

**NEVADA REAL ESTATE COMMISSION
MINUTES**

VIA VIRTUAL AND IN PERSON MEETING

December 14, 2021

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 9:08 AM

1-A) Introduction of Commissioners in Attendance

Lee Gurr, Elko County; Lee Barrett, Clark County; Russell Roth, Clark County; and Spiridon Filios, Clark County

Commissioner Filios stated that President Plummer would not be present.

Commission Counsel: Deputy Attorney General Asheesh Bhalla

1-B) Introduction of Division Staff in Attendance

Sharath Chandra, Administrator; Shareece Bates, Administration Section Manager; Evelyn Pattee, Commission Coordinator; Kelly Valadez, Commission Coordinator; Charvez Foger, Deputy Administrator; Jan Holle, Chief Compliance Audit Investigator; Susan Clark, Licensing Manager; Annalyn Carrillo, Education & Information Officer; Deputy Attorney Generals Matthew Feeley and Karissa Neff representing the Division.

2) Public Comment

No Public Comment

5-B) For possible action: Discussion and decision regarding respondent's Request for Reconsideration of disciplinary terms:

NRED v Beth S. Gardner

Case # 2016-1775

Parties Present

Beth Gardner was present.

Deputy Attorney General Matthew Feeley was present representing the Division.

Mr. Feeley stated that this is Ms. Gardner's request for reconsideration of the terms of her disciplinary action. Mr. Feeley stated that Ms. Gardner is requesting that the payments she has

made be considered as full payment. Mr. Feeley stated that Ms. Gardner is requesting that the remaining amount that she owes be forgiven. Mr. Feeley stated that Ms. Gardner has paid approximately \$11,000.00 of the \$20,000.00 fine. Mr. Feeley stated that Ms. Gardner has returned her license to the Division. Mr. Feeley stated that Ms. Gardner's license is in inactive status. Mr. Feeley stated that if the Commission decides to grant Ms. Gardner's request, the Division has no objection.

Ms. Gardner read her statement and stated that her help from the Commission is based on medical and financial issues. Ms. Gardner provided the Commission with copies of medical records, pay stubs and a financial statement. Ms. Gardner stated that she has paid the Division \$9,550.00. Ms. Gardner stated that she is requesting that the Commission accept \$692.58 in investigative costs as payment in full for the remainder of the balance due.

Commissioner Barrett moved to accept the \$9,550.00 paid without the \$692.58 in costs as full payment. Seconded by Commissioner Roth. Motion passed.

5-C) For possible action: Discussion and decision regarding respondent's Request for Reconsideration of disciplinary terms:

NRED v Anson Blair Wenzel

Case # 2019-224

Parties Present

Anson Blair Wenzel was present.

Deputy Attorney General Matthew Feeley was present representing the Division.

Mr. Wenzel stated that he is requesting a reduction in his fine that was levied regarding an infraction that happened in 2019. Mr. Wenzel provided the Commission with medical documentation. Mr. Wenzel stated that he is not disputing the facts or the narrative made by the complainants. Mr. Wenzel stated that he is not able to pay the fines that were imposed as he is trying to make restitution to the complainants.

Mr. Feeley stated that the Division opposes any changes to the license revocation. Mr. Feeley stated that the Division is not going to take a position to the amount of fines decided by the Commission or any changes to the fines made by the Commission.

Commissioner Barrett stated that this was a severe case. Commissioner Barrett stated that he would be willing to extend the amount of time to pay the fine. Commissioner Barrett stated that the blatant disregard in showing up for the hearing is a big concern. Commissioner Barrett stated that he opposes a reduction of the fine.

Mr. Wenzel stated that he did not receive a response to the offer he made to attend the hearing remotely.

Mr. Feeley stated that Mr. Wenzel was properly served.

Commissioner Gurr stated that she would be willing to discuss a payment plan if Mr. Wenzel had made earnest intent in making a payment prior to coming before the Commission asking for reconsideration.

Commission Gurr moved to deny the request for reconsideration of disciplinary terms. Seconded by Commissioner Barrett. Motion passed.

5-A) For possible action: Discussion and decision regarding respondent's Request for Reconsideration of disciplinary terms:

NRED v Jules Mitchell Lehr

Case # 2019-521

Parties Present

Jules Mitchell Lehr was present.

Kathryn Holbert was present representing Mr. Lehr.

Deputy Attorney General Karissa Neff was present representing the Division.

Ms. Holbert stated that they are requesting reconsideration of the decision to revoke Mr. Lehr's license. Ms. Holbert stated that the decision to revoke Mr. Lehr's license was an extraordinary action that was taken in contrast to the case that was heard. Ms. Holbert stated that the Division made the decision to revoke Mr. Lehr's license based on the number of complaints that were made against Mr. Lehr. Ms. Holbert stated that Mr. Lehr was never given any education on what he should or should not do when he is dealing with rental transactions. Ms. Holbert stated that the initial complaint was made by Mr. Lehr's broker who made no attempt to educate Mr. Lehr. Ms. Holbert stated that the second case filed in 2018 occurred after the events of the 2019 case. Ms. Holbert stated that she doesn't think the Commission had a firm understanding of what the actual timeline was. Ms. Holbert stated that the last rental transaction that was the basis of the 2019 case occurred in May of 2018. Ms. Holbert stated that since that time, Mr. Lehr has done numerous sales transactions and never had a complaint. Ms. Holbert stated that all three complaints dealt with assisting in rental transactions.

