

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, September 29, 1989

Time: 9:00 a.m.

Place: Kuhina Nui Room, Second Floor  
HRH Princess Victoria Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii

Present: Peter Yanagawa, Chairman  
Barbara Dew, Member  
Yoshiko Kano, Kauai Member  
Stanley Kuriyama, Member  
Michele Matsuo, Public Member  
Marcus Nishikawa, Member  
Douglas Sodetani, Maui Member  
Yukio Takeya, Hawaii Member

Calvin Kimura, Executive Secretary  
Cynthia Yee, Information Officer  
Glenn Grayson, Deputy Attorney General  
Irene Kotaka, Secretary  
Linda Saito, Condominium Clerk  
Rodney Maile, Senior Hearings Officer  
Gary W. K. Au Young, Recovery Fund Counsel

John Ramsey, Consultant  
Susan Miles, Licensee  
David McFall, Applicant  
Jessica Williams, Licensee

Absent: Larry Ordonez, Public Member

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

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

3. Executive Secretary's Report
  - c. Correction to the Minutes of the May 26, 1989 Meeting

5. Recovery Fund Report  
Ben Nordstrom, et al vs. Michael Belsky, Civil  
No. 8522
8. Licensing - Restoration of Forfeited License  
Michael Moss
9. Licensing - Questionable Applications  
Owner's Management Corporation  
John C. Stevenson  
Alfredo Cabael  
Susan M. Miles  
Gwen Furukawa
10. Next Meeting - Decision Making

Correction Upon a motion by Commissioner Sodetani, seconded by  
to the Commissioner Kano, it was voted on and unanimously  
Minutes: carried to approve the correction of the May 26, 1989  
Real Estate Commission Meeting Minutes as follows,  
Page 12 should read "Fiscal Year 1988-89".

Chairman's  
Report: No report was presented.

Executive  
Secretary's  
Report: The new board member orientation is scheduled for  
October 6, 1989.

Disciplinary  
Case Report: HEARINGS OFFICER'S RECOMMENDED ORDERS  
MARSHALL F. GOLDMAN, RE 85-134

Rodney Maile, Senior Hearings Officer, presented a summary of Marshall Goldman case. He stated that in the Calvin Lau case, the Commission ruled that if a licensee is acting as a broker in a personal transaction, he is subject to the laws and rules applying to real estate brokers. In the Truesdale case, RICO argued that the licensee was required to comply with the real estate laws and rules in the transaction. The licensee in this case was involved in a personal non-related transaction which turned into a real estate transaction.

In the Marshall Goldman case, Respondents Goldman and Berg formed a partnership to develop real estate on the island of Hawaii. Respondent Berg was the managing partner in Kona, while Respondent Goldman's office was located in Honolulu. Both licensees secured the limited partners to develop some property located in Kona. Mr. Zuzak, a

limited partner, became disenchanted with the project as the project ran into some problems. The limited partners asked the Respondents for information on the status of the project. Respondents Berg and Goldman were involved in another development and they arranged to have their interest in the second development transferred to the limited partnership if they wanted to get out of the first one. The limited partners opted for that. The second project went bad. Respondent Berg eventually entered into a default in the judicial proceedings. Respondent Goldman settled with the limited partners and paid the moneys owed to the limited partners.

The Hearings Officer stated that the Commission must decide whether or not the activities of Respondent Goldman constitutes grounds for disciplinary action, and if the licensing laws and rules did apply, did Respondent Goldman violate the laws and rules.

The Hearings Officer stated that as a general partner, Respondent Goldman had the authority from the limited partners to secure financing for the development. Pursuant to the partnership agreement, all the limited partners had had prior experience in limited partnerships. The Commission needs to determine if this kind of activity falls within the parameter of real estate licensees. The Hearings Officer feels that this does not fall within the parameters of a licensee because limited partners are regulated in a different section of the law and because the relationship between general partners and limited partners is different from the relationship of a real estate broker and his client. The statutes regulating the limited partners provides remedies if a problem occurs.

Commissioner Dew asked if the settlement agreement for Respondent Berg involved his capacity as a real estate licensee.

