

## **MINUTES OF ND REAL ESTATE COMMISSION WEDNESDAY, NOVEMBER 29, 2000**

The North Dakota Real Estate Commission met on Wednesday, November 29, 2000 in the Red River Room, North Dakota State Capitol Building, Bismarck, North Dakota. The meeting began at 12:45 PM, Central Time with the following members present:

Jerry Youngberg	Chairperson
Robert Willer	Vice Chairperson
Roger Cymbaluk	Member
Kris Sheridan	Member
Dennis Schulz	Secretary Treasurer

### **RE: APPROVE MINUTES OF SEPTEMBER 14, 2000 MEETING**

Commissioner Willer moved that the minutes of the September 14, 2000 meeting be approved. Commissioner Sheridan seconded the motion. Motion carried.

### **RE: APPROVE MONTHLY FINANCIAL REPORTS FOR THE MONTHS OF SEPTEMBER AND OCTOBER 2000**

Commissioner Sheridan moved that the financial reports for the months of September and October 2000 be approved. Commissioner Cymbaluk seconded the motion. Motion carried.

### **RE: REVIEW PROPOSED STIPULATED AGREEMENT REGARDING EARL ALLEN, A LICENSED REAL ESTATE BROKER**

Commission members were presented with a Stipulated and Settlement Agreement regarding Earl Allen, Jr., a licensed real estate broker. The stipulated agreement was the result of a complaint initiated by the Commission alleging and asserting that Earl Allen violated certain statutes and/or regulations governing the conduct of North Dakota real estate licensees. The complaint alleged that Mr. Allen had, among other things, acted, or assumed to act, as a real estate broker, during the time period when his license was under suspension in violation of Section 43-23-05 N.D.C.C. by posting and maintaining signs at various locations in Minot, North Dakota.

Commissioner Cymbaluk moved that the Commission enter into a stipulated agreement which provides that the respondent, Earl Allen, Jr. be issued a letter of reprimand which shall be placed in his file with the Commission and pay a monetary fine in the amount of \$500.00 to the Commission. Commissioner Sheridan seconded the motion. Motion carried.

**RE: REVIEW ATTORNEY GENERAL'S OPINION REGARDING  
RECIPROCITY WITH FOREIGN COUNTRIES**

Commission members were presented with a copy of an opinion issued by Heidi Heitkamp, North Dakota Attorney General, regarding the question of whether the North Dakota Real Estate Commission is permitted to engage in reciprocity with provinces in Canada or other foreign countries in connection with 43-23-10, N.D.C.C.

Attorney General Heitkamp in her opinion dated November 13, 2000 indicated that Section 43-23-10, N.D.C.C. does not permit reciprocity with any of the provinces of Canada or other foreign countries. Furthermore, if the Commission wants to be able to grant foreign countries reciprocity, authorizing legislation would need to be passed.

Commissioner Cymbaluk moved that based upon Attorney Heitkamp's opinion the Commission is prohibited from entering into a formal reciprocity agreement with any province of Canada or other foreign countries. However, an applicant may still obtain licensure in North Dakota by successfully completing the licensing examination in North Dakota. Furthermore, under the circumstances it is recommended that the Commission not seek specific legislation at this time. Commissioner Willer seconded the motion. Motion carried.

**RE: REVIEW KRAUSE VS. NESDAHL COMPLAINT PREVIOUSLY  
TABLED PENDING CIVIL LITIGATION**

The Commission was informed that the civil litigation involving Ann and Ronald Krause vs. Orville Nesdahl and Bruce Walker was recently resolved. The complaint against the licensees has been pending for the past couple of years. Because the matter has been resolved to the satisfaction of the Complainants, David Reich presented an Order for Dismissal of Complaint Without Prejudice to the Commission.

Commissioner Sheridan moved that the Commission entered into the dismissal order. Commissioner Willer seconded the motion. Motion carried.

**RE: REVIEW OPINION REQUESTED BY BISMARCK-MANDAN BOARD  
OF REALTORS**

In a July 21, 2000 letter, Patricia Jergenson, Executive Officer with the Bismarck-Mandan Board, submitted a question as to whether an agent who entered into an agreement with a seller while the property was listed with another agency is in violation. Jergenson asked the Commission to review the matter for a possible violation of 70-02-03-11, N.D. Administrative Code.

Commissioner Sheridan moved that the Commission postpone making a decision at this time and request that the issue be researched further before making a final determination. Commission Cymbaluk seconded the motion. Motion carried.

