

Minutes of the Meeting
of the
REAL ESTATE LICENSE COMMISSION
OF THE TERRITORY OF HAWAII

April 7, 1955, at the office of the Commission, Room 121, Honolulu Armory, corner of Hotel and Miller Streets, Honolulu, T. H.

Present: Eaton H. Magoon, Chairman
J. Patton Odom, Member
Hirotoshi Yamamoto, Member
Robt E. Bekeart, Administrator

A special meeting of the Real Estate License Commission of the Territory of Hawaii was called to order by Eaton H. Magoon, Chairman, at 1:30 p.m., in the Commission office, Room 121, Honolulu Armory, corner of Hotel and Miller Streets, Honolulu, T. H. The reading of the minutes of the previous meeting was dispensed with. The order of business and the actions taken were as follows:

ORDER OF BUSINESS

Case of Francis Y. Wong, Broker
Informal Hearing

Upon a written complaint filed with this Commission by You Kee Ching, Ernest Ching, Wilfred H. S. Young, and Q. C. Lum against Mr. Francis Y. Wong, real estate broker, an informal hearing was scheduled to give Mr. Wong an opportunity to explain the charges brought against him. (see attached copy of the letter of complaint from Walter G. Chuck, attorney from the law office of Fong, Miho, Choy, and Chuck.)

Present with Mr. Wong at the hearing was his counsel, Mr. Robert Y. Kimura.

(Mr. Wong and Mr. Kimura were called in together before the Commission for questioning)

MAGOON: Mr. Kimura, there has been many charges brought against your client. This Commission --

KIMURA: (interrupting) Before you proceed, you don't mind if I explain, possibly clarify, my position?

MAGOON: Go right ahead.

KIMURA:

My name is Robert Kimura, attorney at law, and I have been retained by Francis Y. Wong to be his counsel. Roughly, about a week and a half or two weeks ago, I was retained by Mr. Wong. When I first stepped into the picture, a suit was filed against him by You Kee Ching, Ernest Ching, Wilfred H. S. Young, and Q. C. Lum - the same filed by the firm of Fong, Miho, Choy, and Chuck - I thought that was the only suit against Mr. Wong; but, thereafter, Mr. Kashiwa, attorney who represents the wife of Francis Wong, found that there were other creditors who were interested in Mr. Wong. This matter came up, and as his counsel, I felt that it might be necessary for me to appear here in person with my client, although the informal nature of this hearing was stated in the letter and verified by one of the girls here.....that if any criminal action is taken against Mr. Wong, I thought that I be present here to advise him when any problem or questions that might be asked of him that might be of a criminatory nature or which might be prejudicial in this case, as I would feel as counsel. Now one of the things that I would like to be informed as his counsel is the exact nature of the charges that have been placed against him. Of course, I realize, this is an administrative hearing conducted by the Real Estate License Commission, but I still would like to know specifically -- what about the charges -- by whom the charges were lodged -- and the type of proceeding that is to be embarked upon Mr. Wong. So with that in mind, I am here now. If it is the practice of the Commission in conducting any course of informal hearings to preclude attorneys; if you feel that my presence here would be absolutely of no use to Mr. Wong, I might prejudice Mr. Wong's position.

MAGOON:

Mr. Kimura, as long as I have been in this Commission, I have never precluded or refused to have counsel with the broker or salesman. I feel that is his right. If he wants you here, that is perfectly satisfactory to this Commission. We're proceeding with this hearing based upon the complaint filed against him and upon the facts that were disclosed -- you have the complaint filed --

KIMURA:

You mean the civil suit? Yes, I have it. It is a matter of public record.

MAGOON:

Yes, I realize that. Now, it has been the practice of the Commission since I have been on and I think Mr. Odom and Mr. Yamamoto can vouch for me that I don't like to

April 7, 1955

judge a person guilty before he is judged guilty. In other words, we don't like to go in and make a decision which might jeopardize his position in any civil proceedings -- we have tried not to make this office a collection agency -- but in this particular case, we were about to suggest to you and to your client if he would like to surrender his broker's license to this office and pending these various transactions, we will accept the surrender of his broker's license. He cannot operate once he surrenders this. Upon the final determination on the civil suits filed against you --

KIMURA: Are you referring strictly to the civil suits or criminal suits?

MAGOON: We cannot compound felony -- you know that.

KIMURA: Right.

