

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 Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes.

Date: February 26, 1988

Time: 9:00 a.m.

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

Present: Gloria Damron, Chairman
Joseph Blanco, Member
Yoshiko Kano, Kauai Member
Michele Matsuo, Public Member (late arrival)
Marcus Nishikawa, Member
Constance Smales, Public Member (late arrival)
Yukio Takeya, Hawaii Member
Peter Yanagawa, Member (late arrival)

Calvin Kimura, Executive Secretary
Cynthia Yee, Information Officer
Russell Wong, Assistant Information Officer
Linda Saito, Condominium Registration Clerk
Irene Kotaka, Secretary
Grant Tanimoto, Deputy Attorney General
Ruth Shimada, Deputy Attorney General
Rodney Maile, Hearings Officer
Owen Tamamoto, RICO Attorney
Nathan Sult, RICO Attorney
Gary W. K. Au Young, Esq., Recovery Fund Attorney

Tom Bodden, President-Elect, HAR
Philip Birn, Licensee
David Mikonczyk, Attorney for Mr. Birn
Hansel Chang, Licensee
Richard Kiefert, Licensee

Excused: Douglas Sodetani, Maui Member

Call to Order:

The meeting was called to order at 9:07 a.m. by Chairman Damron.

Approval of Minutes:

Upon a motion by Commissioner Kano, seconded by Commissioner Takeya, it was voted on and unanimously carried to approve the Minutes of the January 29, 1988 Commission Meeting as circulated.

Hearings Officer's Reports:

PHILIP BIRN, RE 87-90, RE 87-100, RE 87-374, RE 87-375, and RE 87-376

Owen Tamamoto represented the State. Mr. Philip Birn and his attorney, David Mikonczyk, were present.

Commissioner Smales arrived.

Mr. Tamamoto stated that the settlement agreement was reached through a compromise by all parties. He also stated that the case had parallel time share proceedings.

Mr. Mikonczyk stated that Mr. Birn's application for time share registration was denied pending the resolution of the Commission's case. He also requested that the Commission make a timely decision.

Commissioner Yanagawa arrived.

After review of the information presented by all parties and the documents submitted, Commissioner Smales moved to accept the settlement agreement. Commissioner Takeya seconded the motion. The motion was voted on and carried. Commissioners Yanagawa and Matsuo abstained from voting since they were not present when testimony was given.

REALTY PACIFIC, INC., HANSEL CHANG, AND DAVID NICKLE, RE 87-500

Chairman Damron was excused from the meeting due to a conflict of interest.

Vice-Chairman Takeya presided over the meeting.

Nathan Sult, RICO Attorney, was present on behalf of the State. Mr. Chang was present on his own behalf.

The Hearings Officer stated that the Commission had earlier rejected a settlement agreement involving Mr. Chang. Part of the problem is that the settlements are split. The Commission was not able to get an overall picture of what was going on. There are two separate settlement agreements. One is for Mr. Chang and the other is for Realty Pacific and Mr. Nickle.

Mr. Sult stated that the reason for the split in the settlement agreements was that Mr. Chang, when contacted by RICO, wished to resolve this matter immediately and he also wanted to make some representations to the Commission as to the remedial steps that he has taken after being subjected to the situation that caused the investigation. For that reason, the matter was separated into two settlement agreements. Mr. Nickle and Realty Pacific, its corporate entity, did not necessarily want to make the same representations concerning Mr. Chang's remedial steps that Mr. Chang wanted to get into the record. The two agreements had been scheduled to be submitted to the Commission for last month's meeting. However, because of a scheduling problem it was not submitted in time. The terms of the agreement are exactly the same. There was a single resolution of the matter. The violation is simply that Realty Pacific did not put Mr. Chang onto the various trust accounts that were being held for the condominiums that were managed by Realty Pacific. As we indicated in the settlement agreement, there is no indication of any consumer harm as a result of that conduct.

