

## MINUTES

A meeting of the Alabama Real Estate Commission was held December 4, 2014, at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama.

Those present were Chairman Bill Watts; Vice Chairman Nancy Wright; Commissioners Steve Cawthon, Reid Cummings, Cindy Denney, Carole Harrison, Clif Miller, Dorothy Riggins-Allen and Danny Sharp; Executive Director Patricia Anderson; Assistant Executive Director Teresa Hoffman; General Counsel Chris Booth; Assistant General Counsel Mandy Lynn; Education Director Ryan Adair; Licensing Administrator Anthony Griffin and Investigators David Erfman, Chuck Kelly, Phillip Bunch and K. C. Baldwin. Tori Adams served as Hearing Officer.

Other staff members present for all or part of the meeting were Public Relations Manager Vernita Oliver-Lane, Public Relations Specialist Lori Moneyham, IT Manager Brett Scott, Accounting and Personnel Manager Molli Jones, Education Specialist Julie Norris, IT Systems Specialist Steven Brown and Licensing Assistant Gini Ingram.

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order at 9:00 a.m. by Chairman Bill Watts and a quorum was declared.

Commissioner Riggins-Allen made a motion to approve the minutes from the October 23, 2014 meeting. Commissioner Cawthon seconded the motion and it passed unanimously 9-0.

Executive Director Patricia Anderson presented the financial report. The expenditures and revenues are close to projection. When comparing revenue from FY2014 with revenue from FY2011, FY2012 and FY2013, there was a significant increase in FY2014. This increase is mainly due to an increase in license transfers and original licenses.

Ms. Anderson thanked the Commission staff for their participation in the State Combined Campaign (SCC). Ms. Anderson recognized Julie Norris and Gini Ingram as the coordinators of the Commission's SCC fund raising. Through their leadership, the Commission staff exceeded the SCC goal by more than 300% with 97% staff participation.

Ms. Anderson announced that the Commission had received notice of an upcoming audit by the Alabama Department of Examiners of Public Accounts and a Sunset Audit. She explained that the Commission is subject to a compliance audit by the Examiners every two years and an audit by the Sunset Committee every four years. Both of these audits will take place in 2015. At the completion of the Sunset Audit, Commission staff managers and Commissioners will be asked to meet with the Legislature's Sunset Committee.

Ms. Anderson and Education Director Ryan Adair will attend the Association of Real Estate License Law Officials (ARELLO®) Leadership Meeting, January 6-8, 2015. Ms. Anderson is a member of the ARELLO® Executive Committee and Mr. Adair serves as an ARELLO® committee chair.

General Counsel Chris Booth updated Commissioners on a recent timeshare scam. The Commission issued a fraud warning and alert regarding companies that have been soliciting owners of

timeshare units for the resale of those units. These companies are not located at the stated addresses and Alabama real estate licensees are being falsely identified as participating in these transactions.

Commissioners discussed the current 2013-2017 Commission Strategic Plan. Upon consensus, Commissioners decided to pursue legislation to regulate HOAs and hold off until a future time to propose legislation regarding the regulation of property managers. Language that addressed the Commission's desire to deliver continuing education through videoconferencing was changed to reflect the fact that this was already an option through the universities that are able to provide real estate education. Ms. Anderson reported that two videos have been added to the Commission's website to coincide with strategic plan Goal 6 to educate licensees on the Commission's role and rules. These videos are designed to be used by brokers in sales meetings.

Commissioners discussed the Homeowners' Association bill (HB137) that was presented in the 2014 Alabama legislative session. Commissioner Cawthon provided a list of bullet points as guidelines for the Commissioners based on the content of HB137. Commissioner Cawthon made a motion to adopt these guidelines as the basis for a Commission policy statement on regulating HOAs. Commissioner Miller seconded the motion and it passed unanimously 9-0. This policy statement will be submitted to the Alabama Association of REALTORS® and sponsors of any future HOA bill explaining the Commission's position on this issue.

Commissioner Cawthon made a motion to conduct disciplinary hearing disposition discussions and decisions in an open meeting. Commissioner Miller seconded the motion and it passed unanimously 9-0.