MAGOON: We do not like to prosecute anyone unless someone has lodged a complaint; we don't initiate a complaint -- although we do feel that commingling of funds which he has admitted and has used to the people -- however, that is only hearsay - we have to have evidence. If he wants to surrender his license, he can do so and there is no stain against his name. I could use no evidence against him if he wants to surrender his license to this Commission; that is, only we can do is accept it. He doesn't have to if he doesn't want to -- if he doesn't, we will not do anything further until such time as commingling of funds have been proven. We have three or four different complaints against Mr. Wong. We usually call a regular hearing and if the Commission finds you have violated our laws, then we act accordingly -- probably revoke or suspend his license. We have people who turned in their licenses. If he does then we will hold it in abeyance until determination and then we have to act accordingly. Otherwise, we will have to give you a formal hearing, telling you these charges, and the Attorney General will be our counsel. I am a practicing lawyer, but the Attorney General handles the cases. If he surrenders his license, it doesn't mean that he is guilty of an offense -- we try to be fair.

KIMURA: Before we proceed on that, would it be all right if you could specify in detail the nature of the complaint lodged and by whom?

MAGOON: Well, the use of funds that belonged to his clients - that's sufficient to convict him. This was admitted - we just have to prove that. We have sufficient evidence

but they have not sworn to a statement --

KIMURA: The reason why I am trying -- you see in this particular suit -- that is, filed by You Kee Ching, Ernest Ching, Wilfred H. S. Young, Q. C. Lum -- they have filed a suit on money loaned in advance, the money loaned on or about August 23, 1954. Now, the matter of loan -- the form of particular suit -- is not important to you. It's only a question of whether he owes or does not owe money. At the preliminary argument for the bill of particulars, Mr. Walter Chuck who represents them argued in the presence of Judge White, Mr. Kashiwa, counsel for Mrs. Wong, that this is strictly a loan -- that is the theater in which they are proceeding. He expressed that the money was a loan and strictly a loan and not a case of fraud or conversion. Mr. Chuck and Mr. Kashiwa will bear me out -- it is only a matter of money loaned in advance and the money is due and the money is not paid back. If it was a matter of embezzlement and fraud, we would ask the court to direct a memorandum to show specific charges -- this is only money loaned in advance and to date it wasn't paid. What we want to know is the specific complaint and, incidentally, can we be informed of the person who made the complaint and may be we can iron out our difficulties.

MAGOON: These complaints which were called to our attention -- we can do one or two things. We can put them in writing to fine him for misrepresentation or for commingling of funds. If we find them to be true, we can act accordingly. We have never prejudged any broker during these suits. We don't want to prejudge a broker unless we are satisfied he has committed the act. If you would like to talk this matter with your client about turning in his license -- but we have to proceed to determine -- that he used this money -- what money, I don't know. Anyway, if he spent the money which was for some specific thing -- as a broker -- we feel it is our duty, if we find that admission to be correct.

KIMURA: That is why, Mr. Magoon, if the name of the individual could be disclosed to us then I can more adequately --

MAGOON: You already know -- Q. C. Lum.

KIMURA: Q. C. Lum? I see.

MAGOON: Mr. Lum has testified in his (referring to Administrator) presence that he did so -- that's sufficient to us.

If you want a hearing, it's up to you.

KIMURA: No, what I want to know is whether or not -- it is my understanding that these individuals here, apparently they are the same ones -- will it be permissible for this Commission -- of course, you stated that in his surrender of his broker's commission or broker's license that at least until the matters before the courts could be adjudicated his rights would be held in abeyance pending the outcome?

MAGOON: No, I am not asking to surrender but if anybody comes in with a sworn statement, we may give him a formal hearing. At such time, your license might be revoked. So far no one has done so. We are not asking for his license, but any way, this is up to you and so long as this matter is before us, we are not going to revoke his license until we have evidence. Now, I have three different distinct complaints, including Mr. Lum's, and we have other brokers -- now, I am not going to do -- those are merely hearsay as far as I am concerned. If they come in with sworn statements, we then have to proceed -- is that --

KIMURA: Didn't Mr. Chuck file a complaint with you?

MAGOON: Yes, he did.

KIMURA: In writing?

MAGOON: Yes, I have the complaint.

KIMURA: You can proceed on that complaint.

MAGOON: No, if he wants to bring in Mr. Wong, and Mr. Wong comes in and swears in --

KIMURA: We are not going to, I think --

MAGOON: I think, I am very fair --

WONG: May I talk to my counsel?

KIMURA: Here's another think - I - you realize -- will it be satisfactory if this matter of surrendering his commission could be taken into very serious consideration? Perhaps my client could be given 24 hours, at least a period longer than a conference outside, I would appreciate that. I would like to go over with my client what he disclosed to me. You see,

many of these suits that are pending, certain ones have been dismissed, and some of them stand a very good chance of being compromised. If the Commission would allow it, it would be very helpful to Mr. Wong to give him the opportunity to prepare himself in another 24 hours to determine whether he would turn in his license. As his counsel, I would like to go over with him and advise him in the best interest of Mr. Wong. In other words, we are preparing to give an answer any time after today on the question of whether he will turn in his license or not. This, to me, is of a very serious nature.