Mr. Chang:

"To begin with, say within making the mistake we did, I mean the company did, as the principal broker, I have served on different companies as far back as when Hawaiian Trust was here. So that's how far my experience goes back to, I might say. I might add that I was also one of the organizers of Aloha TPLO Airlines so that gives me a background as an administrator. The accusation within this thing here states that I have not been able to supervise. Unfortunately, it will remain an accusation. But rather than fighting this thing right through, I've gone ahead and admitted this thing to the extent of having paid for my error, a \$500 slap on the wrist. However, if the board feels that there is more to it, I would appreciate it very much that they resolve this matter because I am planning on a trip to China."

Upon a motion by Commissioner Smales, seconded by Commissioner Kano, it was voted on and carried to reject the settlement agreement.

Commissioner Matsuo arrived.

Chairman Damron resumed conducting the meeting.

STANLEY H. KAKUNO; THOMAS T. KOKI, NELSON SECRETARIO, AND PROGRESSIVE INVESTMENT CORPORATION, RE 86-226, 85-1465-RE-262

The Hearings Officer recommended that based on what was presented that the defendants be treated somewhat differently. Mr. Koki was to pay a fine of \$500 within 30 days. Respondents Kakuno and Progressive Investment Corporation, based on the violations found, it was recommended that their licenses be suspended for one year. As to

Mr. Secretario, there were some problems about establishing through preponderance of evidence that some violations occurred. Based upon that, the Hearings Officer recommended that the charges against Mr. Secretario be dismissed. No exceptions have been filed.

Commissioner Takeya stated that the proposed sanctions are small in comparison to the violation.

The Hearings Officer stated that Mr. Koki was a salesman and his conduct might have been limited to a salesman's responsibilities.

Commissioner Takeya then questioned why the corporation wasn't fined.

The Hearings Officer then stated that if the Commission felt that the sanctions to be imposed or the recommended sanctions are not sufficient to deal with the severity of the violations, then the Commission can impose more significant penalties.

Commissioner Takeya stated that he was concerned that these people were involved in some kind of a limited partnership. Is all of the limited partnership out already? Or is it still going on? If their license is suspended and the investors relied on them to sell the property and so forth, wouldn't the investors get hurt?

The Hearings Officer stated that at this point, the corporate entity is still functioning. He didn't know how many other partnerships were involved. It might be one isolated case or it could be the tip of the iceberg. Unfortunately, when it comes to hearing, we can only look at this case in isolation. If the

licenses are suspended, whatever investments were made or whatever the people put money into that is probably going to be handled through civil proceedings. If it is a bonafide investment and if there is property, then other brokers would probably be able to dispose the property.

Upon a motion by Commissioner Takeya, seconded by Commissioner Smales, it was voted on and carried to approve the Hearing's Officer's Recommended Order for Thomas T. Koki and Nelson Secretario and to amend the Hearings Officer's Recommended Order for Progressive Investment and Stanley Kakuno. The licenses of Progressive Investment and Stanley Kakuno shall be revoked and a fine of \$1,000 per violation shall be imposed.

VW, Inc., RE-LIC-86-5

Upon a motion by Commissioner Blanco, seconded by Commissioner Smales, it was voted on and unanimously carried to accept the Hearings Officer's Recommended Order.

Additions to
the Agenda:

Upon a motion by Commissioner Takeya, seconded by Commissioner Yanagawa, it was voted on and unanimously carried to add the following to the agenda:

Licensing - Restorations

Goto, Clifford - Salesman
Matsuo, Patricia - Salesman
McClintock, Kathleen - Salesman
Veregge, Frederick - Broker
Avecilla, MacArthur - Broker
Harris, Bob -

Licensing - Questionable Applications

Maruko Hawaii, Inc.
Richard Kiefert
Teresa O'Dolan
Lorene Chang

Committee Reports: The Executive Secretary requested if the Commissioners desired to continue the policy of approving the recommendations from Committee meetings at the Commission meeting. The Commissioners felt that this policy should be maintained.

