

## **MINUTES**

A meeting of the Alabama Real Estate Commission was held September 22, 2022 at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama. This meeting was also available by video teleconference (VTC).

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

Chairman Barran called the roll, and the following Commissioners indicated their presence with a spoken "present": Vice Chairman Terri May; Commissioners Jimmie Ann Campbell, Betsy Echols, Joyce Harris, Randy McKinney, Susan Smith and Cerita Tucker Smith. A quorum was declared. The seat for the Sixth District is currently vacant.

Commission staff members in attendance or participating via VTC for all or part of the meeting were Executive Director Vaughn Poe; Assistant Executive Director Teresa Hoffman; General Counsel Starla Leverette; Assistant General Counsel Zack Burr; Investigators David Erfman, Rickey Fennie and Marshall Simons; Communications and Public Relations Director Vernita Oliver-Lane; Communications and Public Relations Specialist Senior Lori Moneyham; State Professional Trainee Jess Sparks; Communications and Public Relations Intern Taylor Hooks; Education Director Ryan Adair; Education Specialists David Bowen, Julie Norris and Pam Oates; Education Assistant Nancy Williamson; Accounting and Personnel Director Molli Jones; Auditors Anthony Brown, Denise Blevins and Vickie Shackelford; Senior Accountant Pam Garner; Staff Accountant Hattie Thomas; Account Clerk Amber Green; Information Technology Director Brett Scott; Information Technology Systems Specialist Steven Brown; Licensing Director Anthony Griffin; Licensing Assistants Edward Arrington, Shy'kierra Knight, Price Sparks and Pam Taylor; and Executive Assistant Barbi Lee. The Hearing Officer was Jim Hampton.

Members of the public also attended via video teleconference.

Vice Chairman May made a motion to approve the minutes from the August 18, 2022 Commission meeting. Commissioner Echols seconded the motion and it passed 6-0-1 with Commissioner Harris abstaining from the vote since she was not in attendance for that meeting.

## **AWARD PRESENTATION**

Chairman Barran announced the Commission won the 2022 Fair Housing Award from the Association of Real Estate License Law Officials (ARELLO®). Director Poe explained that the award submission was for a documentary entitled "Lenders, Landlords, & the Law: A Fair Housing Reflection on Diversity & Inclusion" created by the Birmingham Civil Rights Institute (BCRI). Birmingham qualifying broker, Abra Barnes of Barnes and Associates, and several other sponsors and collaborators were also instrumental in the documentary. Communications and Public Relations Senior Specialist Lori Moneyham accepted the award at the 2022 ARELLO® Annual Conference in Nashville, Tennessee on behalf of BCRI and the Commission. Ms. Moneyham gave

a brief overview of the history and purpose of the documentary. The documentary is available for viewing on the Birmingham Civil Rights Institute website. Ms. Moneyham expressed her appreciation to the Commission for the opportunity to be involved. Commissioner Campbell added that Ms. Moneyham provided an excellent presentation at the ARELLO® meeting. Commissioner Tucker Smith added the documentary was very special to her and plans for this to be just the beginning in educating licensees and consumers about fair housing. Vice Chairman May requested that a link to the Fair Housing documentary be placed on the Commission's website.

## **EXECUTIVE DIRECTOR'S REPORT**

Director Poe presented the August 2022 financial reports and gave Commissioners an update on revenues and expenditures in the operating and recovery fund accounts. Revenues and expenditures are on track as projected for the year. There have been no recovery fund payouts for the past 30 days. The Commission has paid \$615,016.18 to other state agencies for services during fiscal year 2022.

Director Poe reported the Commission has issued 40,417 total licenses. There are 4,478 licensed companies and branches. During August there were 429 licenses issued: 221 Temporary, 174 Original Salesperson; and 34 Broker. The average rate of growth for August was 8.5 new license applications per day, or roughly 255 per month. This was the same figure as July. Presently there are 9,855 inactive licenses. Currently, there are 35,057 individuals licensed.

Director Poe announced 31,445 licenses were renewed by the August 31, 2022 deadline. This number includes 4,060 Companies and Branches; 7,253 active Brokers, 14,886, active Salespersons, 922 inactive Brokers, and 4,324 inactive Salespersons. The online renewal rate was over 95% for this renewal cycle. Commission staff members worked until after midnight taking phone calls and answering emails to assist last-minute licensees. The last renewal occurred at 11:57 p.m. Licensing Director Anthony Griffin added that the Commission received approximately 1,600 checks during the last two weeks of renewal.

