

## MINUTES

The Alabama Real Estate Commission met April 3, 2009 at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama.

Those present were Chairman Sheila Hodges; Vice-Chair Jewel Buford; Commissioners Steve Cawthon, Bobby Hewes, Clif Miller, Jan Morris, Bill Watts and Nancy Wright; Executive Director Philip Lasater; Assistant Executive Director Patricia Anderson; Deputy Attorney General Charles Sowell; Assistant Attorney General Chris Booth; Education Director Ryan Adair; Investigators David Erfman, Chuck Kelly, Phillip Bunch, K.C. Baldwin and Auditor Denise Blevins. Hearing Officer was Tori Adams. Commissioner Dorothy Riggins-Allen was absent with notice.

Other staff members present were Public Information Manager Vernita Oliver-Lane, Public Information Specialist, Lori Moneyham, Senior Accountant Molli Jones, Information Technology Manager Nancy Barfield and Assistant Information Technology Manager Brett Scott.

The meeting having been duly noticed according to the Open Meetings Act, was called to order at 9:00 a.m. by Chairman Hodges.

Commissioner Watts moved to approve the March 11, 2009 minutes as presented. Commissioner Hewes seconded the motion and it passed unanimously 8-0.

Executive Director Philip Lasater reported that the March financials are generally not available until after the 15<sup>th</sup> of each month but will be posted soon on the Commissioner web site and any questions may be discussed at the next meeting.

Mr. Lasater invited Commissioners to attend the exit interview with Examiners on April 14, 2009 to hear a report on the 2007-2008 compliance audit. Examiners stated that Commissioner attendance was not required but they wanted Commissioners aware and invited. It is anticipated that Examiners will review the findings they have already indicated would be reported and that have been shared with Commissioners along the way. Mr. Lasater reported that the two legislative bills (SB 23 and HB428) followed most closely by the Commission concerning License Law changes have passed their respective chambers and been reported out of committee by the other chamber and are in a position for final passage.

Commissioner Buford inquired about the timing on the posting of minutes. It was explained that staff does not post them until the following meeting when they are approved. Upon discussion and consideration it was the consensus of the Commission that staff not publish or post meeting Minutes until they had been officially approved.

The public hearing was opened for comments from anyone who wished to speak to proposed changes to Rules 790-X-1-.06, 790-X-1-.07, 790-X-1-.09, 790-X-1-.12, 790-X-1-.13, 790-X-1-.14, 790-X-1-.15, 790-X-1-.16, 790-X-1-.17, 790-X-1-.19, 790-X-1-.21, 790-X-2-.02, and 790-X-2-.03. The halls have been sounded and no one present to speak and from those present in the room hearing none, the public hearing concluded.

Discussion regarding the history of designation courses for continuing education approval carried over from the February meeting was resumed. Commissioner Watts asked Assistant Executive Director Pat Anderson to provide Commissioners with an overview of the information compiled by staff and shared in Commissioner's packets. Ms. Anderson discussed the chronology of rule changes on this matter from 1986 to 2004 and Commissioner rationale regarding each rule change along with a review of the other documents identifying existing designations, Commission approved courses, designation courses that have not been submitted for approval and a summary of a survey of other states. Clarification was provided regarding rule 790-X-1-.12(15) that allows for CE credit to be earned by Alabama licensees when courses are taken out of state as long as such courses are approved by another state. Clarification was also provided about Alabama's approval process. Online capability for submission of course applications and upcoming expanded capability for instructor and school applications was outlined.

Chairman Hodges recognized Chip Watts, current President of the Alabama CCIM (Certified Commercial Investment Member) chapter, to speak to this issue of designation courses and more specifically the instructors of those courses and the process for approval. Mr. Watts introduced David Corey, current present of the Alabama IREM (Institute of Real Estate Management) chapter. Mr. Watts, having heard the previous discussion, stated the Alabama chapter would educate their members to obtain CE certificates when they attend courses out of state and provide those to the Alabama Commission in order to receive credit. Mr. Corey spoke briefly to assure Commissioners that all NAR (National Association of Realtors) courses and instructors are of the highest quality. Deputy Attorney General Charles Sowell addressed Commissioners to express concern if they are considering any kind of blanket approval for courses and/or instructors within a select group of providers. He cited two cases of disparate treatment and the courts rulings on those. Chairman Hodges asked Commissioners to give additional thought to all they had heard on this subject today and let Mr. Lasater know in advance if they desired further discussion at next month's meeting. If so it should be made an agenda item.