EDUCATION COMMITTEE

Upon a motion by Commissioner Blanco, seconded by Commissioner Takeya, it was voted on and unanimously carried to accept the following recommendations of the February 17, 1988 Education Committee Meeting as circulated:

1. Approve the soliciting of additional specific investment management proposals from those companies responding to the Commission's first request for investment proposals.
2. Approve execution of memorandum of agreement with the Hawaii Association of Realtors for the administration of an all-island Client-Trust Accounting Seminar, including the administration of pre and post tests.
3. Approve the Commission informally requesting proposals to publish the Commission's bulletin commencing upon the completion of the existing contract with John Ramsey.
4. Approve the extension of John Ramsey's bulletin consultant contract completion date to June 30, 1988.
5. Approve the continuation of the following licensing exam procedures:
 - a. Permit space available walk-in retesting for failed candidates only.

- b. Exam retakes means both uniform and state portions of the exam.
6. Approve the payment of licensing exam item reviewers and writers at \$50 a day for their respective participation in the March 28, 29, and 30, 1988 writing session.
7. Approve the education fund expenditure for the printing of Commission-related business cards for all commissioners.

SCHOOL BOND ISSUE

The Assistant Information Officer reported that two of the three schools who were having a bonding problem should be solving it shortly and have not encountered any further problems.

Commissioner Nishikawa moved that the deadline for the real estate schools to obtain bonding be shortened to April 1, 1988. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

ANNUAL BUDGET AND PLANNING SYMPOSIUM

Upon a motion by Commissioner Blanco, seconded by Commissioner Takeya, it was voted on and unanimously carried to approve the execution of a contract with the Hawaiian Regent Hotel for symposium services for April 14 and 15, 1988.

CURRICULUM REVIEW SUBCOMMITTEE

Commissioner Smales reported that the minutes for the last Curriculum Review Subcommittee meeting should be out shortly. The Committee is currently in the process of researching what can and cannot be done for the immediate post-licensing areas.

REAL ESTATE RESEARCH AND EDUCATION CENTER
SUBCOMMITTEE

Commissioner Nishikawa reported that the proposed budget will be presented at the symposium.

Commissioner Nishikawa also stated that it is very important that the Center, Advisory Council, and the Commission have good communication channels. Only in the event that the Commission has questions would the members from the Research Center be asked to attend the meeting.

Commissioner Smales reported that she had asked the Center for help with the curriculum development, however she never received any response from the Center. Looking back at the intent of the fund, Commissioner Smales questions whether or not the Center is following the purpose of the fund. The basic purpose of the fund is to provide continuing education and approved curriculums for the licensees.

Commissioner Smales recommended that the Program of Work for the Center be established after the Commission's program is set.

Chairman Damron stated that two-thirds of the members of the Advisory Council are active licensees. She also stated that the Advisory Council should submit their proposed projects to the Commission for approval prior to its undertaking.

CONDOMINIUM AND COOPERATIVES REVIEW
COMMITTEE

Upon a motion by Commissioner Yanagawa, seconded by Commissioner Blanco, it was voted on and unanimously carried to approve the following recommendations:

1. The issues relating to Makena Surf by the attorneys representing the lender, developer, association and individual parties in pending litigation to be taken under advisement.
2. Commissioner Yanagawa to work on the language of the bills relating to condominiums and cooperatives.

Upon a motion by Commissioner Takeya, seconded by Commissioner Yanagawa, it was voted on and unanimously carried to approve the following recommendations:

1. The subject of financial advisors and investment counselors as they relate to real estate shall be placed on the program of work for the Education Committee. The Hawaii Association of Realtors shall be asked to work with the Commission on this problem.
2. Commissioner Nishikawa and the Executive Secretary to work with the Hawaii Insurance Rating Bureau on amending House Bill No. 3267. In addition, any other specific concerns on the condominium hotel operators bills should be addressed to Commissioner Nishikawa immediately so that he may present a prioritized list of concerns to the Commission.
3. Commissioners Blanco and Matsuo shall revise the definition of real estate broker.
4. The Executive Secretary was given the authority to grant an extension of site offices. However, should a site office request further extensions, the matter shall be referred to the Commission for approval.

