

REAL ESTATE COMMISSION
Professional & Vocational Licensing Division
Department of Regulatory Agencies
State of Hawaii

MINUTES OF MEETING

Date: Friday, February 24, 1978

Place: Board Room, Kamamalu Building
1010 Richards Street, Honolulu, Hawaii

Present: Ah Kau Young, Chairman
Mary V. Savio, Vice Chairwoman
Tadayoshi Ishizu, Member
Edwin H. Shiroma, Member
John M. Urner, Member
Ralph S. Yagi, Member

Russel S. Nagata, Deputy Attorney General
R. Brian Tsujimura, Deputy Attorney General
Robert Klein, Complaints & Information Officer
Alvin Yamamoto, Investigator
Yukio Higuchi, Executive Secretary
Saeko Whang, Secretary

Joseph Choy, Director, Small Business Management Program, U. of H.
Donald Bell, Professor, College of Business Admin., U. of H.
Irene Jacobs, Educational Officer, Honolulu Board of Realtors and
Hawaiian Association of Realtors
Rhoda Feinberg, Education Director, Hawaiian Ass'n of Realtors
Robert M. Costes, Applicant for Real Estate Salesman License
Judith Sidel, Complainant

Absent: John D. Texeira, Member

Call to Order: There being a quorum present, Chairman Young called the meeting to order at 9:15 a.m.

The Executive Secretary apprised that the agenda for today's meeting was filed on Tuesday, February 21, 1977 at the Lt. Governor's office in compliance with the Sunshine Law.

Minutes: Mary Savio moved and Ralph Yagi seconded to approve the minutes of January 24, 1978 as circulated. Motion carried unanimously.

Committee Reports: Real Estate Education Advisory Council

Real Estate Chair at University of Hawaii

The Executive Secretary reported he received official approval from the Governor's office regarding the proposed appointments to the U. of H. Real Estate Chair. They are as follows:

Dr. Paul Wendt - 1978 fall term
Dr. Fred Case - 1978 summer term
Dr. William Kinnard - alternate

Professor Bell reported that Dr. Paul Wendt has accepted the appointment for the fall term and Dr. Fred Case has accepted the summer appointment.

In order to set up an instructors' workshop, Professor Bell stated that College of Business Administration will need the help of S.B.M.P. to handle the administration and would like to discuss this matter further with the Education Committee.

Professor Bell requested and received permission to reproduce additional copies of "Characteristics and Performance of Real Estate Brokers and Salesmen In the Hawaiian Islands" for the prospective candidates.

S.B.M.P. Advanced Real Estate Courses

Joseph Choy, Director of S.B.M.P., reported that he and the Education Committee has met and approved 2 courses; will continue reviewing the remaining 3 courses on March 2, 1978; and will present the whole package at the next Commission's meeting on March 31, 1978.

Choy thanked the members of the Education Committee for their cooperation.

Real Estate Book Donation

Mary Savio reported that nothing much has been done about this matter. However, she suggested the Commissioners consider placing "The Condominium Community" published by the Institute of Real Estate Management - a guide for owners, boards of directors and managers, in the various library facilities.

Ralph Yagi moved and Tadayoshi Ishizu seconded to delegate authority to the Education Committee to proceed with this matter to find out the number of books needed for distribution to the library systems. Motion carried unanimously.

Laws and Rules Review Committee

In the absence of Edwin Shiroma, who arrived later in the day, Mary Savio reported that the Rules Review Committee accomplished a good deal of work and still working very hard. She announced that the next Committee meeting will be held on Thursday, March 30, 1978.

Chairman Young took this opportunity to thank Mary Savio for the use of the Tropic Shores Realty conference room.

Announcement regarding ACT Brochure

Executive Secretary stated that Chairman Young received a brochure from American College Testing who is embarking on a program for real estate salesmen and brokers, which is basically the same type of service E.T.S. is giving, i.e. writing up of examination, receive and review applications, administer the examination, locate the testing facilities, arrange for monitors, release the scores to the candidates, etc.

Inasmuch as this is a new program, the Executive Secretary recommended that the Commission should hold this matter in abeyance until such time ACT has acquired more experience. This matter will be filed for future reference.

Real Estate Recovery Fund (Stevens vs. Seveland, Civil No. 51240)

The Executive Secretary reported that Sidney Ayabe, counsel to the Real Estate Recovery Fund, in his letter of February 7, 1978, requested the Commission for a decision in the above matter which came before him.

Attorney Steven Guttman had asked Ayabe whether the Commission will grant waiver of the two-year statutory requirement contained in Section 467-18, H.R.S. Counsel Ayabe recommended that Commission not waive the statute of limitations.

