



North Dakota Real Estate Commission Meeting Minutes -- FINAL
10:00 a.m., Thursday, November 9, 2023 – virtual only
1120 College Dr Ste 204, Bismarck, ND

www.realestatend.org

Present by Teams: Tate Cymbaluk, chair; Scott Breidenbach, vice chair; members: Sandra Meyer, Steven Bitz, Steven Link; Tiffany Grossman, assistant attorney general; David Phillips, special assistant attorney general; staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist. Members of the public also present by Teams.

1. Call to order, roll call and determination of quorum. Chair Mr. Tate Cymbaluk called the meeting to order at 10:00 a.m. Ms. Jeanne Prom, executive director, called the roll, with a quorum of all members present. Others present online introduced themselves.
2. Review and approval of agenda. Mr. Steven Link moved to approve the agenda as presented. Mr. Steven Bitz seconded. Motion carried by unanimous voice vote.
3. Review of applicants. There were no license applicants to review.
4. Update on complaints.
 - A. 2022-09 – Myron and Dina Goodman v. Mike Nelson and Danielle Levey.

Ms. Prom noted that Ms. Tiffany Grossman, assistant attorney general, was present by Teams to answer any questions from the commission. Ms. Grossman would advise the commission if it needed to convene in an executive session for attorney consultation under the authority of NDCC § 44-04-19.1.

Ms. Prom reviewed the proposed findings of fact, conclusions of law, and orders from Mr. Lance Shurtleff, an attorney representing licensees Mike Nelson and Danielle Levey, Respondents. The Respondents claim there were no violations of license law, and therefore should be no disciplinary actions, monetary fines or awarding of costs.

Ms. Prom reviewed the proposed findings of fact, conclusions of law, and orders from Mr. David Phillips, representing the State on behalf of the Complainants Myron and Dina Goodman. The State claims there were violations of license law by both respondents, and the commission should:

- 1) Assess a fine of \$1,000 for violations on NDCC § § 43-23-11.1(1)(b), 43-23-11.1(1)(p), and 43-23-12.1(2) on each respondent,
- 2) Assess one half of the actual costs, including attorney's fees, incurred by the Commission in the investigation and prosecution of the case, which are \$8,184.80 total, on each Respondent, which will be \$4,092.40 being assessed to Respondent Nelson and \$4,092.40 being assessed to Respondent Levey, and
- 3) Issue a letter of reprimand for violation of NDCC § 43-23-11.1(1)(v) to both Respondents.

Ms. Grossman stated that in a civil proceeding, the commission will need to determine if it is more likely than not that any violations occurred, and clarified when fines can be assessed. The commission discussed the findings and conclusions presented.

Mr. Scott Breidenbach moved the commission fine Respondents Mr. Nelson and Ms. Levey \$1,000 each and assess to each Respondent one half of actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the

case which are \$8,184.80 total, with \$4,092.40 being assessed to Respondent Nelson and \$4,092.40 being assessed to Respondent Levey. The motion died for lack of a second.

Mr. Link moved that Respondents each be issued a letter of reprimand, and each be assessed one half of the actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case which are \$8,184.80 total, with \$4,092.40 being assessed to Respondent Nelson and \$4,092.40 being assessed to Respondent Levey. The motion died for lack of a second.

Mr. Bitz moved that Respondents each be issued a letter of reprimand for violation of NDCC §43-23-11.1(1)(v) for failure to disclose the correct age of the mobile home, a material fact, and that the findings of fact be rewritten to reflect this. Ms. Sandra Meyer seconded. Discussion: The commission discussed assessing Respondents the investigation costs but agreed by consensus with clarification from Ms. Grossman that a separate motion can assess these costs. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Breidenbach moved that Respondents each be assessed a fine of \$1,000. The commission discussed that NDCC § 43-23-12.1(2) should be identified as the statute the Respondents violated. Mr. Breidenbach amended the motion to include language that the fines of \$1,000 each are assessed for violation of NDCC § 43-23-12.1. Mr. Link seconded the motion as proposed and amended by Mr. Breidenbach. Discussion: Mr. Breidenbach clarified that the statute cited in the motion is NDCC § 43-23-12.1(2). Roll call vote on the amended clarified motion: ayes – Mr. Link, Mr. Breidenbach, Mr. Cymbaluk; nays – Mr. Bitz, Ms. Meyer. Motion carried 3-2.

Mr. Breidenbach moved that Respondents together be assessed one-half of the actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case, or \$4,092.40, split equally between Mr. Nelson and Ms. Levey; with the commission responsible for the remaining costs of \$4,092.40. Mr. Bitz seconded. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Link moved the commission direct Ms. Grossman to revise the findings of fact and conclusions of law and the order to reflect the commission's determinations, and to table a final vote at another meeting after these revisions are drafted. Mr. Bitz seconded. Discussion: This may be a special meeting. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Cymbaluk thanked Ms. Grossman for her legal advice and Ms. Grossman left the meeting.