5. Staff shall clarify the definition of site office. The intent of a site office is for the initial sale of project units (condominium, subdivision, time share only) and should not include resales or rentals.

Recovery Fund:

CHARLES EUGENE DEPOY VS. ANTON A. LEEB,
CIVIL NO. 8062, CIRCUIT COURT, THIRD
CIRCUIT

The Commission reviewed Consultant Au Young's recommendation. Commissioner Yanagawa moved to pay from the Recovery Fund a total of \$10,000 for the claim against Anton A. Leeb. Commissioner Blanco seconded the motion. The motion was voted on and unanimously carried.

DAVID T. LEE AND MARIANNA K. LEE VS.
BROKER ASSOCIATES AND DENNIS M. GRADY;
CIVIL NO. 74492, CIRCUIT COURT, FIRST
CIRCUIT

The Commission reviewed Consultant Au Young's recommendation. Commissioner Blanco moved to pay from the Recover Fund a total of \$6,241.74 for the claim against Dennis M. Grady. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

IN THE MATTER OF ESTER CHU

Consultant Au Young asked the Commission if they would be interested in filing a claim for the abandoned property of Ester Chu in order to attempt to recover funds paid out from the Recovery Fund on her account. It is understood that the abandoned property is financial institution accounts with unknown balances, and there is no way of obtaining the balances.

Upon a motion by Commissioner Matsuo, seconded by Commissioner Yanagawa, it was voted on and unanimously approved that

Consultant Au Young file a garnishee order for abandoned property on behalf of the Commission.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES - TAX INTERCEPT PROGRAM

The Assistant Information Officer reported that Commission staff is working with the Department of Accounting and General Services to see if the Department of Taxation's Intercept Program could be utilized in recovering funds paid out against licensees. The program would allow the Commission to receive the refunds that would normally go to the licensees.

Staff is in the process of working with DAGS to determine how the material should be transferred to the Intercept program.

Executive Session:

Upon a motion by Commissioner Takeya, seconded by Commissioner Yanagawa, it was voted on and unanimously carried to enter into Executive Session, pursuant to Chapter 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 11:00 a.m.

Upon a motion by Commissioner Takeya, seconded by Commissioner Yanagawa, it was voted on and unanimously carried to move out of Executive Session at 2:06 p.m.

Licensing:

Restorations:

Klein, Wallace Broker

After a review of the documents submitted by the applicant, Commissioner Blanco moved that restoration be approved upon successfully passing the broker's examination. Commissioner Takeya seconded

the motion. The motion was voted on and carried. Commissioner Matsuo opposed the motion.

Bruno, Mary Anne Salesperson

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Conant, Janet W. Salesperson

After a review of the documents submitted by the applicant, Commissioner Blanco moved that restoration be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Del Castillo, Margaret Salesperson

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Fritz, Collin M. Salesperson

After a review of the information submitted by the applicant, Commissioner Takeya moved that restoration be approved upon submitting evidence of successfully completion of a Commission-approved real estate course. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

completion of a Commission-approved real estate course. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Verrege, Frederick Broker

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Avecilla, MacArthur Broker

Commissioner Yanagawa was excused due to a conflict of interest.

After a review of the information submitted by the applicant, Commissioner Takeya moved that restoration of license be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and carried.

Commissioner Yanagawa returned to the meeting.

Harris, Robert M. Salesperson

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon submitting evidence of successful completion of a Commission-approved real estate course. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Questionable Applications

Tsu Development, Inc.

Commissioner Nishikawa was excused from the meeting due to a conflict of interest.

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

Commissioner Nishikawa returned to the meeting.

B and B Realty, Inc.