The Hearings Officer stated that it did. Respondent Berg agreed to a revocation of his license. Respondent Berg had experienced problems with his recordkeeping and was unable to produce some of his records.

Commissioner Sodemani asked if there was any

evidence of fraud or misrepresentation that took place.

The Hearings Officer said no. The limited partners were aware of the risks involved in the venture. They were given an option to get out and they did.

Commissioner Kuriyama asked if the Complainant were aware of the fact that the moneys invested were used to repay the loans.

The Hearings Officer reported that Complainant Zuzak was given the opportunity to review the financial records but never took advantage of the opportunity. Respondent Goldman lost his investment, his interest in the other partnership, and had to meet the obligations of Respondent Berg.

Commissioner Kuriyama stated that there were a number of suits that Complainant Zuzak filed and were later dismissed. Were the dismissals based on the merits of the case or was it a procedural dismissal?

The Hearings Officer stated that the cases were dismissed because of settlement agreements were filed.

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

FORD K. USHIJIMA, JULIE ITCHNER, RICHARD H. FUJIWARA, HERBERT K. HORITA, RE 87-160

Commissioners Matsuo and Sodetani were excused from the meeting due to a conflict of interest.

Upon a motion by Commissioner Takeya, seconded by Commissioner Dew, it was voted on and unanimously carried to approve the Settlement Agreement After Filing of Petition for Disciplinary Action and the Commission's Final Order.

Commissioners Sodetani and Matsuo returned to the meeting.

EUGENE P. TILL, SR., RE 89-221, 89-223, 89-224

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

Agreement Prior to Filing of Petition for Disciplinary Action and Commission's Final Order.

CALVIN C. F. LAU, RE 87-90, ET AL.

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodetani, it was voted on and unanimously carried to request the both parties be present at the October 25, 1989 Real Estate Commission Meeting.

Committee EDUCATION COMMITTEE  
Reports:

Upon a motion by Commissioner Dew, seconded by Commissioner Takeya, it was voted on and unanimously carried to approve the recommendations of the September 13, 1989 Education Committee Meeting, as follows:

1. Approve the investment of a portion of the Education Fund and the Recovery Fund in the following amounts for the following times:  
  
Education Fund, \$250,000, 30 days, maturing 10/89  
Education Fund, \$250,000, 60 days, maturing 11/89  
Recovery Fund, \$250,000, 60 days, maturing 11/89  
Recovery Fund, \$300,000, 6 months, maturing 3/90
  
2. Approve the execution of a new contract with the University of Hawaii via its Contracts Officer, for the continued operation of the Center, under the direction and management of the University of Hawaii Board of Regents at Manoa. The terms and conditions of the contract are as set forth in the University of Hawaii's draft version of the "Agreement Regarding the Hawaii Real Estate Research and Education Center," subject to the final review and approval by the Commission's Deputy Attorney General.
  
3. Approve the following continuing education applications:

Continuing Education Provider Application -  
Coldwell Banker McCormack Real Estate  
Waikiki Realty Real Estate School

Continuing Education Instructor Application -  
Jane Muramatsu, Laws/Ethics  
Jay John Spadinger, Finance, Laws/Ethics  
George K. Yamashiro, Laws/Ethics

4. Defer decision making on the following continuing education instructor applications for the following courses, until such time as applicants complete their application with the submission of the additional information:

Norman Akita, Contracts and Finance  
Jane Muramatsu, Contracts and Finance  
Jay John Spadinger, Contracts  
Gwen Tano, Contracts, Finance, Laws/Ethics  
George K. Yamashiro, Contracts and Finance

5. Instruct staff to continue its work in finalizing the survey questions for evaluating the Commission's continuing education program, subject to the expert review of a retained statistical and survey consultant.
6. Execute a personal service contract with John Ramsey for the preparation, publication, and writing of the Commission's 1989 Annual Report to the Governor for the total compensation amount of \$3,825.00.
7. Execute and ratify a personal service contract with the Hawaii Association of Realtors (HAR) for the administration of Commission-sponsored seminars retroactive to March 24, 1988.
8. Continue to negotiate with the Director of Community Services, Maui Community College, University of Hawaii, as to a lower compensation amount for the preparation of a Real Estate Handbook for the County of Maui.

