

REAL ESTATE COMMISSION  
Professional & 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: Friday, August 25, 1989

Time: 9:00 a.m.

Place: Exam/Conference Room, Second Floor  
HRH Princess Victoria Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii

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

Calvin Kimura, Executive Secretary  
Cynthia Yee, Information Officer  
Russell Wong, Assistant Information Officer  
Glenn Grayson, Deputy Attorney General  
Irene Kotaka, Secretary

Sheryl Nagata, Special Hearings Officer  
Lynn Minagawa, RICO Attorney  
Steve Gilbert, Associate Director, Real Estate  
Research & Education Center

John Clear, Century 21 Real Estate Schools  
Victor Marciel, Jr., Licensee  
John Jacob Ing, Attorney for Mr. Marciel  
Delores Sandvold, Principal Broker  
Dan Fox, Licensee  
Andy Fuches, Attorney for Rainbow Hawaii Realty

Absent: Larry Ordonez, Public Member  
Stanley Kuriyama, Member

Call to Order: Chairman Yanagawa called the meeting to order at 9:10 a.m., at which time quorum was established.

Chairman's  
Report:

Chairman Yanagawa reported that he had asked Red Morris, Special Assistant to the Commission, to give the key note address to the National Association of Real Estate Brokers (NAREB), on his behalf.

Grant Tanimoto's condominium consultant contract has been approved.

Executive  
Secretary's  
Report:

The Executive Secretary distributed copies of the Department's policy on per diem allowances to the Commissioners for their information.

Additional distribution:

Committee Reports:

- a. Education Review Committee
- b. Condominium and Cooperative Review Committee
- c. Laws and Rules Review Committee

Additions to  
the Agenda:

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

5. Recovery Fund Report
  - a. Maurice Jackson, et al. vs. Sergio J. Misztal, Civil No. 87-2640-08
6. Committee Reports
  - a. Education Committee - John Clear
8. Licensing - Restoration of Forfeited Licenses - Jessica Williams
9. Licensing - Questionable Applications -  
Angelita Pasion  
Christopher L. Lau  
Dan Fox  
Y & C Properties Corporation and WDOX, Inc.

Disciplinary  
and Licensing  
Appeals Orders:

PROGRESSIVE INVESTMENT CORPORATION,  
RE 86-226, 85-1456-RE-262

The Commission deferred discussion on this matter.

ARTHUR G. T. KAM, RE 86-162

Upon a motion by Commissioner Sodetani, seconded by Commissioner Matsuo, it was voted on and unanimously carried to approve the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order.

SIEGFRIED EHRMANN, RE-LIC-89-3

Upon a motion by Commissioner Sodetani, seconded by Commissioner Matsuo, it was voted on and unanimously carried to approve the Special Hearings Officer's Recommended Order Granting Motion to Dismiss for Failure to Prosecute Request for Hearing Relief.

JAY WESTCOTT, RE-LIC-89-4

Upon a motion by Commissioner Matsuo, seconded by Commissioner Kano, it was voted on and unanimously carried to approve the Special Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order.

DEBORAH BRADLEY, RE 87-489

Ms. Minagawa, RICO Attorney, stated that Ms. Bradley will not be present at the hearing because she is on medication and is unable to attend.

Commissioner Takeya arrived.

Upon a motion by Commissioner Sodetani, seconded by Commissioner Kano, it was voted to approve the settlement agreement. Commissioners Sodetani and Kano voted to approve the settlement agreement. Commissioners Dew, Matsuo, Nishikawa, Takeya, and Nishikawa opposed the motion. The motion died.

Upon a motion by Commissioner Matsuo, seconded by Commissioner Nishikawa, it was voted on and carried to reject the Settlement Agreement. Commissioner Sodetani opposed the motion.

LANGSFORD HOOKER, RE 87-489

Ms. Minagawa stated that Mr. Hooker was informed of the Commission Meeting and said that he was not able to attend.

Upon a motion by Commissioner Takeya, seconded by Commissioner Matsuo, it was voted on and unanimously carried to reject the Settlement Agreement.

CHARLES J. BEEDE, RE 87-90, ET AL.

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on and carried to approve the Settlement Agreement. Commissioner Matsuo opposed the motion.