Chairman Hodges welcomed the Leadership Class from the Alabama Association of Realtors who were present to observe as a part of their experience.

Commissioner Morris made a motion to conduct its disciplinary hearing disposition discussions in open session. The motion was seconded by Commissioner Buford and it passed unanimously 8-0.

## **HEARINGS**

### **Johnny A. Moore, Request to Renew Lapsed Real Estate Broker License Under Hardship, I-12,989**

Upon discussion of the evidence and testimony presented in the matter of Johnny A. Moore hardship request for late broker license renewal, Commissioner Morris made a motion to deny Mr. Moore's request. Commissioner Cawthon seconded the motion and it passed unanimously 8-0.

### **Arthur L. Cole, III, Denied Application for Real Estate CE Instructor Status, I-13,004**

Upon discussion of the evidence and testimony presented by Arthur L. Cole, III, in his request for Commission re-consideration in accepting his application for continuing education instructor, Commissioner Morris made a motion to approve Mr. Cole's application for a continuing education instructor. Commissioner Hewes seconded the motion and it passed unanimously 8-0.

### **Alabama Real Estate Commission vs. Donald Joseph Taylor, Formal Complaint No. 3128**

Upon discussion of the evidence and testimony presented in the matter of Donald Joseph Taylor, Salesperson, Waterways Realty, Orange Beach, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(19) by failing to comply with Section 34-27-35(k) in that Respondent leased condominiums for the public for a fee while his license was inactive, Commissioner Buford made a motion to find Mr. Taylor guilty and fine him \$2,500. Commissioner Morris seconded the motion. The motion failed 1-7 with Commissioners Cawthon, Miller, Morris, Watts, Hodges, Hewes and Riggins-Allen voting no. Commissioner Cawthon made a motion to find Mr. Taylor guilty and revoke his license. Commissioner Morris seconded the motion and it passed 7-1 with Commissioner Buford voting no.

### **Alabama Real Estate Commission vs. Helen A. Emmons, Formal Complaint No. 3135**

Upon discussion of the evidence and testimony presented in the matter of Helen A. Emmons, Qualifying Broker, HAE, Inc., and Exit Realty at Hillcrest, Mobile, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, Count 1: Section 34-27-36(a)(19) by failing to comply with 34-27-32(f) and 34-27-2(a)(11)b. in that Respondent failed to maintain a place of business separate from her home; Count 2: Section 34-27-36(a)(8)a. and 34-27-

36(a)(8)b. by failing, within a reasonable time, to properly account for or remit money coming into her possession which belonged to others, or commingling money belonging to others with her own funds, and by failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama, Commissioner Watts made a motion to find Ms. Emmons guilty on both counts. Commissioner Hewes seconded the motion and it passed unanimously 8-0. Commissioner Morris made a motion to fine Ms. Emmons \$2,500 on Count 1 and to revoke her license on Count 2. Commissioner Cawthon seconded the motion and it passed unanimously 8-0.

**Alabama Real Estate Commission vs. Michael W. Madison, Formal Complaint No. 3129**

Upon discussion of the evidence and testimony presented in the matter of Michael W. Madison, Salesperson, Madison Realty, LLC, Gulf Shores, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(23)a. by entering a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude, Commissioner Hewes made a motion to find Mr. Madison guilty and fine him \$500. Commissioner Miller seconded the motion and it passed unanimously 8-0.

**Tracy Gatewood, Hardship Application to Obtain Original Real Estate Salesperson's License After Temporary License Lapsed, I-13,025**

Upon discussion of the evidence and testimony presented by Ms. Gatewood in her request for hardship application for an original salesperson's license, Commissioner Cawthon made a motion to grant Ms. Gatewood a 30-day extension. Commissioner Morris seconded the motion and it passed unanimously 8-0.

**Janice D. Moore-Smith, Hardship Application to Obtain Original Salesperson's License After Temporary License Lapsed, I-13,033**

Upon discussion of the evidence and testimony presented by Ms. Moore-Smith regarding her hardship request for an original salesperson's license, Commissioner Buford made a motion to deny Ms. Moore-Smith's request. Commissioner Morris seconded the motion and it passed unanimously 8-0.