Mr. Lehr stated that he had a habit of trying to help renters and owners and fell into some traps. Mr. Lehr stated that he has never gone beyond making the introduction of the renter to the company or owner. Mr. Lehr stated that he has never tried to manage a property. Mr. Lehr stated that if the Commission allows him to keep his license, he will pay the fines, not make mistakes, and not appear again before the Commission.

Ms. Neff stated that the basis for the respondent's motion is that there were several complaints filed but the Commission didn't understand the timeline of events. Ms. Neff stated that due to Mr. Lehr's own actions, his cases were continued well over a year. Ms. Neff stated that at the last meeting the Commission heard testimony from a member of the public who Mr. Lehr rented to that was livid after dealing with Mr. Lehr. Ms. Neff stated that was the case that led to the license revocation. Ms. Neff stated that the Commission has heard a pattern of how Mr. Lehr deals with people. Ms. Neff stated that she recommends the Commission uphold the Division's decision to revoke the license.

Commissioner Barrett stated that based on the respondent's previous two examples in front of the Real Estate Commission, the respondent was aware of what property management is. Commissioner Barrett stated that there has not been a blatant case that he has seen in his six years on the Commission of somebody that is a detriment to the real estate business whether it's property management or practicing real estate. Commissioner Barrett stated that he cannot in good conscious reverse his decision.

Commissioner Gurr stated that in March of this year, there was a stipulation for settlement that was rejected by the Commission. Commissioner Gurr stated that at that time the concern was what appeared to be a pattern of misconduct.

Commissioner Barrett moved to deny the request for reconsideration of disciplinary terms. Seconded by Commissioner Gurr. Motion passed.

5-D) For possible action: Discussion and decision regarding respondent's Request for Reconsideration of disciplinary terms:

NRED v Kathryn L. Miner

Case # 2019-694

Parties Present

Kathryn Miner was present.

Deputy Attorney General Karissa Neff was present representing the Division.

Ms. Miner stated that because of income and medical issues, she is requesting reconsideration of the disciplinary terms stated in the accepted settlement. Ms. Miner stated that her two children offered to give her \$600 each, \$1,200 total to cover the fees incurred by the Division. Ms. Miner stated that the additional \$2,500 fine has created a hardship for her. Ms. Miner stated that any help the Commission could give her with respect to the \$2,500 fine would be greatly appreciated.

Ms. Neff stated that she will leave it up to the Commission's discretion as to whether they want to relieve Ms. Miner of any monetary fines imposed.

Commissioner Gurr moved to dismiss the \$2,500 disciplinary fine so long as Ms. Miner pays \$1,236.16 in administrative costs. Seconded by Commissioner Roth.

Commissioner Gurr moved to amend the motion to include that the \$1,236.16 in administrative costs be paid no later than January 30, 2022. Seconded by Commissioner Roth. Motion passed.

4-A) For possible action: Discussion and decision regarding license denial appeal:

James Reese File No. S-LDA-21-006

Parties Present

Mr. Reese was present.

Chandon Alexander was present representing Mr. Reese.

Karissa Neff was present representing the Division.

Susan Clark, Licensing Manager was present.

Mr. Alexander gave a statement.

Susan Clark, Licensing Manager for the Real Estate Division, stated the reason Mr. Reese's application for salesperson license was denied.

Ms. Neff questioned Mr. Reese.

The Commission questioned Ms. Clark.

The Commission questioned Mr. Reese.

Mr. Alexander questioned Mr. Reese.

Commissioner Gurr moved to grant Mr. Reese a real estate license. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

4-B) For possible action: Discussion and decision regarding license denial appeal:

Gary Anthony Diaz File No. S-LDA-22-001

Parties Present

Gary Anthony Diaz was present.

Karissa Neff was present representing the Division.

Mr. Diaz gave his statement.

Susan Clark, Licensing Manager for the Real Estate Division, stated the reason Mr. Diaz's application for salesperson license was denied.

The Commission questioned Mr. Diaz.

Commissioner Barrett moved to grant Mr. Diaz a real estate license. Seconded by Commissioner Roth. Motion passed.

4-C) For possible action: Discussion and decision regarding license denial appeal:

Keith Hill File No. S-LDA-22-002

Parties Present

Keith Hill was present.

Karissa Neff was present representing the Division.

Mr. Hill gave his statement.

Susan Clark, Licensing Manager for the Real Estate Division, stated the reason Mr. Hill's application for salesperson license was denied.

Commissioner Barrett moved to reinstate Mr. Hill's real estate license. Seconded by Commissioner Roth. Motion passed.

