

MINUTES

A meeting of the Alabama Real Estate Commission was held January 21, 2016 at the Alabama Real Estate Commission offices, 1201 Carmichael Way, Montgomery, Alabama.

Those present were Chairman Bill Watts; Vice Chairman Carole Harrison; Commissioners Steve Cawthon, Reid Cummings, Cindy Denney, Cliff Miller, Danny Sharp and Nancy Wright; 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; Investigators David Erfman, Chuck Kelly, Phil Bunch and K. C. Baldwin; and Legal Auditors Denise Blevins and Vickie Shackelford. The Hearing Officer was Tori Adams. Commissioner Dorothy Riggins-Allen was absent with notice.

Other staff members in attendance for all or part of the meeting were Public Relations Manager Vernita Oliver-Lane; Public Relations Specialist Lori Moneyham; Accounting and Personnel Director Molli Jones; Information Technology Manager Brett Scott; and IT Systems Specialist Steven Brown.

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order at 9:05 a.m. by Chairman Bill Watts and a quorum was declared.

Commissioner Wright made a motion to approve the minutes from the November 19, 2015 meeting. Commissioner Harrison seconded the motion and it passed unanimously 8-0.

Executive Director Patricia Anderson presented the November and December 2015 financial reports. She reported that revenue numbers were in line with projections and renewal funds were moved from the proportionate fund into the revenue fund. Expenditures are under projection; however, a new licensing management system will be purchased this year. There has been an increase in the Recovery Fund due to fewer claims. Commissioners were informed that the mileage rate changed to \$.54 per mile effective January 1, 2016.

Ms. Anderson reported that she sent a letter to the Alabama Ethics Commission requesting an official opinion on what activities are allowable under the ethics law regarding Commissioners' participation in the Alabama Association of REALTORS® (AAR).

Ms. Anderson suggested that the Commission consider moving forward on a statutory change that would expand the criminal history background check currently required of all new license applicants from one covering Alabama records only to a process that would also involve a federal check through the FBI records. Commissioner Wright made a motion to pursue this legislation. Commissioner Sharp seconded the motion and it passed unanimously.

The Homeowners Association (HOA) Task Force Initiatives are being implemented. An email has been sent to qualifying brokers outlining the new law. A letter of agreement has been signed with the Alabama Center for Real Estate to update the Risk Management course outlines to include information on the new HOA law and to develop home buyers' and home sellers' guides that will also contain information on HOAs. An article on the TILA-RESPA Integrated

Disclosure (TRID) rules has been published in the winter 2016 issue of *The Update* newsletter and includes information on the HOA law.

Commissioners received an executive summary of the services provided in 2015 by strategic planning consultant J. Danny Cooper. The renewal of Mr. Cooper's contract as provided in the Request for Proposal will be on the February agenda of the Contract Review Legislative Oversight Committee.

Chairman Watts stated that a Request for Proposal (RFP) for the new licensing management system has been distributed to vendors. The main RFP requirement is that the software be non-proprietary so that the Commission will own it and staff will be able to manage it as needed. Chairman Watts appointed Commissioner Harrison to the RFP Review Task Force to assist in reviewing and evaluating the RFP responses.

Commissioner Wright made a motion to conduct disciplinary hearing disposition discussions and decisions in an open meeting. Commissioner Sharp seconded the motion and it passed unanimously 8-0.

HEARINGS

Ken L. Faught, Jr. Request to be Relicensed After Revocation, Investigative File I-14,453

Upon discussion of the testimony presented by Mr. Faught regarding his request to be relicensed after revocation, Commissioner Wright made a motion to deny his request. Commissioner Miller seconded the motion and it passed 7-0. Commissioner Denney abstained.

Alabama Real Estate Commission vs. Action Property Management LLC dba Montgomery Homes and Erica Lynn Philippou, Formal Complaint No. 3379

Action Property Management LLC dba Montgomery Homes and Erica Lynn Philippou, Qualifying Broker, were charged on Count 1 of violating *Code of Alabama* 1975, as amended, Section 34-27-36(a)(8)b. for failing in their positions as qualifying broker and real estate company 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. Erica Lynn Philippou was charged on Count 2 of violating *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-.03(1) in that she was not a signatory on the trust account with authority to write or make checks as necessary on the trust account prior to an October 15, 2015 audit.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Cummings made a motion to find Action Property Management LLC and Ms. Philippou guilty on Counts 1 and 2 and fine them \$2,500 each. Commissioner Wright added a friendly amendment to Commissioner Cummings' motion adding that Ms. Philippou be required to take both the Level I and Level II Risk Management courses within 90 days. She may use the continuing

education credit from these courses toward her license renewal. Commissioner Sharp seconded the motion and it passed 8-0.

Dallas Demetrius Cunningham, Application for Determination of Licensing Eligibility, Investigative File I-14,689

Upon discussion of the evidence and testimony presented by Mr. Cunningham regarding his application for determination of licensing eligibility, Commissioner Cawthon made a motion to approve his application. Commissioner Wright seconded the motion and it passed unanimously 8-0.