- B. 2022-12 – Natasha Lafrenz v. Jesse Clooten. Ms. Prom introduced Mr. Phillips, who was now acting in his role as the Special Assistant Attorney General for the commission. Mr. Phillips stated the commission previously dismissed this complaint against another original Respondent, Mr. Lee Gierszewski. Mr. Link moved to accept

the stipulation and settlement agreement signed by Mr. Jesse Clooten, assessing a fine of \$2,500 and costs including attorney fees of \$1,150; and if Mr. Clooten does not pay the fine and costs within 30 days of when the Notice of Entry of Order is issued, Mr. Clooten agrees to pay an additional \$300. Mr. Bitz seconded.

Discussion: Mr. Phillips noted that the legislature amended NDCC § 43-23-11.1(2)(4) in 2021 to allow the commission to direct a licensee to pay a fine not to exceed \$5,000 and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. Previously the fine limit was not to exceed \$2,500. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

- C. 2023-04 – Shad Kouba v. Nathan Engh. Mr. Link moved to dismiss 2023-04 – Shad Kouba v. Nathan Engh. Ms. Meyer seconded. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

5. Update from management.

- A. 2023-2024 priorities. Ms. Prom reported that the September 12, 2023 FBI audit of the commission's use, retention and disposal of FBI criminal history records obtained through the N.D. Office of Attorney General's Bureau of Criminal Investigation (BCI) identified no discrepancies.

Mr. Breidenbach moved to require 3 hours of continuing education on real estate fraud and scams including vacant property scams, as a mandatory topic for all licensees for the November 16, 2024 through November 15, 2025 CE cycle. Mr. Link seconded.

Discussion: Ms. Meyer suggested education on underground storage tanks and the EPA requirements. Ms. Jill Beck, CEO at the North Dakota Association of Realtors, reminded that the association requires the ethics course this year, and recommended not requiring the fraud and scams course this CE cycle. Mr. Breidenbach noted that 6 hours on mandatory topics is reasonable when all licensees need 12 hours, and many licensees are looking for direction on what CE to take. Mr. Link noted that the topic of scams and frauds is an issue across states, that education providers may have courses on this topic already available, and when mandatory topics are more general and not just specific to North Dakota, licensees can get credit for these courses in other states where they are licensed. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Breidenbach moved to contract with PSI for testing services from July 1, 2024 through June 30, 2025. Mr. Link seconded. Discussion: Staff will document if there are any issues with services. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Breidenbach moved to discontinue the use of test codes for applicants taking state and national broker and salesperson license examinations. Mr. Link seconded. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk; nays – none. Motion carried unanimously.

Mr. Rob Yost reported on research Ms. Candie Robinson conducted on PayPal and Venmo as possible alternative payment methods. The commission agreed by consensus to continue with current payment methods.

- B. Policies/procedures. The commission discussed the history of the fees charged for changing a firm address. Current fees are set at \$50/license with a minimum charge of \$250 and charges not to exceed \$1,500. Mr. Link moved to eliminate the minimum fee of \$250 for a firm change of address, with total fees for a firm not to exceed \$2,500.

Mr. Bitz seconded. Roll call vote: ayes – Mr. Link, Mr. Bitz, Ms. Meyer, Mr. Cymbaluk; nays – Mr. Breidenbach. Motion carried 4-1.

Ms. Prom reported that the ND Department of Health and Human Services (DHHS) issued a subpoena to the commission on the commission's request, so the commission can share license records with DHHS's Child Support Enforcement Unit. Ms. Prom and Mr. Phillips reported that the commission is waiting to hear back from the U.S. Air Force on whether the intent of the new federal law on occupational license portability was that commissions waive the requirement to take state exams for qualifying active military members and their spouses. Ms. Prom reported on a call from a non-licensee who referenced a ND board also waiving fees for military and military spouses.

- C. Trust account waivers. The commission received a list of recent trust account waivers from Ms. Cieana Schneider.
 - D. Trust account audits. Mr. Rob Yost reviewed recent trust account audits.
 - E. Next meetings. The commission's next regular meetings are at 10 a.m., Thursdays, January 25, and March 21, 2024. The Labor Commissioner has requested 1 hour at the March 21, 2024 meeting as part of the interim study of occupational licensing boards' licensing of non-residents and continuing education requirements.
 - F. License numbers. The commission reviewed current license and application numbers, and renewals.
6. Financial reports – August 2023 through September 2023. Mr. Breidenbach stated the public sector is losing employees to the private sector, and training new employees is expensive. The commission directed Ms. Prom to meet with the chair and vice chair on staff compensation. Mr. Breidenbach moved to approve the August 2023 through September 2023 financial statements. Mr. Bitz seconded. Motion carried by unanimous voice vote.
7. Minutes – August 24, 2023 and August 29, 2023 meetings. Mr. Link moved to approve the August 24, 2023 minutes as presented. Mr. Bitz seconded. Motion carried by unanimous voice vote.
- Mr. Link moved to approve the August 29, 2023 special meeting minutes as presented. Ms. Meyer seconded. Motion carried by unanimous voice vote.
8. Other – next meeting – January 25, 2024. The next commission meetings likely will include a special meeting at a date to be determined, and the regular meeting on Thursday, January 25, 2024.

Adjourn. Chair Cymbaluk adjourned the meeting at 12:07 p.m.