

REAL ESTATE COMMISSION  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Lieutenant Governor's Office as required by Section 92-7(b), Hawaii Revised Statutes.

Date: December 18, 1987

Time: 9:00 a.m.

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

Present: Gloria Damron, Chairman  
Yoshiko Kano, Kauai Member  
Michele Matsuo, Public Member (Late Arrival)  
Marcus Nishikawa, Member  
Douglas Sodetani, Maui Member  
Yukio Takeya, Hawaii Member (Early Departure)  
Peter Yanagawa, Member

Calvin Kimura, Executive Secretary  
Cynthia Yee, Information Officer  
Irene Kotaka, Secretary  
Grant Tanimoto, Deputy Attorney General  
Rodney Maile, Hearings Officer  
Owen Tamamoto, RICO Attorney  
G. A. "Red" Morris, Special Assistant to  
the Real Estate Commission

Nicholas Ordway, Chairholder/Director  
Real Estate Research & Education Center  
John Ramsey, Editor, Real Estate Bulletin  
Paul Alston, Attorney for Locations  
Stephanie Doughty, Hawaii Association of  
Realtors  
Gary W. K. Au Young, Esq.  
Percy Mirikitani, Esq.  
John W. Clear  
Sandra S. Oden

Excused: Joseph Blanco, Member  
Constance Smales, Public Member

Call to Order:

The meeting was called to order at 9:00 a.m. by Chairman Damron. Quorum was established.

Executive Secretary's Report:

The Executive Secretary informed the Commission that Richard B. "Nick" Nicholls, is now a full-time consultant and is no longer the commissioner of the Arizona Department of Real Estate.

The Executive Secretary also reported that Charles C. Case, Jr., Executive Director of the Oklahoma Real Estate Commission has retired and Ann Woody has been appointed as the Acting Executive Director.

Approval of Minutes:

Upon a motion by Commissioner Takeya, second by Commissioner Kano, the Commission unanimously approved the Minutes of the November 25, 1987 Commission Meeting as circulated. The motion was voted on and unanimously carried.

Upon a motion by Commissioner Takeya, second by Commissioner Kano, the Commission unanimously approved the correction of the Minutes of the April 24, 1987 Commission Meeting as follows:

Page 6, Recovery Fund:

HAROLD G. SMITH VS. DEVELOPMENT CONCEPTS, INC.; Civil No. 86-0277; Circuit Court, First Circuit

The Commission reviewed Consultant Au Young's recommendation. Commissioner Blanco moved to pay from the recovery fund a total of \$25,000 for the claim against the licensee. The motion was seconded by Commissioner Takeya, voted and unanimously carried.

SYLVIA SUGIMOTO VS. CLARENCE K. J. FUNG, Civil No. SCD 83-1078

The Commission reviewed Consultant Au Young's recommendation. Commissioner Blanco moved to pay from the Recovery Fund a total of \$616 for the claim against the licensee. The motion was seconded by Commissioner Takeya, voted and unanimously carried.

Additions to  
the Agenda:

Upon a motion by Commissioner Sodetani,  
by Commissioner Yanagawa, it was voted and  
unanimously approved to add the following to  
the agenda:

Recovery Fund Report

Questionable Applications:

Stanley Bukes  
John Hilliard, Jr.  
Vern York

Miscellaneous - Real Estate Commission  
Office Partitions

Miscellaneous:

Upon a motion by Commissioner Sodetani,  
second by Commissioner Nishikawa, it was  
voted on and unanimously carried to approve  
the purchase of three wall partitions for  
the Real Estate Commission Office at a cost  
of \$2,500.

Committee Reports:

LAWS AND RULES REVIEW COMMITTEE REPORT

Upon a motion by Commissioner Takeya, second  
by Commissioner Sodetani, it was voted and  
unanimously carried to accept the following  
recommendations of the December 17, 1987  
Laws and Rules Review Committee Meeting as  
circulated:

1. Jack Rolls, Dr. Ordway, and a  
representative from the Hawaii  
Association of Realtors be invited to  
the Commission meeting on December 18,  
1987 to further discuss the pertinent  
facts issues. The issues to be  
clarified are "as is" sales and the  
definition of pertinent facts.
2. The issue of operation of condo hotels  
in places not zoned for condo hotel use  
be addressed in the condominium hotel  
operators study.