**RE: PROPOSED LEGISLATION MANDATING RECIPROCITY AMONG REGULATED/LICENSED OCCUPATIONS**

Commission members were presented with proposed legislation drafted by the North Dakota Attorney General's office mandating reciprocity among various regulated/licensed occupations. In addition, the Commission was presented with an analysis of the various features of the bill outlining some of the problem areas that potentially exist. It was noted that some of the areas of concern are in conflict with reciprocity agreements that currently exist between the North Dakota Real Estate Commission and other jurisdictions with which we currently have reciprocity.

Commissioner Cymbaluk moved that the Commission draft a letter to the North Dakota Attorney General's office expressing the Commission's concerns and requesting that we be specifically exempted. Commissioner Sheridan seconded the motion. Motion carried.

**RE: REVIEW PROPOSED LEGISLATION REGARDING ERRORS & OMISSIONS INSURANCE**

A bill draft proposing E & O Insurance was presented to the Commission for their consideration. The bill draft is the result of discussions with the North Dakota Association of REALTORS over the past few months. It was noted that the language contained in the proposed bill was taken almost exclusively from that contained in the South Dakota statutes which mandates E & O insurance for licensees in that state.

Commissioner Cymbaluk moved that the Commission go on record as supporting mandatory E & O insurance for all licensees and that Dave Reich be authorized to pre-file the bill with the North Dakota Legislative Council. Commissioner Sheridan seconded the motion. Motion carried.

**RE: REVIEW OFFICE LEASE AGREEMENT**

Secretary Schulz presented the Commission with a new office lease agreement that maintains the same office rent as the previous three-year period. The new agreement covers that period from October 1, 2000 to September 30, 2003 at a monthly rate of \$390.00 per month.

Commissioner Cymbaluk moved that the Commission enter into a new three-year lease agreement with Downtown Offices, Inc. Commissioner Sheridan seconded the motion. Motion carried.

**RE: REVIEW TRUST ACCOUNT WAIVER SUBMITTED BY THOMAS N. KLOSTER**

Secretary Schulz submitted a formal request from Thomas N. Kloster, a licensed real estate broker, requesting a waiver of the trust account requirement based upon no activity with reference to his real estate practice at this time.

Commissioner Willer moved that Mr. Kloster be granted a waiver under Section 43-23-14.1, N.D.C.C. Commissioner Cymbaluk seconded the motion. Motion carried.

**RE: REVIEW FORMAL COMPLAINT CASE 2000-04 NICK CHOUKALOS  
VS JOSHUA OLSON**

The Commission reviewed a formal complaint filed by Nick Choukalos, a real estate licensee, against Joshua Olson, a real estate licensee, alleging that Mr. Olson improperly interfered with an existing agency relationship in violation of 70-02-03-11 N.D. Administrative Code. Mr. Choukalos indicated that Paula and Troy Metzger had attended an open house conducted by the sellers, Larry and Laurie Sankey, on April 30, 2000. Assist 2 Sell listed the Sankey's house for sale. Josh Olson was the listing agent. After attending the Sankey's open house on April 30<sup>th</sup>, the Metzgers called Nick Choukalos and asked him to write-up an offer to present to the Sankeys. Mr. Choukalos wrote an offer and called Josh Olson to make an appointment to present the offer at 6:00 p.m. on April 30<sup>th</sup>. Mr. Olson had not arrived at the Sankeys by approximately 6:20 p.m. when Mr. Choukalos had to leave. He left the offer with the Sankeys and asked them to review it with Mr. Olson. Mr. Olson called Mr. Choukalos at approximately 6:45 p.m. and indicated he was working on the offer, but that it was incomplete in that the buyers' phone number, address and social security number were not filled in. Mr. Choukalos provided this information. At approximately 6:50 p.m., Paul Metzger called Mr. Choukalos and indicated that the sellers had called and indicated that they wanted to meet with the Metzgers without Mr. Choukalos being present. At 9:20 p.m., Mr. Olson called Mr. Choukalos and indicated that the sellers had not made a counter offer and that the buyers did not get the house. At 9:45 p.m., Paul Metzger called Mr. Choukalos and stated that the Metzgers had purchased the home directly from the sellers.

The Metzgers have failed to cooperate regarding the investigation after repeated attempts by Mr. Reich to gather additional information regarding the sale. In addition, Mr. Choukalos has requested that he be allowed to withdraw his complaint.

Commissioner Willer moved that based upon the recommendation of legal counsel that Mr. Choukalos' complaint be dismissed, without prejudice. Commissioner Sheridan seconded the motion. Motion carried.