The Accounting Division reported that 26 desk audits and five assistance visits were completed since the August 2022 Commission meeting. The assistance visits are still aiding new and current companies in maintaining their operations in accordance with license law.

The Education Division reported there are 789 total education licensees. Education staff performed seven course audits during August, including six education courses and one prelicense school audit.

Director Poe advised Commissioners that the proposed Commission meeting dates for 2023 were included in their monthly meeting packet and would be approved at the November 17, 2022 Commission meeting. He proposed to forego the July 2023 Commission meeting. This change would allow for summer travel and will not cause congestion of cases. There will be two off-site meetings next year, one in North Alabama and the other in West Alabama.

Director Poe stated the hotel information for the October 13, 2022 Commission meeting to be held in Mobile, Alabama was emailed to everyone and additional details for the meeting would be forthcoming.

Director Poe discussed Coffee with the Commission, which was held on Wednesday, September 21, 2022. Legal Division investigators KC Baldwin and Marshall Simons joined moderator education specialist Julie Norris to discuss the formal complaint process. There were 55 attendees. Coffee with the Commission will not be held for the month of October.

Director Poe announced the first meeting of the Broker Licensure Restructure Task Force is scheduled for Wednesday, September 28, 2022.

Director Poe asked for Commissioners' feedback from the 2022 ARELLO® Annual Conference that was held August 29-September 2 in Nashville, Tennessee. Commissioner Echols shared that she and Commissioner Campbell participated in a couple of roundtable discussions and, when they shared the progress being made in Alabama, the others in attendance were very impressed with the assistance visits for new companies. Commissioner McKinney stated the conference was very beneficial as attendees learn what is happening in other jurisdictions from coast to coast. He also said Commissioner College was very valuable as well. Commissioner Harris stated she learned a lot and that Commissioners should attend Commissioner College in their first year serving on the Commission. Commissioner Campbell stated she has been contacted by participants in the roundtable discussion for follow up information about what is being done in Alabama.

Director Poe reminded everyone of the Commission's outreach efforts through the quarterly Briefly Legal; Coffee with the Commission on the day before the monthly Commission meeting; monthly livestreamed Commission meetings; and the Commission's social media presence on, YouTube, Twitter, Instagram, TikTok and Facebook. The Commission must be active where the licensees are active.

## **COMMISSIONER DISCUSSION**

1. Adopt Proposed Rule Amendment for Certification to Legislative Services Agency Rule Amendment 790-X-1-.07 Qualifications for Prelicense and Post License Instructors.

Education Director Ryan Adair reviewed and discussed the amendment with Commissioners. Upon discussion, Vice Chairman May made a motion to certify Rule Amendment 790-X-1-.07 Qualifications for Prelicense and Post License Instructors to the Legislative Services Agency. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

This rule will be effective December 15, 2022.

2. Approve for Filing Proposed Rule Amendments with Legislative Services Agency

A. Rule Amendment 790-X-1-.06 Prelicense and Post License School Approval and Requirements.

Education Director Ryan Adair explained this amendment removes the requirement of a closing prelicense and/or post license school to submit school records for the previous four years to the Commission upon closure. Course credit is submitted electronically to the Commission and those records are not needed.

Upon discussion, Commissioner Smith made a motion to file proposed Rule Amendment 790-X-1-.06 with the Legislative Services Agency. Commissioner Echols seconded the motion and it passed unanimously 8-0.

B. Rule Amendment 790-X-1-.12 Continuing Education Course Approval and Requirements.

Education Director Ryan Adair explained this amendment removes the requirement of a closing continuing education school to submit school records for the previous four years to the Commission upon closure. Course credit is submitted electronically to the Commission and those records are not needed.

Upon discussion, Commissioner Smith made a motion to file proposed Rule Amendment 790-X-1-.12 with the Legislative Services Agency. Commissioner Harris seconded the motion and it passed unanimously 8-0.

3. Approval of New License Examination Provider Recommended by Task Force

Education Director Ryan Adair explained there have been numerous problems and complaints regarding the current exam provider, PSI, from both license exam applicants and Commission staff members. The current PSI contract is set to expire September 30, 2023; however, communication was made with PSI to terminate services early. A Request for Proposal (RFP) was sent out to 306 registered vendors and two responses were received by the submission deadline: One from PSI and one from Pearson VUE. A 5-member task force comprised of Commissioner Smith, Bo Evans, Mark Yarbrough, Michelle Traweek and Mr. Adair reviewed, scored, and rated each proposal individually. The task force unanimously recommended that the contract for license examinations be awarded to Pearson VUE. The effective date for the Pearson VUE contract will be January 1, 2023.