Upon a motion by Commissioner Sodetani, seconded by Commissioner Matsuo, it was voted on and unanimously carried to retain the services of the Social Science Research Institute (SSRI), at the University of Hawaii, in one or all of the

following Commission projects, continuing education evaluation, separate licensing, and reentry requirements, and increase the budget to \$16,000 for fiscal year 1990 and 1991.

#### CONDOMINIUM AND COOPERATIVE REVIEW COMMITTEE

Upon a motion by Commissioner Matsuo, seconded by Commissioner Sodegami, it was voted on and unanimously carried to approve the recommendations of the September 29, 1989 Condominium and Cooperative Review Committee Meeting, as follows:

1. Approve the draft of the Amended Notice of Intention, Questionnaire Form, and Guidelines subject to the correction of typographical errors, spelling errors, and the addition of missing words, and Commission staff to proceed immediately with updating the format.
2. Staff to review project files of Kainui Estates to determine if the preliminary and final public reports indicated a change in the sidewalk, which was listed as a common element in the sidewalk, which was listed as a common element in the preliminary and final public report.
3. The Condominium Specialist to determine what type of regulatory scheme is required regarding the community association and association of apartment owners under the Condominium Property Regime.
4. The Condominium Specialist to work on a Real Estate Commission bill to correct the problem with Section 514A-85 on the availability of information.
5. Commissioners to submit any comments relating to the condominium association registration to the Condominium Specialist as soon as possible.
6. Commission to present a Certificate of Appreciation to Eileen Luko, Director of Education, for the Hawaii Association of Realtors, in recognition of her work with the Commission.

7. The Deputy Attorney General to assist staff in drafting a letter in response to Mitchell A. Imanaka's letter on the necessity of delivering CPR reports to prospective purchasers of the time share interests.
8. Defer further discussion on the Kauai Building Inspection form to the next CCRC Meeting on Kauai at which time it will be discussed with the Kauai County Planning Director.

KALEPA BUSINESS CENTER, REGISTRATION NO. 2043

Upon a motion by Commissioner Matsuo, seconded by Commissioner Sodetani, it was voted on and unanimously carried to approve the following conditions for the Kalepa Business Center:

1. That the developer shall not receive any purchaser's funds for its own account until the project is 100% complete.
2. No buyer shall be required to close the purchase of his condominium until the completion of the project.
3. The developer shall pay all actual common expenses of the project until the project is 100% complete and the developer files an amended disclosure abstract as required by HRS section 514A-15(b).
4. Release of the purchaser's funds is limited to the completed units elected for closing by the purchasers.
5. Preparation of an amended disclosure statement indicating the changes in the escrow conditions. The amended abstracts shall be delivered to all purchasers and prospective purchasers and receipt acknowledged.
6. That the developer shall obtain the releases from the contractors involved.

KAMANI TREES CONDOMINIUM, REGISTRATION NO. 1981

Upon a motion by Commissioner Kuriyama, seconded by

Commissioner Takeya, it was voted on and unanimously carried to have staff review all advertising and written materials for compliance and take appropriate action and work with consultants to ensure that proper disclosures are made.

LAWS AND RULES REVIEW COMMITTEE

Upon a motion by Commissioner Takeya, seconded by Commissioner Sodehani, it was voted on and unanimously carried to approve the recommendations of the September 29, 1989 Laws and Rules Review Committee, as follows:

1. Chapter 16-99, Hawaii Administrative Rules, which was adopted on February 27, 1987 and became effective on July 11, 1987, was the subject of another opportunity to provide public comment. A public hearing was held on September 12, 1989 at 8:00 a.m., in the Kuhina Nui Room, Department of Commerce and Consumer Affairs. Public notice of the hearing was published on August 2, 1989, in the Advertiser, Star Bulletin, West Hawaii Today, the Maui News, the Hawaii Tribune Herald, and the Garden Island.

After a review of the comments submitted, the Real Estate Commission determined that the rules should remain as originally adopted.

The Commission readopted the rules relating to Chapter 16-99, Hawaii Administrative Rules, which was originally adopted on February 27, 1987 and became effective on July 11, 1987.