6-D) NRED v Bradford Roberts, for possible action

Case # 2019-893

Parties Present

Bradford Roberts was not present.

Deputy Attorney General Karissa Neff was present representing the Division.

Ms. Neff stated that this complaint was filed on May 14, 2021. Ms. Neff stated that the answer was due 30 days later. Ms. Neff stated that she emailed Mr. Robert's counsel on November 8, 2021, requesting that an answer be put on file by November 19, 2021. Ms. Neff stated that after not receiving an answer, a Notice of Default was filed. Ms. Neff stated that an answer was eventually received on November 30, 2021. Ms. Neff stated that she has been in communication with Mr. Robert's counsel. Ms. Neff stated that Mr. Robert's counsel informed her that neither he nor his client would be attending this hearing. Ms. Neff advised Mr. Robert's counsel that she would proceed with a request for a default.

Ms. Neff stated that the Division would submit that there was proper service upon Mr. Roberts.

State's Witness

Evelyn Pattee, Commission Coordinator, testified regarding service of complaint.

Ms. Neff asked that the certificates of mailing and green cards be admitted as evidence.

Commissioner Filios stated that the certificates of mailing and green cards would be admitted.

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

Ms. Neff moved for the entry of default against Mr. Roberts.

Ms. Neff asked that the notice of documents be admitted as State's Exhibits.

Commissioner Filios stated that the notice of documents would be admitted.

Ms. Neff read the factual allegations and violations of law into the record.

Commissioner Gurr moved that the factual allegations and violations were proven. Seconded by Commissioner Barrett. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- \$5,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$2,357.32 to be paid within 30 days of the effective date of the order.

Commissioner Barrett moved to accept the recommendation of the Division. Seconded by Commissioner Gurr. Motion passed.

6-E) NRED v Bradford Roberts, for possible action

Case # 2020-310

Parties Present

Bradford Roberts was not present.

Deputy Attorney General Karissa Neff was present representing the Division.

Ms. Neff stated that she has been in contact with Mr. Robert's attorney. Ms. Neff stated that Mr. Robert's attorney represented to her today that neither he nor Mr. Roberts would be attending today. Ms. Neff stated that there have been settlement discussions. Ms. Neff stated that Mr. Robert's attorney stated that his client did not feel it was necessary for him to attend the hearing. Ms. Neff stated that the complaint was filed in May, 2021. Ms. Neff stated that two continuances were granted, one despite the Division's objection. Ms. Neff stated that Mr. Robert's answer was due within 30 days of the date of filing the initial complaint which was May 14, 2021. Ms. Neff stated that on November 8, 2021, after having received no answer from Mr. Roberts, counsel for the Division contacted Mr. Robert's counsel and requested an answer be filed no later than November 22, 2021. Ms. Neff stated that a Notice of Default was filed. Ms. Neff stated that not until November 30, 2021, did Mr. Roberts file an answer.

Ms. Neff moved for an entry of default against Mr. Roberts.

Ms. Neff stated that the Division would submit that there was proper service upon Mr. Roberts.

State's Witness

Evelyn Pattee, Commission Coordinator, testified regarding service of complaint.

Ms. Neff asked that the certificates of mailing and green cards be admitted as evidence.

Commissioner Filios stated that the certificates of mailing and green cards would be admitted.

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

Ms. Neff read the factual allegations and violations of law into the record.

Commissioner Barrett moved that the factual allegations and violations were proven. Seconded by Commissioner Gurr. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- \$50,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$8,395.68 to be paid within 60 days of the effective date of the order.
- Revocation of all licenses and permits effective 30 days from the effective date of the order.

Commissioner Barrett moved to accept the recommendation of the Division. Seconded by Commissioner Gurr.

Commissioner Barrett stated that this is a case where public trust has been damaged. Commissioner Barrett stated that more importantly, it has damaged the industry.

Motion passed.

6-A) NRED v David Howie, for possible action
Case # 2021-486

Parties Present

David Howie was present.

Deputy Attorney General Matthew Feeley was present representing the Division.

Preliminary Matters

Mr. Feeley stated that a settlement had been reached. Mr. Feeley stated that this matter reached a settlement at the last meeting and was not accepted by the Commission. Mr. Feeley stated that the Commission stated that based on the allegations, the amount of the fine was not sufficient. Mr. Feeley read the factual allegations and settlement into the record.

Settlement

- Respondent agrees to pay the Division \$4,000.00 as an administrative fine and \$1,206.16 in administrative costs as follows:
 - Respondent shall make monthly payments due the 1st of each month in the amount of \$1,301.54 starting January 1, 2022 for 4 months.

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

6-I) NRED v Julie M. Rowell, for possible action
Case # 2021-424

Parties Present

Julie Rowell was present.

Deputy Attorney General Virginia Tomova was present representing the Division.

Opening Statements

Ms. Tomova gave her opening statement.

Ms. Rowell gave her opening statement.

State's Witness

Maria Martin testified.

Ms. Tomova asked that the notice of documents be admitted as State's Exhibits.

Commissioner Filios stated that the notice of documents would be admitted.