JACQUELINE MANSARD, RE 88-112

Upon a motion by Commissioner Sodetani, seconded by Commissioner Kano, it was voted on and unanimously carried to approve the Settlement Agreement.

UTAH-WAIKIKI REAL ESTATE CORPORATION, RE 87-90, ET AL.

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Matsuo, it was voted on and unanimously carried to reject the Settlement Agreement.

VERNON SMITH, JR., RE 87-417, AND 87-503

Upon a motion by Commissioner Takeya, seconded by Commissioner Nishikawa, it was voted on and unanimously carried to approve the Settlement Agreement.

THOMAS HAGEN, RE 87-90 ET AL.

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

Upon a motion by Commissioner Sodetani, seconded by Commissioner Takeya, it was voted on and carried to approve Mr. Hagen's request that he be allowed to take two of the three

courses, Residential Property Management Seminar, GRI 201, and GRI 401, in order to meet the terms of the Commission's Final Order.

Commissioner Matsuo returned to the meeting.

Executive  
Session:

Upon a motion by Commissioner Matsuo, seconded by Commissioner Takeya, it was voted on and unanimously carried to enter into Executive Session at 10:25 a.m., pursuant to Chapter 92-5(a)(4), Hawaii Revised Statutes, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;".

Upon a motion by Commissioner Matsuo, seconded by Commissioner Takeya, it was voted on and unanimously carried to move out of Executive Session at 10:34 a.m.

Recovery  
Fund:  
Report:

MYERS V. BEATTY, ET AL, CIVIL NO. 86-172

Mr. Au Young, Recovery Fund Counsel, reported that the Supreme Court for the State of Hawaii issued a decision stating that a claimant must notify the Real Estate Commission at the commencement of the lawsuit in order to recover from the Real Estate Recovery Fund.

The claimant in the above-mentioned case had notified the Commission eight months after the complaint was filed. Counsel objected, stating that the claimant failed to notify the Commission when the complaint was filed. The judge agreed with Counsel and denied the motion for payment. The claimant appealed the decision. On appeal, the Hawaii Supreme Court upheld the Commission's position and held that the statute which requires notice to the Commission at the commencement of the lawsuit is clear and unambiguous in requiring notice to the Commission at the time the action was commenced. The Hawaii Supreme Court affirmed the lower court's decision which denied recovery to the claimant.

MAURICE AND LESLIE JACKSON VS. SERGIO MISZTAL,  
CIVIL NO. 87-2640-08

Upon a motion by Commissioner Sodetani,  
seconded by Commissioner Dew, it was voted on  
and unanimously carried to defer decision  
making on this matter.

Committee  
Reports:

EDUCATION COMMITTEE - JOHN CLEAR

John Clear was present at the meeting to  
discuss his instructor application for the  
continuing education contracts course and to  
request further clarification on the types of  
supporting documents the Commission would need  
to approve his application for instructor.

Mr. Clear stated that he feels that he is  
qualified to teach the contracts course. He is  
a pre and post licensing instructor for the  
Century 21. He has taken the two instructor  
workshops at the University of Hawaii.

Commissioner Nishikawa asked if Mr. Clear could  
substantiate his expertise in teaching the  
contracts course.

Upon a motion by Commissioner Takeya, seconded  
by Commissioner Sodetani, it was voted on and  
unanimously carried to defer decision making  
pending receipt of further documentation.

Licensing

RESTORATION OF FORFEITED LICENSE

Victor Marciel, Jr.

Mr. Marciel, John Jacob Ing, Mr. Marciel's  
attorney, and Delores Sandvold were present.

Mr. Ing stated that Mr. Marciel does not  
question the fact that the licensee failed to  
restore his license and that Mr. Marciel did  
not intentionally neglect to pay his renewal  
fee. He stated that Mr. Marciel is a minister  
and would be willing to participate in  
community service to assist in solving tenant  
disputes in lieu of the examination requirement  
that the Commission previously imposed.

Ms. Sandvold stated that she had asked the licensees for their current licenses and cross them off her list. She stated that she has had an experience where a change form was filled out, but the Licensing Branch had no record.

The Executive Secretary stated that the expiration date is printed on the pocket card and notices were also sent out reminding licensees of renewals.

Upon a motion by Commissioner Matsuo, seconded by Commissioner Takeya, it was voted on and unanimously carried to take this matter under advisement.