2. Defer decision making on the definition of material facts until more responses are received from the Commissioners, industry, and continuing education instructors.
3. The Licensing Branch is to allow an equivalent amount of time for the applicant to rectify any problems with new license applications. The amount of time is to be determined by the date the application was received at the Licensing Branch and the date the application was reviewed by the Licensing Branch.

4. Approve payment of the excess lodging for Commissioner Matsuo, subject to approval of the Director, Department of Commerce and Consumer Affairs.

Licensing: QUESTIONABLE APPLICATIONS

Susan Miles

Ms. Miles was present to request that the Commission consider her application for real estate license.

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

RESTORATION OF FORFEITED LICENSE

Jessica Williams

Ms. Williams was present to request that the Commission reconsider her application restoration and grant her an extension of three months in which to complete the Commission-approved real estate course.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to grant Ms. Williams reconsideration and to grant her a 3-month extension in which to complete the Commission-approved real estate course(s). Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Executive Session: Upon a motion by Commissioner Kuriyama, seconded by Commissioner Sodetani, it was voted on and unanimously carried to enter into executive session at 11:15 a.m., pursuant 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;".

Upon a motion by Commissioner Sodetani, seconded by Commissioner Takeya, it was voted on and unanimously carried to move out of executive session at 12:06 p.m.

Licensing: RATIFICATION

Upon a motion by Commissioner Takeya, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to approve the ratification of the following licensees:

Real Estate Brokers:

Oahu Area Real Estate, Inc.  
Terrance R. Shumaker  
Hawaii Hometrend, Inc.  
J. G. L. Enterprises, Inc.  
Kiahuna Golf Village  
A I Realty, Inc.  
Katherine Cadiente  
Plantation Realty Inc.  
Pacific Basin Management Corp.  
Richard A. Chong Realty, Inc.  
Omega Properties, Ltd.  
Kawili Corporation  
Antoinette M. DeMello  
Pacific Network Properties, Inc.  
D & J Associates, Ltd.  
Christmas Properties One, Inc.  
NORPAC Group, Inc.  
Russ Kam Realty, Inc.

Branch Offices

Bertha Laubscher Realty, Inc.  
dba Laubscher Realty

Site Office

The Landmark Property Corporation

Real Estate Tradenames

Jayne Henley dba Grand Resorts Realty  
Amy M. Ige dba Hawaii Realty Unlimited  
Joseph T. Leng dba New Century Realty

RESTORATION OF FORFEITED LICENSE

Michael Moss Broker

After a review of the information submitted by the applicant, Commissioner Sodetani 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 educational and experience requirements. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Stanley Fujimoto	Salesperson
Arthur Barnes	Salesperson
Gordon Evans	Salesperson
Thomas Foley	Salesperson

Karen Takamoto	Salesperson
Cherilyn Kauhane	Salesperson
Michael Riess	Salesperson

After a review of the information submitted by the applicants listed above, Commissioner Sodetani 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.

Mae S. Kimura

Chairman Yanagawa was excused from the meeting due to a conflict of interest. Vice Chairman Takeya took over the meeting.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to deny Ms. Kimura's request for reconsideration for restoration of her forfeited license. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Chairman Yanagawa returned to the meeting and resumed presiding over the meeting.

Paul Landrum

After a review of the information submitted by the applicant, Commissioner Sodetani moved to grant Mr. Landrum's request for reconsideration and his request for an extension to December 15, 1989. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

#### QUESTIONABLE APPLICATIONS

Nicki Hale Kai, Inc.

After a review of the information submitted by the applicant, Commissioner Matsuo moved to deny the real estate corporation application of Nicki Hale Kai, Inc. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Y C & N Real Property Corporation

After a review of the information submitted by the applicant, Commissioner Sodetani moved to deny the real estate corporation application of Y C & N Real Property Corporation. Commissioner Dew seconded the motion. The motion was voted on and unanimously carried.

Ala Cua International, Inc.

After a review of the information submitted by the applicant, Commissioner Kano moved to deny the real estate corporation application of Ala Cua International, Inc. Commissioner Matsuo seconded the motion. The motion was voted on and unanimously carried.