CONDOMINIUM AND COOPERATIVE REVIEW COMMITTEE  
REPORT

Upon a motion by Commissioner Yanagawa,  
second by Commissioner Nishikawa, it was

voted on and unanimously carried to accept the following recommendations of the December 17, 1987 Condominium and Cooperative Review Committee Meeting as follows:

1. Committee Yanagawa and Commissioner Nishikawa will work with Consultant Stephen Tom in finalizing the Fidelity Bond Study on Condominium Managing Agents and Self-Managed Condominium Associations.
2. The issues on "Phased Projects" and "Buyer-Builder Projects" will be studied further by the Condominium and Cooperative Review Committee.

Hearings Officer's Report:

LOCATIONS, INC. AND DAVID M. VIERA, JR.  
RE 87-32

Owen Tamamoto, RICO Attorney, was present on behalf of the State. Locations, Inc. was represented by Paul Alston, Esq.

Chairman Damron was excused due to a conflict of interest.

Commissioner Sodehara asked what the next step in the process would be if the settlement agreement was not accepted. The Hearings Officer stated that it could either go to hearing or a new settlement could be submitted.

Mr. Alston represented that there was no consumer harm. Mr. Tamamoto stated that RICO has arguments that consumers have been harmed.

Mr. Tamamoto and Mr. Alston requested that this matter be deferred to the next Real Estate Commission Meeting.

ALOHA RELOCATION SERVICE AND LEE C. TURNER,  
RE-84-203

Commissioner Takeya moved to accept the Hearings Officer's Recommended Order Granting State's Motion for Order Imposing

Sanctions for Failure to Comply with Commission's Order. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

NORMAN E. NUTTER, RE-86-38

Commissioner Takeya expressed concern over the salesperson conducting himself as a broker and felt that it was a serious violation which should be dealt with severely.

Upon a motion by Commissioner Takeya, second by Commissioner Nishikawa, it was voted on and unanimously carried to reject the settlement agreement due to the serious nature of the violation.

Executive Session:

Upon a motion by Commissioner Takeya, second by Commissioner Yanagawa, it was voted and unanimously carried to enter into Executive Session, pursuant to Chapter 92-4, to Section 92-5(a)(1) "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in Section 26-9 or both, at 9:47 a.m.

Upon a motion by Commissioner Takeya, second by Commissioner Yanagawa, it was voted on and unanimously carried to move out of Executive Session at 10:05 a.m.

Committee Reports:

EDUCATION COMMITTEE

Upon a motion by Commissioner Nishikawa, second by Commissioner Yanagawa, it was voted on and unanimously carried to approve the recommendations of the December 9, 1987 and the December 17, 1987 Education Committee Meetings as circulated.

1. Approve payment of the expenses incurred by SBMP in administering the Commission-sponsored seminars on agency disclosure and the 1987 legislative update.

2. Accept the refund check from HAR in the amount of \$3,977.80. The check shall be deposited into the education fund and noted as profits made from the Commission-sponsored seminars on agency disclosure sponsored by HAR.
3. Commission staff to remind SBMP, HAR, and other Commission vendors that all original receipts for expenses incurred and paid must be submitted prior to final payment being rendered.
4. The Pertinent Facts Draft Report will be referred back to the Pertinent Facts Subcommittee. Commissioners Matsuo and Yanagawa are to review the report and make recommendations as to the content and format of the final report to the Commission by the January 1988 Special Meeting.
5. Approve the conditional acceptance of Assistant Information Officer's Proposal for in house tracking of the continuing education requirements subject to an evaluation of the costs associated with the proposal and subject to investigating the costs and scopes of services of outside vendors.
6. The projected cash flows and suggested amounts of investment as proposed by the Assistant Information Officer will be forwarded to Hawaiian Trust Company, Ltd., Massachusetts Mutual Life Insurance Company, and other interested firms with a request that such firms submit investment proposals for the Commission's consideration based on the forwarded information.
7. Commission staff will send to Senator Steve Cobb and other legislators signing the introduction of the related bill the various county responses outlining their concerns and inability to make available the AICUZ Disclosures as required by Act 208 (SLY 1987).