MAGOON: I fully realize that, but we don't want the Commission to be put on the spot but we might as a suggestion which I would like to take up with my board for the 24-hour extension on the assurance that he will not deal in real estate during the time that might be considered. I would like to discuss this with my board. Before we go ahead, I'd like to ask that you be excused so that we can discuss this matter.

KIMURA: I want to assure you that Mr. Wong won't deal in real estate.

MAGOON: Your word is good enough for me.

WONG: There is one question.

MAGOON: You have been here before this Commission?

WONG: Yes, on another matter. If I voluntarily surrender my license within the time specified and these suits can be settled, what are the chances of retaining my license?

MAGOON: Well, I might repeat that if there is no formal complaint against you, if these suits have been filed -- as you have said, there is no embezzlement -- if these suits have been dismissed -- I see no reason if a man has been discharged of all obligations, I don't believe in punishing a man forever. That is not the policy of the board. That is why we have our pardon laws. So long as there is no complaint, we are --

WONG: Mr. Magoon, if I surrender my license, there is no possibility of earning a living. With five children to support and one in college, it is going to be pretty rough for me, except that I have tried to keep up my record.

MAGOON: I don't think your record is good. I don't want to say anything more. If the Board feels it would like to give 24 hours..... Let us know what you want to do. We are not asking you to surrender your license. If you want to have a hearing, we will see all your rights are protected, whether you have counsel or not, but I am very glad that you do have counsel because we have so many complaints. What you do about this particular case, it's entirely up to you. So far there has been no complaints lodged? (asking Administrator)

BEKEART: No, other than the past records that Stephen gave to me.

MAGOON: I feel sorry for you -- that's something that you should have thought before. I have no alternative. What did you do before real estate?

WONG: Before real estate I was running a finance company and I was working with Chinn Ho.

MAGOON: Weren't you in Rollerland business?

WONG: Yes, in August. I was its past president.

MAGOON: You got that straightened out?

WONG: Oh, yes.

ODOM: What about this 24-hour business?

KIMURA: Of course, tomorrow is a holiday.

MAGOON: Is tomorrow a Territorial holiday?

BEKEART: Yes, it is.

MAGOON: On counsel's recommendation that Mr. Wong won't deal in real estate I think Monday would do.

KIMURA: I really appreciate that, Mr. Magoon. I sincerely feel this is not intended in any way as a dilatory tactic. It is a decision on the part of Mr. Wong -- a momentous one. I can advise him on the possibilities and probabilities.

MAGOON: You can advise your decision to our Administrator, Mr. Bekeart.

ODOM: Advise Mr. Bekeart by 9 o'clock on Monday, April 11, 1955.

KIMURA: Another thing, there is the attorney-client relationship here. Mr. Wong gave his word that he will not partake in any real estate transactions over the week end between now and Monday. As far as I am concerned, there has been no discussion with Mr. Wong in any way.

MAGOON: I withdraw that statement - you have nothing to do.

KIMURA: Thank you gentlemen.

WONG: Thank you.

The Commission decided that nothing be done on this case until Monday, April 11, 1955, at which time Mr. Wong can decide to either surrender his real estate broker's license to the Commission or, if he desires, request a formal hearing. However, at the present time, this Commission is unable to investigate further upon the information presented at the informal hearing.

Provisional Appointment of Robert E. Bekeart
as Administrator Succeeding Stephen K. Miyagawa

Mr. Magoon, Chairman, officially announced the provisional appointment of Robert Edward Bekeart as Administrator of the Real Estate License Commission effective April 1, 1955, succeeding Stephen K. Miyagawa, who resigned to accept another position. This ratifies the unanimous action of the members of March 30, 1955. In compliance with the Territorial Civil Service department regarding recruitment of a provisional appointee in the absence of an established eligible list, the necessary forms have been completed and filed with that office.

Oral Examinations Given to Salesmen
Applicants Who Made Borderline Grades

As instructed at the last Commission meeting held on March 22, 1955, Mr. Miyagawa, former Administrator, gave oral examinations to the following applicants who made borderline grades in their salesman's examinations. They were examined and passed on March 29, 1955 and this information is included for the minutes:

<u>Name</u>	<u>Borderline Grade Made in Written Examination</u>
1. Irene D. Wiskow	74.75
2. Stanley M. Sabihon	74.50
3. Ricarte G. Gutierrez	74.00
4. Ann Felzer	73.75
5. Charles T. Akama	73.50
6. Lester Irish	73.25

<u>Name</u>	<u>Borderline Grade</u>
7. Bernales D. Bicoy	72.50
8. Gladys T. Leong	71.75
9. P. V. Anastasopoulos	71.50
10. Volney A. K. Howard	71.50
11. Harriet Pollock	71.50
12. Margaret McNeil	71.00
13. Walter G. Wiskow	71.00
14. Wellington C. Wong	71.00
15. Patrick Tuohy	70.50
16. George A. Gonsalves	70.25
17. Moses S. Utsumi	70.00

The action taken by the Administrator was put into motion for approval by Mr. Yamamoto, seconded by Mr. Odom, and carried.