Hawaii International Vacations, Inc.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve the real estate license of Hawaii International Vacations, Inc. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Royal Coast International Corporation

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

After a review of the information submitted by the applicant, Commissioner Takeya moved to approve the real estate corporation application of Royal Coast International Corporation. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Commissioner Kuriyama returned to the meeting.

Steve Parker and Company

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

After a review of the information submitted by the applicant, Commissioner Takeya moved to approve the extension of the site office located at the Maui

Kamaole condominium project. Commissioner Sodetani seconded the motion. The motion was voted on and unanimously carried.

Commissioner Matsuo returned to the meeting.

Lea Properties, Ltd.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve the extension of the site office located at the Maui Hill condominium project. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Shell Realty Hawaii, Inc.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve the extension of the site office located at the Keauhou Gardens time share project. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Jeannie M. Fogarty Realty, Inc.

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve the name change of Michiyo Healey and to allow Ms. Healey to retain the use of her tradename Jeannie M. Fogarty Realty, Inc. dba Fogarty Realty. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

Michael S. Evans	Salesperson
Hella Rothwell	Salesperson
Thomas Ward	Salesperson
Dan Morikawa	Salesperson
Paula Yanagihashi	Salesperson
Gwen Furukawa	Salesperson

After a review of the information submitted by the applicants, Commissioner Sodetani moved to approve the real estate salespersons license application of the licensees listed above, subject to expungement of all previous licensing records. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.



David Dudeck

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

After a review of the information submitted by the applicant, Commissioner Sodetani moved to defer decision making on Mr. Dudeck's application to a later date. Commissioner Matsuo seconded the motion. The motion was voted on and unanimously carried.

Commissioner Takeya returned to the meeting.

Owner's Management Corporation

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the real estate broker's license of Owner's Management Corporation. Commissioner Takeya seconded the motion. The motion was voted on and unanimously carried.

John C. Stevenson

After a review of the information submitted by the applicant, Commissioner Sodetani moved to approve Mr. Stevenson's request for an equivalency to the 3 listings and 3 closed sales requirement for the broker's experience certificate.

Commissioner Matsuo expressed concerns about the lack of restrictive licenses and that the applicant did not have experience in residential transactions.

Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Alfredo Cabael

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

Recovery  
Fund Report:

SERGIO J. MISZTAL AND S.J.M. PACIFIC CORPORATION,  
CIVIL NO. 87-2640-08

Gary W. K. Au Young, Attorney for the Real Estate Recovery Fund reported on the status of the above-mentioned case.

BEN NORDSTROM, ET AL V. MICHAEL BELSKY, ET AL,  
CIVIL NO. 8522

Mr. Au Young presented an update on the above-mentioned case.

On September 2, 1987, Defendant Michael Belsky's Motion for Order Directing Payment from the Real Estate Recovery Fund came on for a hearing before Judge Shunichi Kimura. Mr. Au Young had raised several objections to the motion, including the fact that Defendant Belsky failed to notify the Commission in writing at the time he commenced his action against the licensee. Judge Kimura took this matter under advisement pending the appeal in Myers v. Beatty, et al, Civil No. 86-172, in the Circuit Court of the Third Circuit, State of Hawaii. The Hawaii Supreme Court recently issued a decision holding that notice to the Real Estate Commission must be given in writing at the commencement of the lawsuit in order for a claimant to recover from the Real Estate Recovery Fund. Mr. Au Young had requested that Judge Kimura deny Defendant Belsky's Motion for Order Directing Payment from the Real Estate Recovery Fund. Judge Kimura denied Mr. Belsky's Order, which resulted in no funds being paid out from the Real Estate Recovery Fund.

Next Meeting:

Upon a motion by Commissioner Sodetani, seconded by Commissioner Kano, it was voted on and unanimously carried that the Real Estate Commission Meeting for the month of October will be held on October 25, 1989, in the Kuhina Nui Room, Second Floor, HRH Princess Victoria Kamamalu Building, 1010 Richards Street, Honolulu, Hawaii.

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

Taken and recorded by:

Irene S. Kotaka, Secretary

Reviewed and approved by:

---

Calvin Kimura, Executive Secretary

---

Date