwartz. Motion passed.

Commissioner Opatik moved that factual allegations 9-16 were proven. Seconded by Commissioner Capurro. Motion passed.

Commissioner Opatik moved that factual allegations 17 and 18 were proven. Seconded by Commissioner Schwartz. Motion passed.

Commissioner Opatik moved that factual allegation 19 was not proven. Seconded by Commissioner Barrett. Motion passed 4 to 1 with Commissioner Schwartz opposed.

Commissioner Opatik moved that factual allegations 20-24 were proven. Seconded by Commissioner Barrett. Motion passed.

#### Violations of Law

Commissioner Opatik moved that violations 25-27 were proven. Seconded by Commissioner Schwartz. Motion passed.

#### Division's Recommendation for Discipline

Chief Compliance Audit Investigator Jan Holle presented the Division's recommendation for discipline:

- Fine of \$30,000.00 and costs of hearing payable within 90 days of the effective date of the order with all normal customary collection language.
- Modification of the license of the Commission's choosing such as a downgrade, suspension, revocation.

Commissioner Capurro moved to order a fine of \$30,000; costs of \$2,460.94 due within 90 days of the effective date of the order; three hours of ethics and three hours of agency within 180 days of the effective date of the order; broker license to be downgraded to a broker-sales license and can't manage for at least two years and he must appear before the Commission prior to getting his broker license back. Seconded by Commissioner Schwartz. Motion passed.

#### **8) Public Comment**

No comment.

#### **9) Adjournment**

Meeting adjourned on September 11, 2018 at 1:15pm.