The witness was dismissed.

Ms. Rowell stated her case.

State's Witness

Ms. Rowell testified.

The witness was dismissed.

Closing Statements

Mr. Tomova gave her closing statement.

Ms. Rowell did not give a closing statement.

Factual Allegations & Violations

Commissioner Barrett moved that the factual allegations and violations were proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Gurr opposed.

Division's Recommendation for Discipline

Jan Holle presented this:

- Revocation of all licenses and permits.
- Cost of the hearing and investigation in the amount of \$1,795.12 to be paid within 6 months of the effective date of the order.

Commissioner Roth moved to accept the recommendation of the Division. Seconded by Commissioner Barrett. Motion passed.

6-J) NRED v Joelle N. Daigneau, for possible action

Case # 2018-996

Parties Present

Joelle Daigneau was not present.

Deputy Attorney General Virginia Tomova was present representing the Division.

Ms. Tomova stated that the complaint in this case was filed on November 12, 2021. Ms. Tomova stated that the respondent had until December 12, 2021 to file an answer to the complaint and has failed to do so. Ms. Tomova stated that the respondent has failed to establish communication of any kind with the Attorney General's office and the Division.

Ms. Tomova moved for the entry of default against Ms. Daigneau.

Ms. Tomova stated that the Division would submit that there was proper service upon Ms. Daigneau.

State's Witness

Evelyn Pattee, Commission Coordinator, testified regarding service of complaint.

Ms. Tomova asked that the certificates of mailing and green cards be admitted as evidence.

Commissioner Filios stated that the certificates of mailing and green cards would be admitted.

Ms. Tomova asked that the notice of documents be admitted as State's Exhibits.

Commissioner Filios stated that the notice of documents would be admitted.

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

Ms. Tomova read the factual allegations and violations of law into the record.

Commissioner Gurr moved that the factual allegations and violations were proven. Seconded by Commissioner Barrett. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- \$1,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$1,574.88 to be payable upon the effective date of the order.
- Revocation of all licenses and permits.

Commissioner Gurr moved to accept the recommendation of the Division. Seconded by Commissioner Barrett. Motion passed.

6-N) NRED v Yeranuhi Arakelyan, for possible action

Case # 2018-326

Parties Present

Yeranuhi Arakelyan was not present.

Deputy Attorney General Virginia Tomova was present representing the Division.

Ms. Tomova stated that the complaint in this case was filed on November 12, 2021. Ms. Tomova stated that the respondent had until December 12, 2021 to file an answer to the complaint and has failed to do so. Ms. Tomova stated that the respondent has failed to establish communication of any kind with the Attorney General's office and the Division.

Ms. Tomova stated that the Division would submit that there was proper service upon Ms. Daigneau.

State's Witness

Evelyn Pattee, Commission Coordinator, testified regarding service of complaint.

Ms. Tomova asked that the certificates of mailing and green cards be admitted as evidence.

Commissioner Filios stated that the certificates of mailing and green cards would be admitted.

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

Ms. Tomova moved for the entry of default against Ms. Arakelyan.

Ms. Tomova asked that the notice of documents be admitted as State's Exhibits.

Commissioner Filios stated that the notice of documents would be admitted.

Ms. Tomova read the factual allegations and violations of law into the record.

Commissioner Gurr moved that the factual allegations and violations were proven. Seconded by Commissioner Barrett. Motion passed.

Division's Recommendation for Discipline

Jan Holle presented this:

- \$90,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$3,349.76 to be paid within 6 months of the effective date of the order.
- Revocation of all licenses and permits.

Commissioner Gurr moved to accept the recommendation of the Division. Seconded by Commissioner Barrett. Motion passed.

6-G) NRED v Richard W. Byrd, for possible action **Case # 2020-719**

Parties Present

Richard Byrd was present.

Deputy Attorney General Henry Kim was present representing the Division.

Opening Statements

Mr. Kim gave his opening statement.

Mr. Byrd gave his opening statement.

Mr. Kim asked that the notice of documents be admitted as State's Exhibits.

Commissioner Filios stated that the notice of documents would be admitted.

State's Witness

Maria Martin testified.

Mr. Byrd cross-examined Ms. Martin.

Mr. Kim re-examined Ms. Martin.

The Commission questioned Ms. Martin.

The witness was dismissed.

State's Witness

Keilla Paiva testified.

Mr. Byrd cross-examined Ms. Paiva.

The Commission questioned Ms. Paiva.

The witness was dismissed.

State's Witness

Howard Martell testified.

Mr. Byrd cross-examined Mr. Martell.

Mr. Kim re-examined Mr. Martell.

The Commission questioned Mr. Martell.

The witness was dismissed.

Respondent's Witness

Howard Martell testified.

Mr. Kim cross-examined Mr. Martell.

Mr. Byrd re-examined Mr. Martell.

The Commission questioned Mr. Martell.

The witness was dismissed.

Commissioner Filios stated that this matter will continue tomorrow.