Dan Fox

Mr. Fox was present, along with Mr. Andy Fuches, attorney for Rainbow Hawaii Realty. Mr. Fox requested that the Commission grant an equivalency or accept the three Hawaii real estate transactions that closed out of state.

Mr. Fox stated that he is involved in recreation and vacation investment properties only in the Western United States. All transactions take place in Hawaii. However, the normal escrow closing is completed by a trust company in California. All properties sold are required to be registered with the U.S. Department of Housing and Urban Development (HUD) and the DCCA's Subdivision Registration Program.

When asked if the trust company had a final closing statement, Mr. Fox stated that the HUD Disclosure form, the cost sheet, purchase contract, purchase receipt, promissary note, and final recorded copies are sent to the purchaser. The disclosure form is filed with HUD. He does not receive an escrow closing statement.

Upon a motion by Commissioner Takeya, seconded by Commissioner Kano, it was voted on and unanimously carried to take this matter under advisement.

Committee  
Reports:

EDUCATION COMMITTEE - REAL ESTATE RESEARCH  
AND EDUCATION CENTER

Steve Gilbert reported on the status of the contract between the Commission and the Center. A new contract was drafted by the Deputy Attorney General for the University of Hawaii. The contract was then sent to Commissioner Nishikawa for review and comment. Under the new contract, the Center will be under the direction of the University's Board of Regents. The University has suggested sending a representative to meet with the Commission staff to resolve any questions involving the contract.

If the program of work is given to the Center, the Center then becomes a consultant to the Commission. The Center would be responsible for seeing that the program of work is completed satisfactorily.

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Kano, it was voted on and unanimously carried to have Commission staff and the Deputy Attorney General review the contract and make a recommendation to the Education Committee at its next meeting.

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Matsuo, it was voted on and unanimously carried to approve the recommendations of the August 9, 1989 Education Committee Meeting, as follows:

1. Chairman Nishikawa, following consultation with Dean Bess, the Real Estate Center Advisory Council, and Commissioners, be authorized to nominate an individual to replace departing Advisory Council member, Kent Keith. The Commissioners shall submit names of individuals to Commissioner Nishikawa for consideration at the September Education Committee Meeting.
2. The proposed material facts definition shall be circulated to industry for comments.

3. Retain John Ramsey as consultant for the Real Estate Bulletin for the next five issues of the Real Estate Bulletin.
4. Approve the REEA and the Hawaii Association of Realtors instructor workshops as meeting the continuing education instructor qualification for renewal.
5. Approve the following continuing education provider and instructor applications:
  - a. Provider:  
Maui Board of Realtors
  - b. Instructor:  
Jon Hudson - Laws/Ethics  
Laverne Bessert - Contracts  
Margie Abinosa - Contracts  
Vicki Levin - Finance
6. Defer decision making on the \$1 fee paid by ETS to NARELLO to the September Education Committee Meeting.
7. Approve Commissioner Takeya's attendance at the Hawaii Institute of Continuing Legal Education Conference on broker's liability, with costs to be paid out of the Education Fund.

Executive  
Session:

Upon a motion by Commissioner Matsuo, seconded by Commissioner Sodetani, it was voted on and unanimously carried to enter into executive session at 11:55 a.m., pursuant to Chapter 92-5(a)(4), "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;"

Upon a motion by Commissioner Matsuo, seconded by Commissioner Nishikawa, it was voted on and unanimously carried to move out of executive session at 12:04 p.m.

Committee  
Reports:

CONDOMINIUM AND COOPERATIVE REVIEW COMMITTEE

Upon a motion by Commissioner Matsuo, seconded by Commissioner Nishikawa, it was voted on and unanimously carried to approve the recommendations of the August 24, 1989 Condominium and Cooperative Review Committee Meeting, as follows:

1. Defer decision making on the Condominium Property Regime (CPR) public reports to purchasers of time share interest to the next Condominium and Cooperative Review Committee Meeting for the Attorney General's comments.
2. Approve the request for return of set-aside fund letter by First Hawaiian Bank in the Haleakala Gardens, Phase I project.
3. Deny the request for a waiver from the bonding requirement in the Waikii Estates project, based on advisement from the Department of the Attorney General. The Commission will accept an irrevocable letter of credit in lieu of the bonding requirement. This matter will be referred to the County of Hawaii's Planning Department for land use issues.
4. Commissioner Sodetani will assist Commission staff in working with individuals from the trust companies, financial institutions and interested parties in the task of proposing rules for handling association funds by trust companies.
5. Defer the community association and association of apartment owners condominium property regime to the next Condominium and Cooperative Review Committee meeting, pending review of the Deputy Attorney General.