Commissioner Smith thanked the task force members for the many hours spent reviewing the submissions. One submission consisted of 572 pages.

Upon discussion, Commissioner McKinney made a motion to approve Pearson VUE as the new license examination provider as recommended by the task force. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

4. Approval of New Digital Fingerprint Collection Services Recommended by Task Force

The current fingerprint vendor, Gemalto Thales, notified the Commission that their company was leaving the fingerprinting business and would no longer be servicing the Commission after December 31, 2022. A Request for Proposal (RFP) was sent out on August 16, 2022. A task force comprised of Assistant Executive Director Teresa Hoffman, Commissioner Echols, Licensing Administrator Anthony Griffin, Investigator Rickey Finney and Information Technology Systems Specialist Steven Brown reviewed the submitted proposals. The submission from Fieldprint was deemed to have met the submission deadline and was opened on September 14, 2022. Task force members reviewed, scored, and rated the proposal individually. Assistant Director Hoffman discussed a few strengths of the proposal received. The current price to an applicant is \$48.25 through Gemalto/Thales while the fee through Fieldprint will be \$47.20, a savings of \$1.05. Fieldprint also met the RFP requirement that an applicant would not be more than a 20-minute drive from a fingerprint collection location. The task force unanimously recommended Fieldprint be awarded the contract for digital fingerprint collection services. The effective date for the Fieldprint contract will be January 1, 2023. Assistant Director Hoffman thanked the task force members. Commissioner Echols stated that Assistant Director Hoffman and staff members did a wonderful job with this RFP.

Upon discussion, Commissioner Echols made a motion to approve Fieldprint as the new digital fingerprint collection service, as recommended by the task force, for the period of January 1, 2023 through December 31, 2024 with the option to extend the contract for three additional two-year periods at the Commission's discretion. Commissioner Tucker Smith seconded the motion and it passed unanimously 8-0.

#### 5. 2023 Proposed Meeting Dates

As previously discussed, the 2023 Commission meeting dates will be approved at the November 17, 2022 meeting.

#### **HEARINGS – 9:30 Docket**

#### **Alabama Real Estate Commission VS. Rebuilt Realty, LLC AND Evan Griffin Holland, Formal Complaint No. 3612**

Attorney Drew Ellis from Birmingham, Alabama was present with Mr. Holland and represented Rebuilt Realty.

Rebuilt Realty, LLC, an unlicensed company, Lexington, Kentucky, was charged on **Count 1** with violating the *Code of Alabama, 1975*, as amended, Section 34-27-30 and Alabama Administrative Code 790-X-1-.03(2) by engaging without a license in activity that requires a real estate license.

Evan Griffin Holland, Salesperson, Guntersville, Alabama was charged on **Count 2** with violating the *Code of Alabama, 1975*, as amended, Section 34-27-36(a)(17) by engaging in employment with an unlicensed broker and by aiding, abetting, or conspiring with a person to

circumvent the requirements of the *Alabama Real Estate License Law of 1951*. Mr. Holland was charged on **Count 3** with violating the *Code of Alabama, 1975*, as amended, Section 34-27-36(a)(14) by accepting valuable consideration for performing acts for which a license is required from a person other than his qualifying broker.

Upon discussion of the evidence and testimony presented in the matter regarding **Count 1**, Commissioner McKinney made a motion to find Rebuilt Realty, LLC guilty. Commissioner Smith seconded the motion and it passed unanimously 8-0. Commissioner Tucker Smith made a motion to fine Rebuilt Realty, LLC \$2,500. Commissioner McKinney seconded the motion and it passed unanimously 8-0.

Regarding **Count 2**, Commissioner McKinney made a motion to find Evan Griffin Holland guilty. Commissioner Harris seconded the motion and it passed unanimously 8-0. Commissioner McKinney made a motion to fine Evan Griffin Holland \$500. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

Regarding **Count 3**, Commissioner Harris made a motion to find Evan Griffin Holland guilty. Commissioner Echols seconded the motion and it passed unanimously 8-0. Commissioner Smith made a motion to fine Evan Griffin Holland \$1,000. Commissioner Harris seconded the motion and it passed unanimously 8-0.