7) Public Comment

Steven Kitnick stated that regarding the earlier case where he was going to testify as a witness, the respondent not only showed this body, the state of Nevada, real estate agents, licensees and the public, his disrespect. Mr. Kitnick stated that the respondent was a coward. Mr. Kitnick stated that the respondent stonewalls and delays. Mr. Kitnick stated that the respondent had continuances then didn't show up at the last minute. Mr. Kitnick stated that when talking about protecting the public, laws are needed and a change or amendment to the code of ethics at the association to protect real estate licensees from unscrupulous brokers. Mr. Kitnick stated that there are dozens of people or more who have been impacted by the respondent's actions that were found proven here today where people could not make their mortgage payments, their rent

payments, buy food for their family, pay tuition for their children or grandchildren and could not pay their medical bills. Mr. Kitnick stated that he is making a victim impact statement.

8) For Possible Action: Adjournment

Meeting recessed at 4:42 p.m. on December 14, 2021.

VIA VIRTUAL AND IN PERSON MEETING

December 15, 2021

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 9:03 AM

1-A) Introduction of Commissioners in Attendance

Lee Barrett, Clark County; Lee Gurr, Elko County; Russell Roth, Clark County; and Spiridon Filios, Clark County

Commission Counsel: Deputy Attorney General Asheesh Bhalla

1-B) Introduction of Division Staff in Attendance

Sharath Chandra, Administrator; Shareece Bates, Administration Section Manager; Evelyn Pattee, Commission Coordinator; Kelly Valadez, Commission Coordinator; Jan Holle, Chief Compliance Audit Investigator; Charvez Foger, Deputy Administrator; Annalyn Carrillo, Education & Information Officer; Deputy Attorney Generals Henry Kim, Virginia Tomova, Matthew Feeley and Karissa Neff representing the Division.

2) Public Comment

Neil Schwartz, Real Estate Commissioner from 2013 to 2020, stated that prior to his appointment to the Commission, he began writing and teaching continuing education classes in all areas. Mr. Schwartz stated that in teaching the post curriculum, he discovered that although the post curriculum was initiated around 2003, it had not been reviewed or updated for almost 10 years. Mr. Schwartz stated that one of his first goals on the Commission was to have the post curriculum reviewed and updated. Mr. Schwartz stated that he formed a workgroup and held workshops in an effort to get feedback from the public which included many continuing education instructors and sponsors. Mr. Schwartz stated that at the conclusion of the workshops, decisions were made on changes to be made to the post curriculum. Mr. Schwartz stated that with the help of fellow commissioners, many of the modules were rewritten and content was expanded or reduced in keeping within the framework of the 30 hours of instruction. Mr. Schwartz stated that during the workshops, it was discovered that there were numerous post programs being presented where the subject matter did not match the module names which caused problems for the licensees that needed to take one module in one location but needed to take and complete their modules in another location. Mr. Schwartz stated that in 2014, the present version of the post curriculum was put into place which was 7 years ago. Mr. Schwartz stated that he believes the post curriculum needs to be reviewed and changed again to reflect the changes that have occurred since 2014. Mr. Schwartz stated that the post program helps new

licensees get a quick start in having a successful real estate career and shows the public that the licensees they are dealing with are well trained and able to protect their interest in real estate transactions. Mr. Schwartz stated that he is requesting that the Real Estate Commission along with the Real Estate Division, set up an automatic review of the post education program on a regular basis such as every 4 or 5 years.

6-G) NRED v Richard W. Byrd, for possible action
Case # 2020-719

Parties Present

Richard Byrd was present.

Deputy Attorney General Henry Kim was present representing the Division.

Mr. Byrd stated his case.

Closing Statements

Mr. Kim gave his closing statement.

Mr. Byrd gave his closing statement.

The Commission questioned Maria Martin, Compliance Audit Investigator.

Commissioner Barrett stated that there is not an understanding on his part about the \$3000 being extortion. Commissioner Barrett stated that the evidence is not clear.

Commissioner Gurr stated that she tried hard to keep track of all the dates going back and forth by both complainants and the respondent. Commissioner Gurr stated that looking at the exhibits, it appears that it was a situation where the complainants had a romantic relationship outside the office. Commissioner Gurr stated that probably complicated the issue which she has seen in numerous cases over her various terms as a Real Estate Commissioner. Commissioner Gurr stated that she believes that Ms. Paiva was not being completely truthful. Commissioner Gurr stated that there were a couple of instances when she questioned Ms. Paiva specifically about the dates and timeframe, where Ms. Paiva contradicted her own complaint. Commissioner Gurr stated that looking at the exhibits, in an email, it's clear that Mr. Byrd is talking about compensation in helping bring the brokerage into the future and for providing materials and training. Commissioner Gurr stated that in the emails, Mr. Byrd is talking about compensation, not commissions. Commissioner Gurr stated that to her, commission in a real estate transaction is payment received for actively working in a file on behalf of a buyer or a seller or both. Commissioner Gurr stated that compensation is also commission but is not only commission.

Factual Allegations

Commissioner Gurr moved that factual allegations 1 and 5 have been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that factual allegations 2 and 3 have not been proved. Seconded by Commissioner Roth. Motion passed.