LAWS AND RULES REVIEW COMMITTEE

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on and unanimously carried to approve the

recommendations of the August 24, 1989 Laws and Rules Review Committee Meeting, as follows:

1. The Real Estate Research and Education Center, as a part of their program, coordinate and administer discussion with the Kentucky and California delegation at the September Real Estate Commission meeting, with the assistance of Commissioner Nishikawa. Mandatory errors and omissions insurance is exclusively the program of work for the Center with the coordinating Commissioner.
2. The Real Estate Research and Education Center, with the assistance of Commissioner Nishikawa, shall coordinate a discussion with the California delegation at the October Hawaii Association of Realtors Convention on Kauai. Material facts is exclusively the program of work of the Center with the coordinating commissioner.
3. The Real Estate Research and Education Center shall submit monthly status reports on its assigned projects which are to be completed on the prescribed standardized form.
4. Advise prohibition of compensation for referrals from a non-licensee developer after consultation with the Time Share Administrator.
5. Accept the fidelity bond with a \$2,500 deductible for Intermark, Limited dba Condo Rentals of Waikiki.
6. Approve licensees disclosing compensation to client they are recommending to the paper trader.
7. The four delegates to the NARELLO Annual Meeting in San Diego, California decide on the voting delegate and the candidate to support for the President-Elect position.

Licensing:            RATIFICATION

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Sodetani, it was voted on and unanimously carried to ratify the following:

Brokers:

Anne Agor  
Robert Henry Smith  
West Beach Realty, Inc.  
Elite Properties Unlimited, Inc.  
R. W. Miller, Inc., Realtor  
Ocean Blue Development, Inc.  
West Maui Realty, Inc.

Branch Offices:

Gold Star Properties Incorporated  
Aloha Properties, Inc.  
CRS Investments, Inc.  
PAH Harrington's Paradise Properties, Inc.  
T. Red Co., Inc.  
McInnes, Tanaka Inc.  
Ellington Corporation

Condominium Managing Agents:

Inoue-Hawaii Realty Corp.

Trade Names:

Maria Y. H. Law dba REMSCO  
Maryl Development, Inc. dba Maryl Realty  
Bertha Laubscher Realty, Inc. dba Laubscher  
Realty  
Pacific Homes Inc. dba Pacific Homes Realtors  
Philip A. Christopher dba Phil Christopher  
Realty  
Hemmeter Commercial Properties, Inc. dba  
Hemmeter Properties  
Louise K. Coakley dba Waha Coakley Realty  
Randal E. Bahner dba Sunshine Homes  
John T. Uyemura dba KMJ Realty

RESTORATIONS

Marciel, Victor V. Jr.            Broker

After a review of the information presented by the applicant, Commissioner Sodetani moved to deny Mr. Marciel's request for reconsideration of the Commission's previous decision, dated

July 5, 1989. Commissioner Dew seconded the motion. The motion was voted on and unanimously carried.

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Sodetani, it was voted on and unanimously carried to approve that an article be included in the Real Estate Bulletin stating that principal brokers are responsible for ensuring that their real estate salespersons or brokers have an active and current license and that the licensee's license number and the expiration date of the license be included on the DROA form and be acknowledged by the buyer/seller be referred to the Laws and Rules Review Committee for further follow up.

Commissioner Matsuo was excused from the meeting.

Executive  
Session:

Upon a motion by Commissioner Nishikawa, seconded by Commissioner Kano, it was voted on and unanimously carried to enter into executive session at 12:35 p.m., 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;"

Upon a motion by Commissioner Sodetani, seconded by Commissioner Kano, it was voted on and unanimously carried to move out of executive session at 12:59 p.m.