## **HEARINGS AND APPEARINGS**

### **Alabama Real Estate Commission vs. Richard Steven Tucker, Formal Complaint No. 3359**

Richard Steven Tucker, Inactive Associate Broker, Montgomery, Alabama, was charged on Count 1 of violating *Code of Alabama 1975*, as amended, Section 34-28-36(a)(23)a. by having entered 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 in case number CC 2013-430 and on Count 2 of violating *Code of Alabama 1975*, as amended, Section 34-27-31(j) in his failure to notify the Commission within ten days of the institution and again after the final adjudication of the criminal action in case number CC-2013-430. Upon discussion of the evidence and testimony presented in the matter Commissioner Cawthon made a motion to find Mr. Tucker guilty on Count 1 and fine him \$1000 and to find him guilty on Count 2 and revoke his license. Commissioner Denney seconded the motion and it passed 7-2 with Commissioners Riggins-Allen and Harrison voting against the motion.

### **Rafus Rayford Jones, Application for Temporary Salesperson's License, Investigative File, I-14,474**

Upon discussion of the evidence and testimony presented by Mr. Jones regarding application for a temporary salesperson's license, Commissioner Riggins-Allen made a motion to approve his application. Commissioner Harrison seconded the motion and it passed 7-2 with Commissioners Cummings and Denney voting against the motion.

**LaDonya C. Merrill, Application for Temporary Salesperson’s License, Investigative File I-14,477**

Upon discussion of the evidence and testimony presented by Ms. Merrill regarding her application for a temporary salesperson’s license, Commissioner Cawthon made a motion to approve her application. Commissioner Wright seconded the motion and it passed unanimously 9-0.

**Alabama Real Estate Commission vs. David L. Brewer and Brewer Real Estate Company, Formal Complaint No. 3361**

David L. Brewer, Qualifying Broker, Brewer Real Estate Company, Montgomery, Alabama and Brewer Real Estate Company, Montgomery, Alabama were charged on Count 1 of violating *Code of Alabama 1975*, as amended, Section 34-27-36(a)(8)b. by failing to deposit and account for at all times funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama, by having a shortage of funds in the trust account. Upon discussion of the evidence and testimony presented in the matter, Commissioner Sharp made a motion to find Mr. Brewer and Brewer Real Estate Company guilty and fine them \$2,500 each. Commissioner Riggins-Allen seconded the motion and it passed 8-1 with Commissioner Cawthon voting against the motion. Commissioner Wright made a motion to suspend Mr. Brewer’s license for 90 days with the suspension stayed pending his completion of the *Risk Management: Avoiding Violations* and *Risk Management for Brokers* courses in a classroom setting. Mr. Brewer will not be able to use credit from these courses toward his next license renewal. Commissioner Cummings seconded the motion and it passed unanimously 9-0.

**Grant Evans Lovinggood, Request to Have Original Salesperson’s License Issued, Investigative File I-14,488**

Upon discussion of Mr. Lovinggood’s request to apply for an original salesperson’s license after allowing his temporary license to lapse, Commissioner Cummings made a motion to approve his request and allow him 60 days to submit his application for an original salesperson’s license. Commissioner Miller seconded the motion and it passed unanimously 9-0.

**NOT APPEARING ITEMS FOR RULING**

**Brian J. Johnson, Waiver of Hearing and Guilty Plea, Formal Complaint No. 3357**

Upon review of the evidence and testimony presented in the matter of Brian J. Johnson, Salesperson, New Beginnings Realty, Inc., Vinemont, Alabama, 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 Wright made a motion to find Mr. Johnson guilty and fine him \$250. Commissioner Cawthon seconded the motion and it passed unanimously 9-0.

**Ebonie Brown, Waiver of Hearing and Guilty Plea, Formal Complaint No. 3358**

Upon review of the evidence and testimony presented in the matter of Ebonie Brown, Salesperson, Arcara Residential LLC, Hoover, Alabama, and the alleged violation of the *Code of Alabama 1975*, as amended, Section 34-27-36(a)(16) by submitting an electronic check as payment for real estate license renewal fees which was returned unpaid, Commissioner Miller made a motion to find Ms. Brown guilty and fine her \$250. Commissioner Cummings seconded the motion and it passed unanimously 9-0.