Alabama Real Estate Commission vs. Praytor Realty Company Inc. and Hugh T. Praytor III, Formal Complaint No. 3376

Praytor Realty Company and Hugh T. Praytor III, Qualifying Broker, were charged on Count 1 of violating *Code of Alabama* 1975, as amended, Section 34-27-36(a)(8)a. by commingling his funds with those belonging to others by depositing amounts connected personally with his and his son's auto racing and a closing of a sale unrelated to rent for property owners into the trust account and on Count 2 for violating *Code of Alabama* 1975, as amended, Section 34-27-36(a)(8)b. in that they failed 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 by having a shortage of funds in the rental trust account.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Cummings made a motion to find Praytor Realty Company and Mr. Praytor guilty on Count 1 and Count 2. Commissioner Wright seconded the motion and it passed unanimously 8-0. Commissioner Cummings made a motion to fine Praytor Realty Company and Mr. Praytor \$2,500 each, suspend the license of Praytor Realty Company for six months and stay the suspension pending Mr. Praytor's completion of the following four 3-hour continuing education courses: Code of Ethics, License Law, Level I Risk Management and Level II Risk Management within six months or less. The courses may be used to satisfy continuing education requirements for license renewal. Commissioner Sharp seconded the motion and it passed 7-0. Commissioner Cawthon abstained.

Alabama Real Estate Commission vs. Marl M. Cummings III and Cummings Realty Corporation and Cummings and Associates Inc.

Mr. Cummings requested and was granted a continuance of his hearing.

NOT APPEARINGS

James Larry Lawson Jr., Bad Check, Formal Complaint No. 3380

Upon review of the evidence presented in the matter of James Larry Lawson, Salesperson, Premiere Trussville dba Keller Williams Realty, Trussville, Alabama, and the alleged violation of the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) in that he presented 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 him guilty and fine him \$250. Commissioner Miller seconded the motion and it passed unanimously 8-0.

James (Jimmy) Franklin Agnew, Request for Rehearing, Formal Complaint No. 3375

Mr. Agnew requested a rehearing of his case, Formal Complaint 3375, from the October 22, 2015 Commission meeting. Commissioner Cummings abstained from discussion and action because he was not present for the October 2015 hearing. Upon review and discussion of Mr. Agnew's request, Commissioner Cawthon made a motion to deny his request. There was no second and Commissioners took no action, constituting a denial of the request.

Randall Hilsman, Discussion of Circuit Court Appeal, Formal Complaint No. 3340

Mr. Hilsman appealed a previous Commission decision on Formal Complaint 3340 to the Circuit Court of Baldwin County, Alabama. Upon review and discussion of the Circuit Court order, Commissioner Harrison made a motion that the Commission appeal the order. Commissioner Cawthon seconded the motion and it passed unanimously 8-0.

Thomas N. Carruthers III, Charles Lee Robinson Jr. and Red Rock Realty Group – Discussion of Settlement, Formal Complaint No. 3363

Mr. Carruthers, Mr. Robinson and Red Rock Realty Group perfected an appeal on the Commission decision made on Formal Complaint 3363. On Counts 1, 2, and 3 of the complaint Mr. Carruthers, Mr. Robinson and Red Rock Realty Group were individually charged and found guilty of having a shortage of funds in a trust account and were fined \$2,500 each. On Count 4 Mr. Robinson was found guilty of commingling funds and his license was ordered revoked. A settlement was offered for Commissioners' consideration proposing that the punishment with regard to Count 4 of the order be reduced to a reprimand of Charles Lee Robinson Jr., a requirement that he take Level I and Level II Risk Management courses within three months and that the order not be published by the Alabama Real Estate Commission in *The Educator* or *The Update* newsletters. All other aspects of the order are to remain the same.

Chairman Watts requested an executive session to receive advice from General Counsel Chris Booth on this matter. Commissioner Wright made a motion to enter into executive session citing attorney/client privilege for approximately 15 minutes to receive legal counsel relative to the proposed settlement offered by Thomas N. Carruthers III, Charles Lee Robinson Jr. and Red Rock Realty Group, with the intent to reconvene in an open meeting following the executive

session. Commissioner Miller seconded the motion and it passed 7-0 with Commissioners voting as follows: Vice Chairman Carole Harrison (Yes), Commissioner Nancy Wright (Yes), Commissioner Reid Cummings (Yes), Commissioner Clif Miller (Yes), Commissioner Steve Cawthon (Yes), Commissioner Danny Sharp (Yes) and Commissioner Cindy Denney (Yes). Chairman Watts recused himself from the executive session and Vice Chairman Harrison presided. Commissioners entered into executive session at 1:26 p.m. The executive session ended at 1:35 p.m. and the open meeting resumed with Chairman Bill Watts, Vice Chairman Carole Harrison and Commissioners Nancy Wright, Reid Cummings, Clif Miller, Steve Cawthon, Danny Sharp and Cindy Denney present. Chairman Watts recused himself from the resumed open meeting regarding this case and Vice Chairman Harrison presided.

Upon review and discussion of the settlement, Commissioner Cummings made a motion to offer a counter settlement that agreed with all the proposed terms except the request to not have the Commissioners' disciplinary actions against Mr. Carruthers, Mr. Robinson and Red Rock Realty Group published in *The Educator* or *The Update* newsletters. Commissioner Wright seconded the motion and it passed 7-0.

Confirm Next Meeting Date and Location for the Record: February 25, 2016 at 9:00 a.m. in Montgomery

Chairman Watts resumed presiding over the meeting. Commissioner Wright made a motion to approve the next Commission meeting for February 25, 2016 at 9:00 a.m. in Montgomery. Commissioner Sharp seconded the motion and it passed unanimously 8-0.

There being no further business, the meeting adjourned at 2:15 p.m.

Done this 21st day of January, 2016.

Bill Watts, Chairman

Lori Moneyham, Recording Secretary