**DeAngelo Marquies O’Neal, Application for Determination of Licensing Eligibility, Investigative File I-22-249**

Upon discussion of the evidence and testimony presented in the matter regarding Mr. O’Neal’s application for determination of licensing eligibility, Commissioner Smith made a motion to approve his application. Commissioner Campbell seconded the motion and it passed 6-2 with Vice Chairman May and Commissioner Echols voting against the motion.

**Alabama Real Estate Commission VS. Shawn Lee Kent AND Home South Property Management, Inc. Formal Complaint No. 3610**

Attorney Zachary Guyse from Huntsville, Alabama was present with Mr. Kent and represented Home South Property Management, Inc.

Shawn Lee Kent, Qualifying Broker, Huntsville, Alabama and Home South Property Management, Inc. were charged with violating *Code of Alabama, 1975*, Section 34-27-36(a)(19) by failing to comply with *Code of Alabama, 1975*, Section 34-27-36(a)(8)a. by failing, within a reasonable time, to properly account for or remit money coming into his possession which belonged to others or by commingling money belonging to others.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman May made a motion to find Shawn Lee Kent guilty. Commissioner Smith seconded the motion and it passed unanimously 8-0. Vice Chairman May made a motion to fine Shawn Lee Kent \$2,500.

Commissioner Echols seconded the motion and it passed unanimously 8-0. Vice Chairman May made a motion to find Home South Property Management, Inc. guilty. Commissioner Campbell seconded the motion and it passed unanimously 8-0. Vice Chairman May made a motion to fine Home South Property Management, Inc. \$2,500. Commissioner McKinney seconded the motion and it passed unanimously 8-0.

**Stephen Gutshall, Application for Real Estate Salesperson's Temporary License, Investigative File I-22-230**

Upon discussion of the evidence and testimony presented in the matter regarding Mr. Gutshall's application for a real estate salesperson's temporary license, Commissioner Smith made a motion to approve his application. Vice Chairman May seconded the motion and it passed unanimously 8-0.

**Debra Lee (Debi) Dean, Application for Real Estate Salesperson's Temporary License, Investigative File I-22-192**

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Dean's application for a real estate salesperson's temporary license, Commissioner Smith made a motion to approve her application. Commissioner Echols seconded the motion and it passed unanimously 8-0.

**Alabama Real Estate Commission VS. Davetta Denise Ferguson, Formal Complaint No. 3608**

Davetta Denise Ferguson, Associate Broker, Montgomery, Alabama was charged on **Count 1** with violating the *Code of Alabama, 1975*, as amended, Section 34-27-36(a)(26) by exhibiting conduct that demonstrates dishonest dealings, bad faith, or untrustworthiness in using an electronic signature of a seller, without the permission of the seller, on an addendum to a sales contract to make it appear that the buyers and sellers were removing the \$1,000 earnest money requirement from a contract. Ms. Ferguson was charged on **Count 2** with violating the *Code of Alabama, 1975*, as amended, Section 34-27-36(a)(26) by exhibiting conduct that demonstrates dishonest dealings, bad faith, or untrustworthiness in not including a contingency clause to in the purchase agreement, despite knowing that the ability of her clients to purchase the home was contingent on their ability to sell their existing home.

Upon discussion of the evidence and testimony presented in the matter regarding **Count 1**, Vice Chairman May made a motion to find Davetta Denise Ferguson guilty. Commissioner McKinney seconded the motion and it passed unanimously 8-0. Vice Chairman May made a motion to revoke Davetta Denise Ferguson's license. Commissioner Echols seconded the motion and it passed 7-1 with Commissioner Tucker Smith voting against the motion.

Regarding **Count 2**, Commissioner Smith made a motion to find Davetta Denise Ferguson guilty. Commissioner Harris seconded the motion and it passed unanimously 8-0. Commissioner Echols made a motion to revoke Davetta Denise Ferguson's license. Commissioner Campbell

seconded the motion and it passed 7-1 with Commissioner Tucker Smith voting against the motion.