6. The projected cash flows and suggested amounts of investment as proposed by the Assistant Information Officer will be forwarded to Hawaiian Trust Company, Ltd., Massachusetts Mutual Life Insurance Company, and other interested firms with a request that such firms submit investment proposals for the Commission's consideration based on the forwarded information.
7. Commission staff will send to Senator Steve Cobb and other legislators signing the introduction of the related bill the various county responses outlining their concerns and inability to make available the AICUZ Disclosures as required by Act 208 (SLY 1987).
8. The Commission will not grant education waivers for MAI designations because the curriculum requirements for such a designation are narrow in scope and do not cover in detail the required pre-license knowledge and skills relating to the principles and practices of general brokerage.
9. The memorandum on separate licensing, which was prepared by the Information Officer, will be referred back to the subcommittee for further research and study and a report with recommendations shall be made to the full Commission.
10. The Commission will investigate and study the advisability of requiring a trigger mechanism to insure a minimum balance in the education fund similar to assessing licensees for an increased amount of fees in the event the recovery fund falls below \$350,000.
11. Approve the auditor's request for an extension of time needed to complete the audits of both funds.

12. The Commission reapproves the payment to its agency disclosure consultants, Milton Hirata of Hirata/Nonaka dba Creative Advertising, \$37,122.67, and Myers Advertising, Inc., \$55,058.84.

ADVISORY COUNCIL

Commissioner Matsuo arrived

Upon a motion by Commissioner Takeya, second by Commissioner Kano, it was voted on and unanimously carried to reappoint Ken Chong, Kent Keith, Laverne Bessert, and Liz Benton to the Advisory Council, with their terms to be decided.

Nominations for the remaining four new members shall be decided at the Special Commission Meeting in January. Commissioner Nishikawa requested that the nominations and resumes for the four new members be submitted to him by January 5, 1988 so that Commission staff can circulate it to the Commission members and Dean Bess. Dean Bess will be invited to attend the special meeting. Terms of appointment shall run from January 1 to December 31.

Commissioner Takeya was excused from the meeting.

PERTINENT FACTS

Stephanie Doughty, HAR, was present to discuss the findings of HAR's Pertinent Facts Study.

Jack Rolls was not able to attend the meeting due to prior commitments.

Dr. Ordway will be drafting a memorandum addressing "as is" sales. Commissioner Matsuo stated that the memorandum should be included as a supplement to the report.

Commissioner Matsuo thanked the Center, Nick Ordway, and Cindy Miller for all of their hard work in compiling the report.

Recovery Fund:

The executive secretary stated that per Commissioner Matsuo's request, we have added to the agenda a report by the attorney for the Recovery Fund to represent what was presented at the November 25, 1987 meeting on Ching vs. Wong, and an update on another case.

Gary W. K. Au Young, Attorney for the Recovery Fund, presented an updated report on the status of two pending recovery fund cases.

HENRY F. CHING VS. WALTER C. WONG  
CIVIL NO. 86-2747; First Circuit

Mr. Au Young discussed the Supreme Court decision on this matter. On October 28, 1987, the Hawaii Supreme Court reversed Judge Klein's decision and held that "ordinarily the majority of the Commission may settle claims without Court approval, although we caution the Commission that obtaining Court approval would appear to be the most prudent course of action to take." Accordingly, the Supreme Court reversed and remanded the matter to the trial court to prorate the remaining funds among the outstanding claimants and to determine whether the \$18,185.00 previously paid by the settlement should be included in the amount prorated.

Commissioner Matsuo asked what the status of the original pay out was. Mr. Au Young stated that \$18,000 may have to be returned. It is dependent upon Judge Klein's decision.

The hearing on this matter is scheduled for January 14, 1988 at 10:30 a.m. before Judge Klein.

ASSOCIATION OF APARTMENT OWNERS OF NAPILI  
SANDS VS. HO'OLI HALE REAL ESTATE  
CORPORATION, ROBERT JUNIUS LAYSON, PERFECTA  
DOMINGO VILLANUEVA, ROBERT JOHN LAYSON,  
FIRST INSURANCE COMPANY OF HAWAII, LTD.,  
CIVIL NO. 85-0398(3); SECOND CIRCUIT

The Executive Secretary and Mr. Au Young attended the hearing in the Second Circuit Court to recover the payment made against Ho'Oli Hale Real Estate Corporation. Ho'Oli Hale Real Estate Corporation was issued a bond to protect consumers against any act of fraud or dishonesty. Mr. Au Young represented the Commission in appealing the matter and recovering from the errors and omissions insurance carrier.