**RE: REVIEW FORMAL COMPLAINT CASE 2000-05 JOSHUA OLSON VS  
NICK CHOUKALOS**

The Commission reviewed a formal complaint filed by Joshua Olson, a real estate licensee, against Nick Choukalos, a real estate licensee. Mr. Olson alleges in his complaint against Mr. Choukalos that Choukalos failed to advise his buyers that he was entitled to receive a 3% commission and that he also misrepresented the nature of his agency relationship to the Metzgers.

The Metzgers have been unwilling to cooperate in the investigation and without their cooperation it would be difficult to proceed with a hearing.

Commissioner Willer moved that based upon the recommendation of legal counsel that Mr. Olson's complaint be dismissed, without prejudice. Commissioner Sheridan seconded the motion. Motion carried.

**RE: ADJOURNMENT**

Commissioner Sheridan moved and Commissioner Cymbaluk seconded that the meeting be adjourned. Motion carried.

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DENNIS SCHULZ, SECRETARY

**NORTH DAKOTA REAL ESTATE COMMISSION  
WEDNESDAY, NOVEMBER 29, 2000**

The North Dakota Real Estate Commission met on Wednesday, November 29, 2000 in the Red River Room, North Dakota State Capitol Building, Bismarck, North Dakota. The public hearing began at approximately 9:00 AM, Central Time with the following members present:

Jerry Youngberg	Chairperson
Robert Willer	Vice Chairperson
Roger Cymbaluk	Member
Kris Sheridan	Member
Dennis Schulz	Secretary Treasurer
David Reich	Legal Counsel

**RE: HEARING IN THE MATTER OF JAY & LINDA WACKER VS.  
HARRY ZACHER AND MICHAEL PUKLICH**

A hearing was held based upon a formal complaint filed with the Commission by Jay & Linda Wacker regarding Harry Zacher and Michael Puklich, both real estate licensees.

Allen Hoberg, Director of Office of Administrative Hearings, conducted the hearing. David Reich, Special Assistant Attorney General for the North Dakota Real Estate Commission, represented the Commission. Dale Moench represented Mr. Zacher and Mr. Puklich.

The hearing opened with a request from David Reich, representing the North Dakota Real Estate Commission, that the complaint against Harry Zacher be dismissed. It was noted that although a dispute exists over when Mr. Zacher first provided Mr. & Mrs. Wacker with copies of documents signed by them in the subject transaction, it is undisputed that he has provided the complainants with copies of the requested documents during the pendency of these proceedings.

The Commission voted on a motion by Cymbaluk and seconded by Sheridan that the complaint against Zacher be dismissed. Motion carried.

Those testifying at the hearing were Jay & Linda Wacker, the complainants, and licensees Arlene Volk, Michael Puklich, John Souter and Harry Zacher. At the conclusion of the hearing, the hearing officer gave the parties until December 13, 2000 to submit closing arguments in the form of post-hearing briefs.

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DENNIS SCHULZ, SECRETARY

**NORTH DAKOTA REAL ESTATE COMMISSION  
WEDNESDAY, NOVEMBER 29, 2000**

The North Dakota Real Estate Commission met on Wednesday, November 29, 2000 in the Red River Room, North Dakota State Capitol Building, Bismarck, North Dakota. The public hearing began at 1:45 PM, Central Time with the following members present:

Jerry Youngberg	Chairperson
Robert Willer	Vice Chairperson
Roger Cymbaluk	Member
Kris Sheridan	Member
Dennis Schulz	Secretary Treasurer
David Reich	Legal Counsel

**RE: HEARING IN THE MATTER OF ROBERT R. RODGERS**

A hearing was held based upon a request by Robert R. Rodgers whose request for licensure was denied by the Commission on July 27, 2000.

Allen Hoberg, Director of Office of Administrative Hearings, conducted the hearing. David Reich, Special Assistant Attorney General for the North Dakota Real Estate Commission, represented the Commission. Mr. Rodgers was not represented by legal counsel.

Mr. Rodgers offered testimony regarding the circumstances that resulted in his plea of guilty in District Court in Grand Forks to a Class B felony. His father also addressed the Commission regarding his son and offered background information pertinent to his son's conduct. No other testimony was introduced into evidence.

Commissioner Cymbaluk moved that Mr. Rodgers be denied approval of his application at this time and that he be advised that when he has completed his probationary period and his record has been expunged the Commission will be willing to reconsider his request for licensure. Commissioner Sheridan seconded the motion. Motion carried.

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DENNIS SCHULZ, SECRETARY