Reinstatement Requests

The following salesmen applied for reinstatement of their forfeited licenses and were recommended for reinstatement by the Administrator, Mr. Bekeart. Mr. Odom moved that reinstatement requests be granted. Motion was seconded by Mr. Yamamoto, and carried.

1. James A. Ai
2. William M. Cox
3. Harry Fo Leong
4. David K. Trask, Jr.

Reinstatement Request by Raymond A. Bartolome

At the last Commission meeting, the members ruled that Mr. Bartolome's reinstatement request be subject to passing a written salesman's examination. Mr. Bartolome was given a brief written examination on March 29, 1955 by the former Administrator, Mr. Miyagawa, and recommended for passing. Mr. Yamamoto moved that the Commission reinstate Mr. Bartolome as a salesman. Motion was seconded by Mr. Odom and carried.

Applications for Brokerage Licenses

1. NAGATORI-YANG - partnership application. Francis Nagatori and Charles Yang, real estate brokers, filed for a partnership license to do real estate business as NAGATORI-YANG. On March 24, 1955, the partnership was given temporary approval subject to an official confirmation by the Commission at its next meeting. Mr. Odom moved that NAGATORI-YANG be officially approved to operate under such trade title. Motion was seconded by Mr. Yamamoto and carried.

2. HAWAII BUSINESS BROKERS, LTD. - brokerage application. On April 5, 1955, an application for a brokerage license, designating Wesley F. Charlton as principal broker, was filed by HAWAII BUSINESS BROKERS, LTD. Although the corporation has met all our requirements, the Commission questioned the misleading nature of the trade name. Just two officers of the corporation are licensed as real estate brokers. It was suggested that if the name could be amended to Hawaii Business Brokerage, Ltd., this Commission would reconsider the application. The Administrator was advised to send a letter to Hawaii Business Brokers, Ltd., on the action taken by this Commission.

Late Renewal Fee by Charles H. Silva

The Administrator explained that Mr. Silva sent in a late renewal on his salesman's license. The Commission ruled that Section 7740, pertaining to fees, Chapter 150, Revised Laws of Hawaii, 1945, as amended, is very specific and should not be deviated; therefore, Mr. Silva's request for consideration was denied. The Administrator was instructed to return the check for \$10.00 and inform Mr. Silva the action taken by this Commission.

Commission's Financial Report

The following financial report on the Commission's Special Fund was moved for acceptance subject to audit by Mr. Odom, seconded by Mr. Yamamoto and carried.

Balance in Special Fund as of 2/28/55.....	\$27,918.26
Fees collected in March 1955.....	<u>1,445.25</u>
	\$29,363.51
Office expenditures.....	\$960.13
Pay Roll.....	959.81
Pay in lieu of vacation(Stephen).....	508.35
	<u>-2,428.29</u>
Balance in Special Fund as of 3/31/55.....	<u>\$26,935.22</u>

Pending Cases

1. Case of Nihis versus Marian Tsue, Broker

At the Administrator's request, the Commission unanimously voted to defer action on this case until a further investigation and study has been made of the case.

2. Case of Edwin G. F. Wee

In an opinion rendered by the Attorney General of the Territory of Hawaii, dated March 24, 1955, it has been ruled that Mr. Wee's conviction for failure to file income tax returns is not a misdemeanor involving moral turpitude. (see copy of opinion attached)

Therefore, the Commission based on the opinion rendered, ruled that no action be taken on the broker's license of Mr. Wee. Our records show that Mr. Wee has adequately met our requirements as far as his real estate office is concerned by appointing Mr. William K. M. Chee as broker-in-charge of his office and salesmen.

3. Case of Alice K. C. Ching versus
Benjamin Kong, Broker

The Administrator explained that the misunderstanding in the case seems to be on pinning down the responsibility for removing some mango trees from the property. Since the details of the case was not too clear as relayed by the former Administrator, the Commission instructed the Administrator to either write a letter or contact Miss Ching personally regarding her complaint.

There being no further business, the meeting adjourned at 3:30 p.m.

Respectfully submitted,



Robt E. Bekeart
Administrator

REB:etk

SUPPLEMENT TO THE MINUTES OF APRIL 7, 1955

On April 18, 1955, Commissioner Odom called the Administrator on the telephone to advise him that the members had reconsidered and unanimously approved acceptance of granting a brokerage license to Hawaii Business Brokers, Ltd. The Administrator was authorized to issue a license to Hawaii Business Brokers, Ltd., forthwith.

Respectfully submitted,


Robt E. Bekeart
Administrator

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Dated: April 18, 1955