**David A. Gulley, Application for Determination of Licensing Eligibility, Investigative File I-22-233**

Upon discussion of the evidence and testimony presented in the matter regarding Mr. Gulley's application for determination of licensing eligibility, Commissioner Smith made a motion to approve his application. Vice Chairman May seconded the motion and the motion failed by a vote of 2-6 with Vice Chairman May and Commissioner Smith voting in favor of the motion and Chairman Barran and Commissioners Campbell, Echols, Harris, McKinney and Tucker Smith voting against the motion. The application is denied.

**Juan Quintallas Jackson, Request for Extension of Deadline to Apply for Salesperson License, Licensing File LC2022-007**

Upon discussion of the evidence and testimony presented in the matter regarding Mr. Jackson's request for extension of deadline to apply for salesperson license, Commissioner Smith made a motion to grant an extension until September 30, 2022. Commissioner Harris seconded the motion and it passed unanimously 8-0.

**Lisa Odom Lamb, Application for Determination of Licensing Eligibility for a Reciprocal License, Investigative File I-22-209**

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Lamb's application for determination of licensing eligibility for a reciprocal license, Commissioner Smith made a motion to approve her application. Vice Chairman May seconded the motion and it passed unanimously 8-0.

**Alabama Real Estate Commission VS. Jonathan A. Owen, Formal Complaint No. 3611**

Assistant General Counsel Zack Burr advised Commissioners that Mr. Owen submitted an executed Not Appearing Waiver and a Consent to Disciplinary Action with a fine of \$2,500 and entered a guilty plea. The facts of the case were presented.

Jonathan A. Owen, Salesperson, Huntsville, Alabama, was charged with violating *Code of Alabama, 1975*, Section 34-27-36(a)(19) by failing to comply with Section 34-27-35(k) which states, "inactive licenses shall be held at the Commission office until activated. No act for which a license is required shall be performed under an inactive license." Respondent sold properties and received commissions during the time his license was inactive.

Upon discussion of the evidence presented in the matter, Vice Chairman May made a motion to continue this hearing until November 17, 2022 and request that Jonathan A. Owen and

his Qualifying Broker be in attendance. Commissioner Tucker Smith seconded the motion and it passed unanimously 8-0.

## **NOT APPEARINGS**

### **Shawn Brady Guzman, Hardship Request for Home Operation, Investigative File I-22-274**

Upon review and discussion of Mr. Guzman's hardship request for home operation, Commissioner Campbell made a motion to deny his request. Commissioner Echols seconded the motion and it passed unanimously 8-0.

### **Kathy J. Evans, Hardship Request for Waiver of Penalty Fee, Licensing File LC2022-008**

Upon review and discussion of Ms. Evan's hardship request for waiver of penalty fee, Commissioner Smith made a motion to approve her request. Vice Chairman May seconded the motion and it passed unanimously 8-0.

At 12:18 p.m. Hearing Officer Jim Hampton advised Chairman Barran that the 9:30 a.m. docket and Not Appearings requests were concluded. Considering that the 9:30 docket and Not Appearings requests were complete, Chairman Barran asked for a motion to stay in Open Session or go into Executive Session for approximately 60 minutes to deliberate these cases in accordance with the Alabama Open Meetings Act, *Code of Alabama* 36-25A-7(a)(9). Commissioner Campbell made a motion that Commissioners go into Executive Session in accordance with the Alabama Open Meetings Act, *Code of Alabama* 36-25A-7(a)(9) for approximately 60 minutes. Vice Chairman May seconded the motion and it passed unanimously 8-0.

At 1:27 p.m. Commissioners returned with all Commissioners named during the initial 9:00 a.m. roll call present. Chairman Barran asked for a motion to return to Open Session. Commissioner Smith made a motion to return to Open Session. Vice Chairman May seconded the motion and it passed unanimously 8-0.

**Confirm November Meeting Date and Location for the Record:** November 17, 2022, 9:00 a.m. in Montgomery, Alabama.

Vice Chairman May made a motion to confirm the November meeting for November 17, 2022, at 9:00 a.m. in Montgomery, Alabama. Commissioner Echols seconded the motion and it passed unanimously 8-0.

**Next Commission Meeting:** Thursday, October 13, 2022, 9:00 a.m. at the University of South Alabama's Faculty Club, 6350 Fincher Road, Mobile, Alabama 36688

There being no further business, Commissioner McKinney made a motion to adjourn the meeting at 1:48 p.m. Vice Chairman May seconded the motion and it passed unanimously 8-0.

Done this 22<sup>nd</sup> day of September 2022.

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Emmette Barran, Chairman

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Barbi Lee, Recording Secretary