**NOT APPEARING ITEMS FOR DISCUSSION**

**James Wade Green, Waiver of Hearing and Guilty Plea, Formal Complaint No. 3103**

Upon review of the evidence and testimony presented in the matter of James Wade Green, Qualifying Broker, Visions Real Estate Development Co., Pensacola, Florida, and the alleged violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16) by presenting to the Alabama Real Estate Commission, as payment for a fee or fine, a check which was returned unpaid by the bank upon which it was drawn, Commissioner Hewes made a motion to find Mr. Green guilty and fine him \$250. Commissioner Morris seconded the motion and it passed unanimously 8-0.

**Justin Anthony James Gray, Surrender of License in Lieu of Hearing, I-12,856**

Upon review of Mr. Gray's request to surrender his license in lieu of a hearing submitted an affidavit acknowledging his salesperson license will be rendered revoked, Commissioner Watts made a motion to accept Mr. Gray's surrender of license. Commissioner Morris seconded the motion and it passed unanimously 8-0.

**Vernice Lennette Lucas-Tyus, Surrender of License in Lieu of Hearing, Formal Complaint No. 3098**

Upon review of the affidavit of license surrender submitted by Ms. Lucas-Tyus rendering her salesperson license revoked, Commissioner Cawthon made a motion to accept Ms. Lucas-Tyus's surrender of license. Commissioner Hewes seconded the motion and it passed unanimously 8-0.

**Kyri Nichole Patterson, Application for Determination of Licensing Eligibility, I-13,032**

Upon discussion of the licensing eligibility of Ms. Patterson, Commissioner Watts made a motion to deny Ms. Patterson's application. Commissioner Cawthon seconded the motion and it passed 7-1 with Commissioner Morris voting no.

**Ada Y. Rueda, Request for Extension to Complete Salesperson Prelicense Course, I-13,035**

Upon review of Ms. Rueda's request for an extension of the one year deadline to complete the salesperson's prelicense course, Commissioner Watts made a motion to grant Ms. Rueda a 30-day extension. Commissioner Miller seconded the motion and it passed unanimously 8-0.

**Randy D. Wilson, Request for Extension to Complete the Salesperson's Prelicense Course, I-13,036**

Upon review of Mr. Wilson's request for an extension of the one year deadline for completing the salesperson's prelicense course, Commissioner Hewes made a motion to grant Mr. Wilson a 60-day extension. Commissioner Morris seconded the motion and it passed 5-3 with Commissioners Watts, Cawthon and Hodges voting no.

**Tiffanie Baker, Request for Extension to File an Application for Original Salesperson's License, I-13,037**

Upon review of Ms. Baker's request for an extension to file application for the original salesperson's license, Commissioner Buford made a motion to deny Ms. Baker's request. Commissioner Hewes seconded the motion and it passed unanimously 8-0.

**Gudrun Elwell, Request for Extension of 90-Day Deadline for Issuance of her Temporary Salesperson's License, I-13,038**

Upon review of Ms. Elwell's request for an extension of the 90-day deadline after passing the examination to submit application for a temporary salesperson's license, Commissioner Cawthon made a motion to grant a 90-day extension of the deadline. Commissioner Morris seconded the motion and it passed unanimously 8-0.

**Paige Thatcher, Re/Max By the Bay, Request for Waiver of Transfer Fee for Company Name Change, I-13,039**

Upon review of Ms. Thatcher's request for waiver of transfer fees to add their d/b/a of Re/Max by the Bay to their licensed company name of Real Estate by the Bay, Inc., Commissioner Morris made a motion to deny Ms. Thatcher's request for a waiver of transfer fees. Commissioner Watts seconded the motion and it passed unanimously 8-0.

**Confirm May Meeting Date and Location for the Record**

Commissioner Morris made a motion to confirm that next Commission meeting will be held on Friday, May 22 at 9:00 a.m. at 1201 Carmichael Way, Montgomery, Alabama.

There being no further business, the meeting adjourned at 1:30 p.m.

Done this 3<sup>rd</sup> day of April, 2009.

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Sheila Hodges, Chairman

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Patricia Anderson, Recording Secretary