

## MINUTES

The Alabama Real Estate Commission met May 7, 2004, at the Huntsville Board of Realtors, 535 Monroe Street, NW, Huntsville, Alabama.

Those present were Chairman Bill Poole; Vice-Chairman Gordon Henderson; Commissioners Roy Bragg, Thomas Hays, Bobby Hewes, Sheila Hodges, Lyman Lovejoy, Chester Mallory and Ruth Whitley; Executive Director Philip Lasater; Education Director Patricia Anderson; Legal Counsel Charles Sowell; Special Investigators David Erfman and Chuck Kelly. Hearing Officer was Tori Adams-Burk.

Chairman Poole called the meeting to order at 9:00 a.m. Chairman Poole expressed appreciation to Association Executive Stephen Perkins who was present for the use of meeting space and facilities. Mr. Frank Reddick was present to observe and was also recognized.

Commissioner Lovejoy moved to approve the Minutes from the April 16 meeting as presented. Commissioner Bragg seconded the motion and it passed unanimously 9-0.

Philip Lasater was recognized for the Executive Director report. SB 356 was reported to be on the House Special Order calendar for Monday May 17. Commissioner Lovejoy elaborated further on contact and commitments from Representative Gallaher. Commissioner Henderson confirmed his contact with Senator Mitchem and strongly urged Commissioners to be present on the last legislative day in Montgomery at the State House. Information for meeting time and location would be provided the next week.

The proposed rule amendment for Continuing Education was published on April 30 and will be distributed to Realtor Boards and Associations, Instructors and other interested parties beginning May 7. The public hearing will be June 4. Proposals for the necessary rule amendments to implement electronic CE crediting and repeal of E&O rules would be presented for approval to submit on July 30.

It was reported that Jewel Buford of Tuscaloosa in the 7<sup>th</sup> Congressional District recently appointed by Governor Riley to fill the expiring term of Commissioner Whitley had been confirmed on May 4. Her term will begin on October 1.

Charles Sowell, General Counsel, reported to Commissioners from his recent CLE class and new trends in alternative probable cause determination, hearing disposition and settlement proposals. This was an introductory report and discussion to apprise Commissioners of how other Administrative agencies are managing emerging challenges due to increased imposition of litigated procedure in the hearing process.

Commissioner Whitley reported on the mid-year ARELLO Board of Directors meeting and that a position opposing the OCC preempting state licensing and regulatory laws be sent to members of Congress. She also reported that future ARELLO annual conferences would be in New York in 2007 and Indianapolis in 2008.

Commissioner Henderson reported from the Commission's committee on an Assistant Executive Director. The committee is comprised of Commissioners Hays, Henderson, Hodges, and Mallory. Chairman Poole hosted the meeting on May 6 at 4 p.m. Commissioner Henderson moved that the Commission accept the recommendation of the Committee to advertise and hire an Assistant Executive Director. Commissioner Mallory seconded the motion and it passed unanimously 9-0.

Commissioner Henderson moved to hear the Angel Realty complaint in Mobile on July 30. Commissioner Hodges seconded the motion and it passed unanimously 9-0.

## **HEARINGS**

### **Scott E. Brown, Applicant for Determination of Eligibility to be Licensed, I-11,240**

Upon discussion of Scott E. Brown's eligibility for licensure, Commissioner Henderson moved to default for failure to appear. Commissioner Mallory seconded the motion and it passed unanimously 9-0.

### **Alabama Real Estate Commission vs. Herman L. Smartt, Formal Complaint No. 2787**

Commissioner Poole acknowledged familiarity with Mr. Smartt but stated he believed he could hear impartially and render a fair decision. Mr. Smartt confirmed his acceptance of the statement and did not request that Commissioner Poole recuse himself.