**Jason Christopher White, Waiver of Hearing and Guilty Plea, Formal Complaint No. 3360**

Upon review of the evidence and testimony presented in the matter of Jason Christopher White, Salesperson, Atmore Realty, Atmore, Alabama, 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 Wright made a motion to find Mr. White guilty and fine him \$250. Commissioner Sharp seconded the motion and it passed unanimously 9-0.

**John C. Boller, Failure to Notify Commission of Address Change - Waiver of Hearing and Guilty Plea, Formal Complaint No. 3356**

Upon review of the evidence and testimony presented in the matter of John C. Boller, Qualifying Broker, Gulf Shores Rentals, Inc., Gulf Shores, Alabama, and the alleged violation of the *Code of Alabama 1975*, as amended, Section 34-27-36(a)(19) by failing to comply with Alabama Real Estate Commission Rule 790-X-3-.01 which states that "it shall be a violation for any licensee to change the address of his place of business as set out on his numbered license certificate and fail to notify the Commission in writing within thirty (30) days after such change has been made," Commissioner Cummings made a motion to find Mr. Boller guilty and fine him \$400. Of the \$400 fine \$100 is stayed for the mitigating circumstances involving the conditions caused by the BP gulf oil spill, resulting in a remaining fine of \$300 which must be paid within 30 days. Commissioner Wright seconded the motion and it passed unanimously 9-0.

**Alabama Real Estate Commission vs. Randall D. Hilsman, Continuation of Hearing on Formal Complaint No. 3340**

Commissioners Watts and Cummings recused themselves from this hearing because neither was present during the original hearing on May 22, 2014. Commissioner Sharp recused himself because he was not present during the September 29, 2014 hearing. Commissioner Denney recused herself because she was not sworn in as a Commissioner until the October 23, 2014 Commission meeting and was, therefore, not present for the May or September hearings. Commission Vice Chairman Wright presided over the December 4, 2014 proceedings of this case.

Randall D. Hilsman, Salesperson, Carney Realty, Inc., Sunset Bay Branch, Gulf Shores, Alabama, was charged on Count 1 with violating *Code of Alabama 1975*, as amended, Section 34-27-36(a)(19) by failing to comply with Section 34-27-30(8) in that his company procured or assisted in procuring prospects for the purpose of effecting the sale, exchange, lease or rental of real estate situated within

the state of Alabama for a fee, commission, or other valuable consideration and not holding a company real estate license and on Count 2 with violating *Code of Alabama 1975*, as amended, Section 34-27-36(a)(19) by failing to comply with Section 34-27-30(10) in that he held out to the public that Bama Beach Front Rentals, an unlicensed company, was able to perform real estate property management for which a license is required, without it being properly licensed. Mr. Hilsman's original hearing was held at the May 22, 2014 Commission meeting. He requested and was granted a rehearing that took place at the September 29, 2014 Commission meeting. This rehearing was continued at the October 23, 2014 Commission meeting. General Counsel Chris Booth informed the Commissioners at the October meeting that Mr. Hilsman's counsel requested that the remainder of his presentation be submitted to the Commission in the form of a written closing argument. Mr. Hilsman's attorney submitted the written closing argument and it was considered by Commissioners, along with Mr. Booth's written response to the closing argument. Based on the closing argument documents and previous testimony at the May 22, 2014 and September 29, 2014 Commission meetings, Commissioner Cawthon made a motion to find Mr. Hilsman guilty on Counts 1 and 2 and revoke his license on both counts and to request that Bama Beach Rentals cease and desist operation on Count 2. Commissioner Miller seconded the motion and it passed 5-0.

**Confirm Next Meeting Date and Location for the Record: January 22, 2015, 1:00 p.m.**

Commissioner Cawthon made a motion to approve the next Commission meeting for January 22, 2015 in Montgomery, but change the meeting time from 1:00 p.m. to 9:00 a.m. Commissioner Riggins-Allen seconded the motion and it passed unanimously 9-0.

There being no further business, the meeting adjourned at 1:45 p.m.

Done this 4<sup>th</sup> day of December, 2014.

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Bill Watts, Chairman

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Lori Moneyham, Recording Secretary