Mary Savio moved and Ralph Yagi seconded to deny the request to waive the 2-year statute of limitations on the basis that it is contrary to the statutes. Motion carried unanimously.

Attorney General's Report

Deputy Attorney General Russel Maqata stated that he will make his statement regarding RE-642 Leisure Living, Inc. when all the members are present.

Business Out
of Minutes:

Robert M. Costes, Late Application for Real Estate Salesman License

Robert M. Costes, who had filed late for his real estate salesman license and was denied license at the January 27, 1978 meeting, requested an audience before the Commission. Costes had agreed to the terms of accepting this informal conference in lieu of the formal hearing.

Costes requested reconsideration of Commission's decision as he felt he had complied within the time period to file application inasmuch as the exam date shown on ETS exam result showed only "12/76".

After the question and answer period, Costes was advised that the matter will be taken under advisement.

Edward Damour, Late Application for Real Estate Salesman License

The above applicant is in a similar situation as above. The Executive Secretary read letter from Damon who requested a hearing and explained that he just "plain goofed."

After discussion, Mary Savio moved and Ralph Yagi seconded to approve Robert M. Costes and Edward Damour applications for real estate salesman license. Motion carried unanimously.

Sandra Au, Late Application for Real Estate Salesman License

At the request of the Executive Secretary, Ralph Yagi moved and Tadayoshi Ishizu seconded to add this matter to the agenda in compliance with the Sunshine Law. Motion carried unanimously.

Sandra Au, in her letter, explained why she had filed late, a similar circumstance as above where ETS did not show the exact date of the examination.

Following discussion, Ralph Yagi moved and Tadayoshi Ishizu seconded to approve Sandra Au's application for real estate salesman license. Motion carried unanimously.

Ralph Yagi stated that the real estate schools should inform their students to file within the 1 year time limit and should there be more late filings in the future, he suggested to find out which school is negligent in not stressing this point and possibly follow up on it.

RE-76-136 Robert Miller, Rita Arciero, and Laura Light

This matter went to a hearing and Hearings Officer Darryl Choy is expecting Exceptions to be filed from the Prosecuting Attorney Allan Kawada.

However, because circumstances beyond his control arose, Kawada had requested and received 2 extensions to file the Exceptions. This matter to be discussed at the next Commission's meeting in March.

RE-642 Leisure Living, Inc., Barney Menor, and Raymond Varde

This matter was deferred until all the Commissioners were present.

Investigations: RE-77-49 Norman Mau Realty, Inc., Norman Mau and Levonzell P. Scheidt

Mary Savio moved and Ralph Yagi seconded to accept the recommendation of the Complaint Review Committee to dismiss complaint against Levonzell Scheidt as it appeared she was not involved in management at the time alleged violations took place; to dismiss complaint

against Norman Mau Realty, Inc. and Norman Mau as there appeared to be no violations. Respondent should pursue this matter through civil proceedings to recover monetary loss. Motion carried unanimously.

RE-77-72 Mike McCormack, Eric W. Sillito and Flora J. Minch

Edwin Shiroma moved and John Urner seconded to dismiss case, as recommended by the Committee, inasmuch as the Committee found no violation. Motion carried unanimously.

RE-77-118 Charles H. Bond Realty, Ltd., Charles H. Bond, Patrick M. Haskins and L. Jones

Edwin Shiroma moved and Ralph Yagi seconded to hold a formal hearing and to designate departmental hearings officer to hear the case. Motion carried unanimously.

RE-77-124 Jon C. Rich, Paul B. Giles, James E. Chrisholm, and Island Resort Management, Inc.

Mary Savio moved and Ralph Yagi seconded to accept the recommendation of the Complaint Review Committee to issue a letter of warning to IRMI to comply with Rule 1.11(a) when dealing with rentals. Motion carried unanimously.

RE-77-137 John J. Barabe

Mary Savio moved and Ralph Yagi seconded to dismiss complaint, as recommended by Complaint Review Committee, on the basis that no violation was found. Motion carried unanimously.

RE-77-151 Leila Virdone

Complainant Judith Sidel announced that she is appearing at this meeting as (in her own words) a watchdog. She stated that she had additional information to submit. Chair advised that, in fairness to the Respondent, she should put it in writing and submit to the investigator to be added into the records.

Sidel spoke her piece and left.

After discussion, Mary Savio moved and Ralph Yagi seconded to accept the Complaint Review Committee's recommendation to defer the matter for further investigation. Investigator to be directed to contact other leads provided by complainant and by Buist. Motion carried unanimously.

CON-77-10 Ocean View Ventures

Mary Savio moved and Ralph Yagi seconded to dismiss complaint, as recommended by Committee, since no violation was found. Motion carried unanimously.