Originally, the recovery fund had a \$54,000 pay out in this matter. A complaint was filed against the errors and omissions insurance carrier, Home Insurance Agency. Default Judgment was rendered with treble damages plus expenses, about a \$190,000 judgment. If successful, it would be the first time recovery fund moneys would be paid to the recovery fund plus additional amounts.

The executive secretary stated that the licensee may be able to be relicensed with the pay back. He will suggest to RICO to continue disciplinary action.

Mr. Au Young reported that this may be the first time the Commission has ever recovered any money from the recovery fund.

#### EDUCATION COMMITTEE MEETING

The next Education Committee meeting will be on Tuesday, January 12, 1988 at 9:00 a.m.

#### Executive Session:

Upon a motion by Commissioner Nishikawa, second by Commissioner Yanagawa, it was voted on and unanimously carried to enter into Executive Session, pursuant to Chapter 92-4, to Section 92-5(a)(1) "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in Section 26-9 or both;" at 11:15 a.m.

Upon a motion by Commissioner Kano, second by Commissioner Yanagawa, it was voted on and unanimously carried to move out of Executive Session at 12:21 p.m.



CLIFFES Properties, Inc.

After a review of the information submitted by the applicant, Commissioner Yanagawa moved to approve the application for corporation of CLIFFES Properties, Inc. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Mitsui Rehouse Realty, Inc.

After a review of the information submitted by the applicant, Commissioner Yanagawa moved to accept the application for corporation of Mitsui Rehouse Realty, Inc. Commissioner Matsuo seconded the motion. The motion was voted on and unanimously carried.

BJ Realty Inc.

After a review of the information submitted by the applicant, Commissioner Nishikawa moved to approve the application for corporation of BJ Realty Inc. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Oden Realty, Inc. dba Century 21 Plus Realty

Mr. John W. Clear and Mrs. Sandra S. Oden were present.

After a review of the information submitted by the applicant, Commissioner Yanagawa moved to approve the application for corporation based on one of the following criteria being met:

1. Sandra S. Oden to take and successfully pass the broker's examination within six months, a conditional license to be issued initially.
2. The name of the corporation shall be Oden and Associates, Inc.
3. Change the name of the corporation and delete the reference to Oden.

Jane S. Laverty

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve Ms. Laverty's request for reinstatement of her suspended license upon successfully passing the real estate salesperson's licensing examination. An educational waiver will be provided to her. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Phyllis G. Culp

After a review of the information submitted by the applicant, Commissioner Matsuo moved to deny Ms. Culp's application for an educational waiver. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Sean Munoz

After a review of the information submitted by the applicant, Commissioner Matsuo moved to deny Mr. Munoz's application for educational waiver. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Paul Valtierra

After a review of the information submitted by the applicant, Commissioner Matsuo moved to deny Mr. Valtierra's application for educational waiver. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Stanley Bukes dba JMC Realty

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve the application. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

John Hilliard, Jr.

The executive secretary reported that Mr. Hilliard is short four months experience to meet the two years full-time salesman experience requirement. Mr. Hilliard failed to submit a completed change forms and failed to respond to deficiency notices. Therefore, his license was placed on an inactive status and the alleged experience period is not recognized.

After a review of the information submitted by the applicant, Commissioner Takeya moved to deny Mr. Hilliard's request for a four month waiver for the broker's experience certificate. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Vern York

After a review of the information submitted by the applicant, Commissioner Sodetani moved that Mr. York successfully pass a course pertaining to ethics and property management, such as a property management course from the Small Business Management Program at the University of Hawaii or a GRI course in ethics, in order to meet the terms of the Commission's Final Order, RE 85-35, dated November 25, 1987. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Next Meeting:

January 12, 1988, 9:30 a.m.  
Exam/Conference Room, Second Floor  
Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii

Adjournment:

There being no further business to discuss the meeting was adjourned at 12:40 p.m.

Taken and recorded by:

  
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Irene S. Kotaka, Secretary

Reviewed and approved by:



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Calvin Kimura  
Executive Secretary

01/22/88

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Date