Commissioner Gurr moved that factual allegation 4 has not been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Gurr moved that factual allegation 6 has not been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Roth moved that factual allegation 7 has not been proven. Seconded by Commissioner Gurr. Motion passed 3-1 with Commissioner Barrett opposed.

Commissioner Gurr moved that factual allegation 8 has not been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that factual allegation 9 has been proven. Seconded by Commissioner Barrett. Motion failed 2-2.

Commissioner Roth moved that factual allegation 9 has not been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Roth moved that factual allegation 10 has not been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Gurr moved that factual allegation 11 has not been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that factual allegations 12 and 13 have been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Roth moved that factual allegation 14 has not been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Barrett moved that factual allegation 15 has not been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Gurr moved that factual allegation 16 has not been proven. Seconded by Commissioner Roth. Motion passed.

Violations of Law

Commissioner Roth moved that violations 18 and 19 have not been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that violation 17 has been proven. Seconded by Commissioner Gurr. Motion failed 2-2.

No disciplinary action was ordered by the Commission.

6-C) NRED v Paul Murad, for possible action

Case # 2019-1011

Parties Present

Paul Murad was present.

Deputy Attorney General Matthew Feeley was present representing the Division.

Preliminary Matters

Mr. Feeley stated that a settlement had been reached. Mr. Feeley read the factual allegations and settlement into the record.

Settlement

- Respondent agrees to pay the Division \$1,500.00 as an administrative fine and \$3,487.20 in administrative costs as follows:
 - Respondent shall make monthly payments due the 1st of each month in the amount of \$623.40 starting January 1, 2022 for 8 months.
- 3 hours of live continuing education in property management to be completed within 6 months of the Commission's order approving the stipulation and such continuing education shall not accrue toward license renewal requirements.

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

Mr. Murad made a statement.

6-F) NRED v Richard W. Byrd, for possible action

Case # 2020-469

Parties Present

Richard Byrd was present.

Deputy Attorney General Henry Kim was present representing the Division.

Opening Statements

Mr. Kim gave his opening statement.

Mr. Byrd gave his opening statement.

State's Witness

Ann Angell testified.

Mr. Kim asked that the State's exhibits be admitted.

Commissioner Filios stated that the exhibits would be admitted.

Mr. Byrd cross-examined Ms. Angell.

Mr. Kim re-examined Ms. Angell.

The Commission questioned Ms. Angell.

The witness was dismissed.

State's Witness

Richard Byrd testified.

Mr. Kim rested his case.

Mr. Byrd stated his case.

Mr. Kim cross-examined Mr. Byrd.

The Commission questioned Mr. Byrd.

Closing Statements

Mr. Kim gave his closing statement.

Mr. Byrd gave his closing statement.

Commissioner Barrett stated that his questions were very specific. Commissioner Barrett stated that this transaction was an assemblage for profit involving a group of people. Commissioner Barrett stated that Mr. Byrd has an obligation to a fairness doctrine and the duties owed. Commissioner Barrett stated that realtors are held to a higher standard when buying their own properties based on statute. Commissioner Barrett stated that Mr. Byrd didn't live up to the standard.

Commissioner Filios stated that he was dubious on this case because he personally has done many land deals for himself, family and clients. Commissioner Filios stated that he was surprised at how the contract in this case was written. Commissioner Filios stated that it's clear that the respondent agreed to some things he shouldn't have agreed to and didn't follow through with what was agreed upon. Commissioner Filios stated that from the preponderance of the evidence, the State has proven its case.

Factual Allegations

Commissioner Barrett moved that factual allegations 1 through 15 have been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegations 16 through 20 have been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegations 21 through 30 have been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegations 31 through 35 have been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegations 36 through 39 have been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegation 40 has been proven. Seconded by Commissioner Gurr. Motion passed.

Violations of Law

Commissioner Roth moved that violation 41 has been proven. Seconded by Commissioner Barrett. Motion passed 3-1 with Commissioner Gurr opposed.

Commissioner Roth moved that violation 42 has been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that violation 43 has been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Barrett moved that violation 44 has been proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Gurr opposed.

Division's Recommendation for Discipline

Jan Holle presented this:

- \$30,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$2,032.40 to be paid within 1 year of the effective date of the order.

Commissioner Barrett moved to accept the recommendation of the Division. Seconded by Commissioner Gurr for discussion.

Commissioner Gurr stated that she does not believe that Mr. Byrd was intentionally acting in a devious manner. Commissioner Gurr stated that \$30,000.00 is an excessive fine for someone that was in the hospital through most of the transaction with significant medical conditions.

Commissioner Roth stated that he agrees with Commissioner Gurr. Commissioner Roth stated that everything Mr. Byrd did was not with malice.

Commissioner Barrett stated that the administrative fine could have been as high as \$40,000.00.

Commissioner Filios stated that he agrees that \$30,000.00 is a little high and that \$15,000.00 plus the investigative costs is more lenient.