Upon discussion of the evidence and testimony presented in the matter of Herman L. Smartt, Qualifying Broker, Smartt Realty, Incorporation, Huntsville, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. by failing, within a reasonable time, to properly account for money coming into his possession that belonged to others and 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, Commissioner Hays moved that Mr. Smartt be found guilty and fined \$100. Commissioner Mallory seconded the motion. The motion and second were withdrawn and Commissioner Whitley moved to find Mr. Smartt guilty and that he be fined \$250. Commissioner Hays seconded the motion and it passed unanimously 9-0.

### **Alabama Real Estate Commission vs. Linda M. Smith, Formal Complaint No. 2795**

Chairman Poole acknowledged familiarity with respondent's counsel. Mr. Cartron expressed total trust in Mr. Poole's ability to fairly and impartially hear and render a decision in his client's matter.

Upon discussion of the evidence and testimony presented in the matter of Linda M. Smith, Temporary Salesperson, Landmark Gallery of Homes, d/b/a/ Landmark Realty Center, Huntsville, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, **Count 1:** Section 34-27-36(a)(1) by attempting to procure a license for herself by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application, Commissioner Hodges moved to find Ms. Smith not guilty. Commissioner Mallory seconded the motion and it passed unanimously 9-0.

**Count 2:** Section 34-27-36(a)(19) by failing to notify the Commission of the institution of criminal prosecution against her, Commissioner Hodges moved to find Ms. Smith guilty and that she be reprimanded. Commissioner Henderson seconded the motion and it passed unanimously 9-0.

**Count 3:** Section 34-27-36(a)(19) by failing to notify the Commission of the criminal verdicts against her pursuant to the Code of Alabama 1975, as amended, Section 34-27-31(k), Commissioner Hodges moved to find Ms. Smith guilty and that she be reprimanded. Commissioner Hays seconded the motion and it passed unanimously 9-0.

**Count 4:** Section 34-27-36(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, Commissioner Hodges moved to find Ms. Smith guilty and that she be reprimanded. Commissioner Hewes seconded the motion the motion passed unanimously 9-0.

### **Alabama Real Estate Commission vs. Larry M. Carter, Formal Complaint No. 2809**

Upon discussion of the evidence and testimony presented in the matter of Larry M. Carter, Inactive Salesperson, Madison, Alabama, and the alleged violation of the Code of Alabama 1975, as amended, **Count 1:** Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. by failing, within a reasonable time, to deposit and account for at all times, funds coming into the company that belonged to others in a separate federally insured account or accounts located in Alabama, and by commingling money belonging to others with the company funds; **Count 2:**

Section 34-27-36 (a)(19) by violating Rule 790-X-3.03(1) in his failure to turn over Mr. Tapscott's earnest money check to his qualifying broker; Count 3: Section 34-27-36(a)(26) by demonstrating conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness by making up false pay check stubs in the matter of a loan application for a Sherelle Conley, Commissioner Hays moved to accept Mr. Carter's affidavit of surrender which has the effect of a revocation. Commissioner Henderson seconded the motion and it passed unanimously 9-0.

**Marvin W. Martin, Jr., Application for Licensing Eligibility, I-11,320**

Commissioners Poole and Bragg both acknowledge familiarity with respondent Martin's family but both expressed belief they can hear impartially and render fair decisions. Mr. Martin did not wish either to be recused.

Upon discussion of the Mr. Martin's eligibility for licensure, Commissioner Henderson moved to approve his licensing eligibility. Commissioner Hays seconded the motion and it passed unanimously 9-0.

**NOT APPEARINGS**

**Susan Hawkins, Qualifying Broker, Southern Properties, Requests Branch Office Ruling, I-11,318**

Upon discussion of Ms. Hawkins' request for an additional office space across from the current space occupied by Southern Properties, Commissioner Lovejoy moved to approve an additional office space in adjacent building on the same property as complying with the place of business requirement for Southern Properties. Commissioner Henderson seconded the motion and it passed unanimously 9-0.

There being no further discussion, the Commission adjourned at 12:05 p.m.

Done this 7<sup>th</sup> day of May, 2004.

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Bill E. Poole, Chairman

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D. Philip Lasater, Recording Secretary