RE-76-128 Aiea Lani Corporation

At the request of Executive Secretary, Mary Savio moved and Tadayoshi Ishizu seconded to add this matter to the agenda in compliance with the Sunshine Law. Motion carried unanimously.

The Executive Secretary reported that he had apprised Deputy Attorney General R. Brian Tsujimura regarding the letter received from the Ombudsman's Office dated February 9, 1978 and that Tsujimura indicated his willingness to appear at today's meeting. Executive Secretary recommended that the Commission and Tsujimura discuss this matter and prepare a response to the Ombudsman.

The Commission discussed the Ombudsman's letter with Deputy Attorney General R. Brian Tsujimura and decided to answer as follows:

Minutes of Executive Session

As far as the Commission is concerned, release to you of the minutes of the executive session by the Commission does constitute public publication. Therefore, the Commission will not provide you with a copy of the minutes of the executive session.

Investigation of Complaint and Subsequent Report

The Commissioners felt that the trend throughout the report was biased and, therefore, the "observations" of the investigator were not given great weight. The investigator's conduct at the meetings and the resultant position of the Director on investigators at meetings clearly indicates a partiality in the report.

Regulation of Developer-Broker

As the complaint was presented as developer-oriented and geared toward the developer, counsel advised the Commission that proceedings under Chapter 514 would be proper and that further action under Chapter 467 is unnecessary. Suppose an individual acts as a developer and makes misrepresentation as a developer, the Commission may decide to act against him as a developer and not as a broker even though he holds a broker's license. The Commission should draw the line when a person wears 2 hats. More importantly in this instance, the complaints were clearly developer-oriented and not broker-oriented.

Recommended Settlement Proposal

In this case, the Commission felt that there may have been possible act of "misrepresentation" by the developer and decided to proceed against Ho, the developer. Under Section 514A-49(b), Hawaii Revised Statutes, the Commission may file a suit in court for civil penalty. In a civil case, the Commission is the plaintiff and the developer is the defendant.

Like any civil case, the parties can settle the matter out of court prior to trial. The Commission's settlement proposal, which was considered a reasonable offer by the Commission, was an offer for settlement out of court. As it turned out, the developer accepted the Commission's settlement offer. Had the developer rejected the settlement proposal, the Commission in all probability would have pursued the matter through the Circuit Court.

Proposed Annual Budget

The Commissioners felt that the proposed budget was in line with overall industry practice at the time. The Commission considered the statement made by Kamai and felt that statements were made after the fact to absolve herself (as property manager) of any liability.

Soundproofing

The Commission's statement regarding soundproofing was intended to apply generally to the complainant because no other information was provided by other complainants.

Developer substituted a new innovative soundproofing material (which is what was advertised) approved by the architect and contractor. The Commission was of the opinion that the Yoders got what they bargained for.

Plans filed with the Commission are not required to reflect every minute change in the construction of the units.

House Rules

The use of the term purchasers is ambiguous. Obviously, future purchasers will have the new house rules as the developer is not required to notify past purchasers unless substantial changes occur. In this case, the change was for betterment of the people and the change was not severe.

Living Area Square Footage

The change was so minimal that the Commission would not have required a supplementary public report be issued. In addition, no other complaint made these same allegations, nor was this complaint investigated.

Warranty Expiration Notice

It was felt that the requirement of notice by certified mail is more for the protection of the developer than purchasers. Since the complainant did acknowledge receipt of the notice through the mail, it was felt that the intent of the requirement has been fulfilled that there was no injury to the complainant.

Pool Furniture

As this was a verbal representation from sales people, could not check on it. At the time the investigation was conducted, the name of Alex Schulutker was unknown to the Commission and/or the investigator. That name is completely foreign to this Commission.

SUMMARY

Settlement between defendant and plaintiff is like any other civil case. The Commission may file an action as a plaintiff against the developer as a defendant if the Commission feels that a possible violation exists. Since the civil complaint will be based on alleged violations, there is no necessity for the Commission to conduct an administrative hearing and find the defendant guilty prior to filing a complaint in court. In addition, the recommended settlement proposal, like any other settlement reached by negotiation prior to litigation, is binding upon all parties.