Metzger, Joseph

After a review of the information submitted by the applicant, Commissioner Kano moved that restoration be approved upon submitting evidence of successfully passing the real estate broker's licensing examination, with a one-time waiver of the education and experience requirements. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Dodd, Charles M.	Salesperson
Aquino, Jose F.	Salesperson
Saigusa, Byron Y.	Salesperson
Brown, Suzanne K.	Salesperson

After a review of the information submitted by the applicant, Commissioner Kano moved that restoration be approved upon submitting evidence of successfully passing the real estate salesperson's licensing examination, with a one-time waiver of the educational requirement. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Westcott, Jay

After a review of the information submitted by the applicant, Commissioner Dew moved to grant Mr. Westcott's request for an extension to December 31, 1989 to complete the real estate course requirement pursuant to the Commission's decision, dated February 2, 1989. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Williams, Jessica

After a review of the information submitted by the applicant, Commissioner Kano moved to deny Ms. Williams request for reconsideration. The Commission's March 28, 1989 decision stands. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

#### QUESTIONABLE APPLICATIONS

Johnsen & Verde Properties, Ltd.

After a review of the information submitted by the applicant, Commissioner Kano moved to deny the application for real estate corporation of Johnsen & Verde Properties, Ltd., as the name includes a non-broker. Commissioner Dew seconded the motion. The motion was voted on and unanimously carried.

Mueh, Penny

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve Ms. Mueh's request for issuance of a new license and waiving of the previous restoration order, subject to expungement of Ms. Mueh's previous licensing records. Commissioner Dew seconded the motion. The motion was voted on and unanimously carried.

Siemann, Joseph

After a review of the information submitted by the applicant, Commissioner Nishikawa moved to deny Mr. Siemann's application for real estate salesperson as he failed to submit a completed application within 90 days from the date of the examination. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Bennington, William R.

After a review of the information submitted by the applicant, Commissioner Kano moved to deny Mr. Bennington's application for real estate salesperson as he failed to submit a completed application within 90 days from the date of the examination. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Merritt, Dianne

After a review of the information submitted by the applicant, Commissioner Kano moved to defer decision making on this matter. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Dudeck, David C.

After a review of the information submitted by the applicant, Commissioner Nishikawa moved to deny Mr. Dudeck's application for real estate salesperson's license as he failed to submit a completed application within 90 days from the date of the examination. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Fox, Dan

After a review of the information presented by the applicant, Commissioner Takeya moved to deny Mr. Fox's request for an equivalency to the three real estate transactions that have closed escrow requirement. Commissioner Dew seconded the motion. The motion was voted on and unanimously carried.

Pasion, Angelita

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve Ms. Pasion's application for real estate broker license. Commissioner Nishikawa seconded the motion. The motion was voted on and unanimously carried.

Lau, Christopher L.

After a review of the information submitted by the applicant, Commissioner Takeya moved to deny Mr. Lau's request for a waiver of the six-month full-time Hawaii salesperson experience requirement in addition to the 18 month Hawaii licensed attorney waiver. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Y & C Properties Corporation and WDOX, Inc.

After a review of the information submitted by the applicant, Commissioner Nishikawa moved to deny the real estate partnership application of Y & C Corporation and WDOX, Inc. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Disciplinary  
Orders:

PROGRESSIVE INVESTMENT CORPORATION, RE 86-226  
85-1456-RE-262

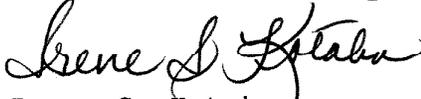
Upon a motion by Commissioner Sodetani, seconded by Commissioner Takeya, it was voted on and unanimously carried to reject the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order and to approve the Real Estate Commission's Recommended Order as the sanctions imposed in

the Hearings Officer's Order were not consistent with the Commission's previous decisions. The motion was voted on and unanimously carried.

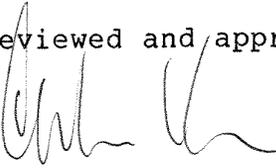
Next Meeting: Friday, September 29, 1989  
Kuhina Nui Room, Second Floor  
HRH Princess Victoria Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii

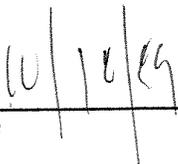
Adjournment: With no further business to discuss, Chairman Damron adjourned the meeting at 1:15 p.m.

Taken and recorded by:

  
Irene S. Kotaka

Reviewed and approved by:

  
\_\_\_\_\_  
Calvin Kimura  
Executive Secretary

  
\_\_\_\_\_  
Date