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

Bertrand Y. Kobayashi

After a review of the information submitted by the applicant, Commissioner Takeya moved to approve the application for real estate license. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Gene C. Carpenter

After a review of the information submitted by the applicant, Commissioner Blanco moved to approve Mr. Carpenter's education waiver. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Marquis G. Hathaway

After a review of the documents submitted by the applicant, Commissioner Blanco moved to approve Mr. Hathaway's salesperson's application. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Kay McMahon

After a review of the documents submitted by the applicant, Commissioner Takeya moved that Ms. McMahon submit evidence of successful completion of the Getting Started Course sponsored by the Hawaii Association of Realtors. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Isabella S. Madeira

After a review of the documents submitted by the applicant, Commissioner Matsuo moved that the matter be referred to the Regulated Industries Complaints Office for further disciplinary action. Commissioner Smales seconded the motion. The motion was voted on and unanimously carried.

Sanora S. Fujino

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon successfully passing the real estate salesperson's examination. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Benjamin T. Gudoy

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon successfully passing the real estate salesperson's examination. Commissioner Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Yoshie Bell

After a review of the information submitted by the applicant, Commissioner Blanco moved that restoration be approved upon successfully passing the real estate salesperson's examination. Commissioner

Yanagawa seconded the motion. The motion was voted on and unanimously carried.

Maruko Hawaii, Inc.

After a review of the information submitted by the applicant, Commissioner Takeya moved to approve the application for corporation of Maruko Hawaii, Inc. Commissioner Blanco seconded the motion. The motion was voted on and unanimously carried.

Richard Kiefert

Mr. Kiefert was present at the meeting to answer any questions that the Commissioners may have had regarding his application for experience certificate.

Mr. Kiefert stated that he has been doing fee conversions. He has 40 listings to convert and sell to the owners of the condominiums the land in which their condo is located.

After a review of the information submitted by the applicant, Commissioner Blanco moved to approve Mr. Kiefert's application for an experience certificate. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Teresa O'Dolan

After a review of the information submitted by the applicant, Commissioner Takeya moved to deny Ms. Dolan's request for reconsideration on involuntary inactive licensing periods or grant a special waiver for the subject period for issuance of a broker experience certificate. Commissioner Matsuo seconded the motion. The motion was voted on and unanimously carried.

Lorene Chang

After a review of the information submitted by the applicant, Commissioner Yanagawa moved that the Change Form was submitted properly and to approve the transactions submitted by Ms. Chang. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Miscellaneous:

TRAVEL POLICY

Upon a motion by Commissioner Takeya, seconded by Commissioner Blanco, it was voted on and unanimously approved to adopt the Commission's out of staff travel policy with the amendments as discussed.

TRAVEL TO NARELLO, RELE, REEA MEETINGS

1. NARELLO BOARD OF DIRECTORS MEETING
Salt Lake City, Utah
April 21 to 23, 1988
Commissioners Blanco and Yanagawa
2. RELE ANNUAL MEETING
Princeton, New Jersey
May 11 to 13, 1988
Commissioner Blanco and the Executive Secretary
3. REEA ANNUAL CONFERENCE
Houston, Texas
May 22 to 24, 1988
Commissioner Smales and the Information Officer
4. NARELLO WESTERN DISTRICT CONFERENCE
Seattle, Washington
May 31 to June 3, 1988
Chairman Damron, Commissioners Nishikawa and Takeya, and the Executive Secretary

LETTER FROM MARY SHERN

The Executive Secretary read the letter from Mary Shern, a former Commission consultant, thanking the Commission for the Certificate of Appreciation that was presented to her.

Next Meeting:

March 24, 1988, 9:00 a.m.
Board Room, Second Floor
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii

Adjournment:

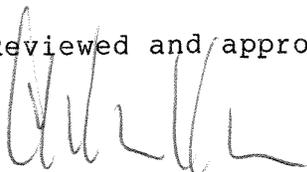
With no further business to discuss, Chairman Damron adjourned the meeting at 2:15 p.m.

Taken and recorded by:



Irene S. Kotaka, Secretary

Reviewed and approved:



Calvin Kimura
Executive Secretary

3/17/88

Date