New Business: LICENSINGCORPORATION

American Homes Inc. - 850 West Hind Rd., #201, Honolulu
Gregory M. Blotsky, pb

Larry Buskett Realty, Inc. - 841 Bishop St., #1919, Honolulu
Larry C. Buskett, pb

Hawaiian Tradewinds, Inc. - 1720 Ala Moana, Honolulu
Keпоikai C. Aluli, pb

Priscilla Hilt Realty, Inc. - 841 Bishop St., #1707, Honolulu
Priscilla W. L. Hilt, pb

JW Realty Corp - 190 So. King St., #2310, Honolulu
James E. Whitfield, pb

Kuriki & Nakano, Inc. - 1585 Kapiolani Blvd. #204, Honolulu
Stanley E. Kuriki, pb

LPC Realty, Inc. - 826 Kaheka St., #306, Honolulu
Lionel P. Camara, pb

New Age Builders Ltd. - 1287 Front St., Lahaina
Wallace G. Boskoff, pb

Paulco Corp - 2335 Kalakaua Ave, Honolulu
Pauline M. Daniel, pb

Prestige Realty, Inc. - 4211 Waialae Ave., #305, Honolulu
Kamran Hariri, pb

Rentals Corporation - 4747 Kilauea Ave., #107, Honolulu
Herbert K. J. Wong, pb

Trans-PacLand, Inc. - 225 Queen St., #16E, Honolulu
Raymond Y. C. Ho, pb

World Properties, Inc. - 1152 Bishop St., 8th Flr, Honolulu
Charles B. Lederman, pb

Kuhio Real Estate Corp. - 2240 Kuhio Ave., #3505, Honolulu
Nobuhiko J. Aonuma, pb

Edwin Shiroma moved and Mary Savio seconded to approve the above applications for corporate licenses excepting Kuhio Real Estate Corporation which address needs to be checked for zoning. Motion carried unanimously.

BRANCH OFFICE

Island Wide Associates, Ltd. - Rm 2 Hilo Hotel Annex, Kinooole Ave.,
Eva Feero Buri, bic Hilo

Tony Leeb Realty, Inc. - Kuwada Shopping Center, Kailua-Kona
Charles M. Nafe, bic

Edwin Shiroma moved and Ralph Yagi seconded to approve the above two applications for branch office. Motion carried unanimously.

TRADENAME

Dave Dodds Broker - D 183 Lina Poe Poe St., Waikoloa Village, Kamuela
David R. Dodds, dba

Jean Fujishiro - 45-1048 Kam Hwy, Kaneohe
Norma J. Fujishiro, dba

GM Associates - 250 Ward Ave., #215, Honolulu
Gerald T. Morihara, dba

Philippine Investment Co. - 1037 Fort St., #306, Honolulu
Benjamin E. Ayson, dba

Tops Realty - Mdse Mart Bldg., Rm 411, Honolulu
Isao Matsumura, dba

Sidney Uyetake & Associates - 841 Bishop St., #1206, Honolulu
Sidney S. Uyetake, dba

Vandervoort Realty - 407 Lulunui St., Kailua
Eleanor Vandervoort, dba

Edwin Shiroma moved and Ralph Yagi seconded to approve the above applications for tradenames. Motion carried unanimously.

Miscellaneous: Meeting with E.T.S. Representative re: Hawaii Test Development

Executive Secretary announced that Edward Manwaring, Program Director of E.T.S., wants to come to Honolulu to meet with the representatives of Hawaii Association of Real Estate Schools on the day of the Rules Committee meeting on April 27, 1978 to discuss the Hawaii test development.

John Urner moved and Ralph Yagi seconded to give Executive Secretary the authorization to proceed on this matter. Motion carried unanimously.

Sanford Yanagi's Request for Waiver of Real Estate Sales Experience

Sanford Yanagi, an employee of the Hilo State Tax Department, requested a waiver of the real estate sales experience inasmuch as he is the district tax administrator and does real estate appraisal work.

Following discussion, Ralph Yagi moved and Tadayoshi Ishizu seconded to grant Yanagi waiver of 1 year only. Motion carried unanimously.

1978 Legislation

The Executive Secretary reported that numerous bills were introduced in this session: testimonys made and going through the motion of public hearings now.

He expressed appreciation to Mary Savio and Edwin Shiroma, who had given full cooperation devoting many hours in reviewing, drafting of testimony and attending committee hearings at all hours.

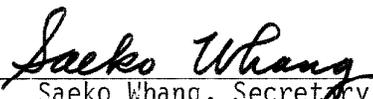
S.B. No. 2581

Deputy Attorney General Russel Nagata stated that the Department of Attorney General has written an opinion on this bill. He stated that there are some constitutional questions on this bill.

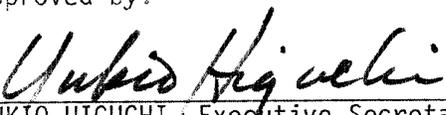
Date of Next Meeting: Friday, March 31, 1978
Board Room

Adjournment: There being no other business to transact, Chair declared the meeting adjourned at 4:15 p.m.

Taken and recorded by:


Saeko Whang, Secretary

Approved by:


YUKIO HIGUCHI, Executive Secretary