

North Dakota Real Estate Commission  
February 18, 2003  
Pearce & Durick Law Office  
Conference Room  
9:00 AM Central Time

Present: Diane Louser/Chair, Roger Cymbaluk/Vice Chair, Bob Willer/Member, Kris Sheridan/Member, Jerry Youngberg/Member, Patricia M. Jergenson/Secretary Treasurer, Dave Reich/Legal Counsel, Rhonda Mahlum & Lynnell Rude/Senger Mahlum & Goodhart pc

1. Chair Diane Louser called the meeting to order.
2. APPROVE MINUTES OF THE PREVIOUS MEETING. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the minutes of the previous meeting. M/C
3. FINANCIAL REPORT. Financial reports for October, November, December 2002 and January 2003 were reviewed. Possible alternatives to investing the \$60,000 in the Education, Research and Recovery Fund were discussed. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to investigate ways of investing the \$60,000 principal in the Recovery Fund. M/C Research will be conducted and reported at the next Commission meeting. It was noted that the transfer of \$12,500 from the Recovery Fund had not been made. It was the consensus of those present to authorize the transfer from the Recovery Fund to the general account. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the financial reports dated October, November, December 2002 and January 2003. M/C
4. REVIEW FORMAL COMPLAINTS.  
CASE# 2002-04 Jill Kordonowy v. Sandra Retterath. The Commission reviewed the formal complaint filed by Ms. Kordonowy alleging that Ms. Retterath misrepresented the condition of said property by assuring the Kordonowys' that the property had a well with a new pump that pumped at a rate of ten gallons per minute, that a well quality report indicated that the well was good and that the property was zoned agricultural. Mr. Reich recommended dismissal of this complaint, as the facts do not support a finding of willful misrepresentation on the part of Ms. Retterath. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to dismiss the complaint. M/C  
CASE# 2002-05 M/M Praus v. Ron Schoch. The Commission reviewed the formal complaint filed by M/M Praus alleging that Mr. Schoch, the owner and listing agent for the property, misrepresented the condition of the property by

telling the Praus' that he had no problems with water in the basement, that the shingles were in good condition, and that the sewer system was in working order. It was noted that this case is currently in litigation. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table this case until the pending litigation is settled. M/C There is another complaint against Mr. Schoch that will be heard at the same time as Case# 2002-05. CASE# 2002-06 Paul Wilhelm v. Joe LaDuke. The Commission reviewed the formal complaint filed by Mr. Wilhelm alleging that Mr. LaDuke violated certain regulations governing licensees in the sale by contract for deed of certain real property owned by Mr. LaDuke. Mr. Reich recommended dismissal of this complaint due to the fact that the Commission does not have jurisdiction to grant the relief requested by the complainant and that the facts of the complaint do not appear to support violation of statutes or regulations governing the conduct of ND real estate licensees by Mr. LaDuke. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to dismiss the complaint. M/C CASE# 2002-07 Calvin Mauch v. Ann Trom. The Commission reviewed the formal complaint filed by Mr. Mauch alleging that Ms. Trom violated certain regulations governing licensees in a failed sale of their house. Mr. Reich recommended dismissal of this complaint as it did not appear that there is sufficient evidence of any violation of statutes and regulations governing the conduct of ND real estate licensees. Commissioner Youngberg moved, seconded by Commissioner Willer to dismiss the complaint. M/C (1 nay Commissioner Cymbaluk)

For future reference: The Commissioners requested copies of the paperwork involved in the transactions involved in complaints. (listing contracts, purchase agreements, property condition statements, etc.)

5. 2001/2002 AUDIT REPORT: Rhonda Mahlum and Lynnell Rude of Senger, Mahlum and Goodhart pc. presented the annual audit. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve the audit as presented. M/C Staff will submit the audit report to the Legislative Council.
6. DUPLICATE LICENSE. Mr. Reich found no code or regulatory provision which would prohibit the issuance of more than one license to an individual nor a code or regulatory provision which would require a person who obtains multiple real estate broker licenses to have ownership interest in, or be an officer in, the multiple entities which maintain his or her license. It was the consensus of the Commissioners that based on this information there was no need to request an opinion from the Attorney General's Office.
7. CORRESPONDENCE FROM MICHAEL CYMBALUK. Michael Cymbaluk requested the Commission to consider allowing him to make application for a real estate license. It has been 5 years since his license was revoked. Discussion. Commissioner Sheridan moved, seconded by Commissioner Willer to allow Michael Cymbaluk to make application for a salesperson real estate license, following all of the requirements that apply, and that he provide a satisfactory credit report. M/C with Commissioner Cymbaluk abstaining.
8. DISCUSS ADVERTISING OFFERING A REBATE. Discussion was open regarding advertising offering a Buyer's rebate. Mr. Reich was asked to write a letter to Assist 2 Sell for clarification on their rebate program and how they feel it does not conflict with the law.