Commissioner Gurr moved to amend the motion to impose an administrative fine of \$15,000.00 plus the hearing and investigation costs in the amount of \$2,032.40 to be paid with 12 months of the effective date of the order. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

6-K,L) NRED v Gregory Navone, for possible action
Case # 2020-169 and Case # 2018-1606

Parties Present

Gregory Navone was not present.

Deputy Attorney General Henry Kim was present representing the Division.

Preliminary Matters

Mr. Kim stated that the Division is requesting a continuance in both cases to the next Real Estate Commission meeting.

Commissioner Filios granted a continuance until the next scheduled Commission meeting in both cases.

3-A) Discussion regarding Administrator's report.

Sharath Chandra presented this report. Mr. Chandra stated that the Division is open and conducting business. Mr. Chandra stated that the Division is now collecting the \$15.00 technology fee that was passed in the last legislative session. Mr. Chandra stated that in the last legislative session, the governor's office gave the Division a one-shot appropriation of almost \$700,00.00. Mr. Chandra stated that the Division should now be able to enhance technology. Mr. Chandra stated that the goal is to automate processing and increase the Division's online presence. Mr. Chandra stated that he and the Deputy Administrator, Charvez Foger have five vendors they are working with on getting solicitations. Mr. Chandra stated that a draft regulation that is being worked on is close to completion. Mr. Chandra stated that the draft will be put out for public comment for 30 days then a workshop will be held where the Commissioners can listen to the feedback after which there will be a revised version of the draft that will be placed on an agenda for another round of public comment. Mr. Chandra stated that the Commission will then discuss the proposed changes, vote on it and eventually it will become regulation. Mr. Chandra stated that an important piece in the regulation is education. Mr. Chandra stated that President Plummer's proposed changes to the Real Estate Termination from Company or Broker form needs to go through statute. Mr. Chandra stated that the technology will help with the issues President Plummer has brought up. Mr. Chandra stated that having one universal office is also a statutory change. Mr. Chandra stated that the upcoming legislative session will be an important one where property management licensing changes can be proposed. Mr. Chandra stated that the Division will try again this year to go self funded. Mr. Chandra thanked Commissioner Barrett for his service and many contributions while serving on the Real Estate Commission.

3-B) Discussion regarding the Disciplinary Report.

Shareece Bates presented this report. Ms. Bates provided the Commission with a written 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. 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-) Discussion regarding Continuing Education Supervisor's reports on continuing education and post education roster upload submittals issues.

Antonio Brown presented this report. Mr. Brown stated that 7 audits were scheduled in November and 5 were completed. Mr. Brown stated that there are currently 7 audits scheduled for December. Mr. Brown reported on roster uploads for continuing education and new continuing education courses.

3-F) Discussion regarding changes to the Real Estate Termination from Company or Broker Form No. 505.

Tabled to the next Real Estate Commission meeting.

3-G) For possible action: Discussion and decision to approve minutes of the September 14-16, 2021 meeting.

Commissioner Gurr moved to approve the minutes as presented. Seconded by Commissioner Roth. Motion passed.

7) Public Comment

No Public Comment

8) For Possible Action: Adjournment

Meeting recessed at 3:53 p.m. on December 15, 2021.

VIA VIRTUAL AND IN PERSON MEETING

December 16, 2021

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 9:04 AM

1-A) Introduction of Commissioners in Attendance

Lee Barrett, Clark County; Lee Gurr, Elko County; Russell Roth, Clark County; and Spiridon Filios, Clark County

Commission Counsel: Deputy Attorney General Asheesh Bhalla

1-B) Introduction of Division Staff in Attendance

Sharath Chandra, Administrator; Shareece Bates, Administration Section Manager; Evelyn Pattee, Commission Coordinator; Kelly Valadez, Commission Coordinator; Jan Holle, Chief Compliance Audit Investigator; Deputy Attorney Generals Henry Kim and Virginia Tomova representing the Division.

2) Public Comment

No Public Comment

6-H) NRED v Richard W. Byrd, for possible action

Case # 2020-728

Parties Present

Richard Byrd was present.

Deputy Attorney General Henry Kim was present representing the Division.

Opening Statements

Mr. Kim gave his opening statement.

Mr. Byrd gave his opening statement.

State's Witness

Maria Martin testified.

Mr. Kim asked that the State's exhibits be admitted.

Commissioner Filios stated that the exhibits would be admitted.

Mr. Byrd cross-examined Ms. Martin.

Mr. Kim re-examined Ms. Martin.

The witness was dismissed.

State's Witness

Richard Byrd testified.

The Commission questioned Mr. Byrd.

State's Witness

Raymond Mielzynski testified.

The Commission questioned Mr. Mielzynski.

The witness was dismissed.

Mr. Kim rested his case.

Respondent's Witness

Maria Martin testified.

Mr. Kim cross-examined Ms. Martin.

The witness was dismissed.

Mr. Byrd stated his case.

Closing Statements

Mr. Kim gave his closing statement.

Mr. Byrd gave his closing statement.