9. REVIEW REQUEST FOR TRUST ACCOUNT WAIVER. Commissioners reviewed the request for a trust account waiver from Steve Stoner. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to grant the trust account waiver. M/C
10. RECIPROCAL AGREEMENT CHANGES FROM THE STATE OF INDIANA. Indiana has promulgated a new rule that requires reciprocal applicants to take and pass the Indiana licensure law section of the broker or salesperson's examination. This requires us to re-negotiate our present reciprocal agreement to reflect the required change. Commissioner Cymbaluk moved, seconded by Commissioner Willer to remove the reciprocal agreement with Indiana based on these new requirements. Discussion. Motion and second were withdrawn. Commissioner Cymbaluk moved, seconded by Commissioner Willer to accept the Indiana position and authorized staff to send a letter of acceptance, expressing the Commission's disappointment in Indiana's position to require an examination. M/C
11. REVIEW APPLICATION FOR A BROKER'S LICENSE. A discrepancy was noted between the real estate broker application of Brian Bosch regarding hours worked in the real estate business, number of listings obtained, and number of closed transactions and the information provided by his broker regarding the same items. Mr. Bosch's explanation was reviewed. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to request Mr. Bosch provide a list of transactions, including the names of the buyer and seller, dates of the transactions, and if there are 20 or more transactions that have transpired within the last 2 years as indicated he will be approved to take the broker's exam. M/C
12. CORRESPONDANCE FROM WAYNE ANDERSON. Mr. Anderson sent a letter to the Commission expressing his frustration with the noise level and distractions at both test centers. Commissioner Sheridan visited the Fargo test site and Pat Jergenson visited the Bismarck test site. Both found the noise level to be distracting at each location. Staff will send a letter to Mr. Anderson informing him that we will be notifying AMP regarding the noise level and although we will be changing the rules regarding failing the test 3 times and waiting a year to retest, we are unable to allow him to retake at this time.
13. AMP REPORT ON CANDIDATE TAKING EXAM WITHOUT APPROVAL. Larry Fabrey/AMP provided an explanation via email regarding AMP's mistake in allowing Cynthia Jones to retake the salesperson license exam. Commissioner Cymbaluk moved, seconded by Commissioner Willer to require Cynthia Jones to wait the one-year from the third attempt to pass the exam before her license will be issued but she is not required to retake the exam. M/C
14. CORRESPONDENCE FROM DEARBORN PUBLISHING. Dearborn Publishing requests approval from the Commission to offer correspondence course numbers: R02-10, C02-07, PM02-08, RC02-11, and R02-09 in North Dakota without the final exam. ARELLO certification for each course was submitted with the request. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the offering of the correspondence courses as requested by Dearborn Publishing without a final exam. M/C
15. APPLICATION FOR REGISTRATION OF SUBDIVIDED LAND BY DISNEY SARASOTA SPRINGS RESORT. An application was submitted by Disney Vacation

Development to register Disney's Sarasota Springs Resort, part of the Disney Vacation Club Resorts. The timeshare resort consists of 184 vacation homes. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the application for registration for Disney's Sarasota Springs Resort. M/C

16. DISCUSSION OF RULES RELATING TO THE SUBMISSION OF ERRORS AND OMISSIONS INSURANCE VERIFICATION. Upon review of 70-02-05-02 and 70-02-05-08 it was the consensus of those present that the law is clear regarding the requirement for licensees to provide verification of errors and omissions insurance at the time of renewal and by 5pm on the date of expiration of coverage.

17. OTHER BUSINESS:

- a. Computaught requested approval to provide their distance learning courses on CD or floppy disk (CBT). ARELLO informed staff that Computaught does not intend to maintain ARELLO certification of its CBT courses and ARELLO certification is a requirement for approval of distance learning in North Dakota. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to not approve the CBT method of delivery for Computaught. M/C
- b. The Commissioners were informed of a problem that has surfaced with Minnesota not accepting continuing education for licensees through reciprocity. Staff is working on the situation with the MN Department of Commerce and the MN Association of REALTORS®.
- c. A copy of a licensee's business card was sent to the Commission office showing that the address on the business card is not the actual office address. The licensee will be contacted.
- d. Pocket cards will need to be addressed in the revisions to the Rules and Regulations.
- e. A letter complimenting Jim Deibert and his pre-licensing course was distributed and a copy will be sent to Mr. Deibert.
- f. Staff's report to the NDAR Board of Directors was included for informational purposes.

Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to adjourn the meeting. M/C

Respectfully submitted,

Patricia M. Jergenson  
Secretary Treasurer