Commissioner Roth stated that the issue is whether the respondent was acting as a broker in the transaction. Commissioner Roth stated that if the Commission finds that respondent was not acting as a broker, this would then be a civil case and should not be before the Commission.

Commissioner Filios stated that just because the respondent was acting as a friend and took ownership of the water rights, the respondent still has obligations as a licensee to act in the best interest of the complainant.

Commissioner Gurr stated that water rights are a big part of life in rural communities and Pahrump is one of the rural communities. Commissioner Gurr stated that a water right is the legal right to use the physical supply of water that is under or next to what is pertinent to the land. Commissioner Gurr stated that water rights are not real property. Commissioner Gurr

stated that whether the Commission thinks that Mr. Byrd did right or wrong in his relationship with Ray Mielzynski, it's a matter of civil litigation or an investigation through a policing entity.

Commissioner Barrett stated that his concern is that someone that is out in the marketplace who doesn't have integrity and doesn't do what they say they are going to do, as a broker, there is a risk to the public.

Mr. Henry quoted case law that states "in Nevada, water rights are regarded and protected as real property."

Factual Allegations

Commissioner Barrett moved that factual allegation 1 has been proven. Motion died for lack of a second.

Commissioner Roth moved that factual allegation 1 has not been proven. Seconded by Commissioner Gurr. Motion passed 3-1 with Commissioner Barrett opposed.

Commissioner Gurr moved that factual allegation 2 has not been proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

Commissioner Gurr moved that factual allegation 3 has been proven. Seconded by Commissioner Barrett. Motion passed 3-1 with Commissioner Roth opposed.

Commissioner Gurr moved that factual allegation 4 has been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that factual allegations 5 through 13 have not been proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

Commissioner Filios moved to amend factual allegation 14 to read Respondent sold 17 acre-feet of water from the Property, through 9 separate transactions for a total combined price of \$112,000.00, but only paid Respondent \$45,000.00. Seconded by Commissioner Barrett. Motion passed.

Commissioner Barrett moved that factual allegation 14 as modified has been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that factual allegation 15 has not been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Gurr moved that factual allegation 16 has been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Gurr moved that factual allegation 17 has not been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Barrett moved that factual allegation 18 has been proven. Seconded by Commissioner Gurr. Motion failed 1-3 with Commissioners Gurr, Filios and Roth opposed.

Commissioner Gurr moved that factual allegation 18 has not been proven. Seconded by Commissioner Roth. Motion passed with Commissioner Barrett opposed.

Commissioner Barrett moved that factual allegation 19 has been proven. Seconded by Commissioner Gurr. Motion passed.

Violations of Law

Commissioner Gurr moved that violation 20 has not been proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

Commissioner Barrett moved that violation 21 has not been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that violation 22 has been proven. Seconded by Commissioner Gurr. Motion passed.

Commissioner Barrett moved that violation 23 has not been proven. Seconded by Commissioner Roth. Motion passed.

Commissioner Barrett moved that violation 24 has been proven. Seconded by Commissioner Gurr. Motion passed 3-1 with Commissioner Roth opposed.

Commissioner Gurr moved that violation 25 has been proven. Seconded by Commissioner Barrett. Motion passed.

Commissioner Gurr moved that violation 26 has not been proven. Seconded by Commissioner Roth. Motion passed 3-1 with Commissioner Barrett opposed.

Division's Recommendation for Discipline

Jan Holle presented this:

- Revocation of all licenses and permits.
- \$15,000.00 administrative fine plus the cost of the hearing and investigation in the amount of \$2,487.62 to be paid within 6 months of the effective date of the order.

Commissioner Barrett moved to accept the recommendation of the Division. Seconded by Commissioner Filios.

Commissioner Gurr stated that she is not in favor of license revocation. Commissioner Gurr stated that she would be in favor of downgrading respondent's license.

Commissioner Filios stated that he agrees with Commissioner Gurr. Commissioner Filios stated that he would be in favor of a higher fine and continuing education.

Commissioner Roth stated that he is not in favor of license revocation or downgrading respondent's license. Commissioner Roth stated that he is in favor of a lesser fine. Commissioner Roth stated that he is in favor of continuing education.

Commissioner Barrett stated that brokers have an obligation to protect the public. Commissioner Barrett stated that the complainant believed the respondent had integrity. Commissioner Barrett stated that he doesn't think anywhere in the transaction did the respondent show integrity even if the respondent was not acting as a licensee. Commissioner Barrett stated that integrity is a quality of being honest, having a strong moral principal and moral insight. Commissioner Barrett stated that the respondent should not have a license.

Motion passed.

3-H) For possible action: Discussion and decision on date, time, place & agenda items for upcoming meetings, including setting meeting dates for 2022.

The Commission agreed to the following dates for 2022 Commission meetings.

- March 29-31, 2022
- June 7-9, 2022
- September 27-29, 2022
- December 13-15, 2022

7) Public Comment

No public comment.

8) For Possible Action: Adjournment

Meeting adjourned at 1:26 p.m. on December 16, 2021.

Prepared by: Evelyn Pattee