

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: Friday, October 28, 1994

Time: 9:00 a.m.

Place: Ka Lanakila Room
HRH Princess Victoria Kamamalu Building
250 S. King Street, Penthouse
Honolulu, Hawaii

Present: Barbara Dew, Vice Chair, Oahu Member
Charles Aki, Hawaii Member
Theo Butuyan, Public Member
Michael Ching, Kauai Member
Alvin Imamura, Maui Member
Stanley Kuriyama, Oahu Member (Early Departure)
Carol Mon Lee, Public Member
Nora Nomura, Public Member

Christine Rutkowski, Executive Officer
Lee Ann Teshima, Real Estate Specialist
Stephen Okumura, Condominium Specialist
R. Victoria Shiroma, Condominium Specialist
Shari Wong, Deputy Attorney General
Irene Kotaka, Secretary

Nicki Thompson, Hawaii Association of Realtors
Christine O'Brien, Hawaii Association of Realtors
Barry Fong, McCormack Real Estate Inc. dba Coldwell Banker McCormack
Real Estate
Kenneth David Josephson, Applicant
Karen R. Foard, Applicant

Excused: Marcus Nishikawa, Chair, Oahu Member

Call to Order: Vice Chair Dew called the meeting to order at 9:07 a.m., at which time quorum was established.

Additional Distributions: The following materials were additional distributions:
8. Licensing - Restoration of Forfeited License
Under Two Years - Salesperson
01/01/93 - Jutaro Sotomura

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

8. Licensing - Restoration of Forfeited License
Over Two Years - Salesperson
Genevieve Phyllis Miyamoto
Under Two Years - Salesperson
Helen U. Simutis
Kanani Mawae-Idemoto
9. Licensing - Questionable Applications
Julie Ann Wilson
Dan M. Parkovich
Thomas A. Williams

Vice Chair's Report: Chair Nishikawa was excused from the meeting.

The Vice Chair reported that she has received good feedback from those who attended the Real Estate Summit and that further discussion will be held at a later meeting.

Executive Officer's Report: The Executive Officer reported that Commissioner Nishikawa was excused from the meeting.

The informational handout regarding the Real Estate Commission's 1994 Batch Renewal Workshops was distributed to the Commissioners for their information.

Adjudicatory Matters: There were no adjudicatory matters to be discussed.

Recovery Fund Report: No report was presented.

Acceptance of Minutes: Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to amend the minutes of the August 26, 1994 Real Estate Commission Meeting, as follows:

Licensing: Restoration of Forfeited License

David W. Blaine

Broker

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the minutes of the September 30, 1994 Real Estate Commission meeting.

Committee Reports: **Condominium and Cooperative Review Committee**

Upon a motion by Commissioner Lee, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to accept the report of the October 12, 1994 Condominium and Cooperative Review meeting, with amendments to Items 5.a., 5.b., 5.c., and 6, as follows:

1. Accept minutes of September 14, 1994 meeting with amendments.
2. HREREC Report (distributed written report)
 - a. Hawaii Condominium Bulletin - Fall 1994 issue - anticipate distribution in early November.
 - b. Condominium Board of Directors Guide -
 - (1) Proxy Chapter - distribution to AOAOs with next Condominium Bulletin.
 - (2) Building Community Relations 0 distributed detailed outline. Initial draft is about 35% complete. Request comments to HREREC by October 14.
 - c. Condominium Association Budget and Reserves -
Anticipated workshops on the following Saturdays:
January 21, 1995 - Kauai April 22, 1995 - Kona
February 18, 1995 - Maui May 10, 1995 -

March 25, 1995 - Hilo
 - d. Condominium Survey - presented an analysis about areas of concern and a summary of data (e.g. number of responses, percentages) in response to the Committee's request.
 - e. HREREC Interactive Program - attended the CAI Fall National Conference and presented an oral report.
 - f. Personnel - recruiting for a research associate/administrative associate with October 17, 1994 deadline.
 - g. "Welcome to Condominium Living Booklet" - will consider partially combining this item with the Condominium Board of Director's Guide chapter on Building "Community Relations" in Associations.
3. CAI Legislative Report - Provided information on the recently passed Congressional bankruptcy reform legislation that affects condominium associations assessments and on the National Flood Insurance program as it relates to condominiums.
4. CAI Proposed Certification Program for Community Association Managers - report presented.
5. Project Registration, Public Reports, and Sales to Owner-Occupants
 - a. Pukuniahia - Apartment Size Questionable - Recommend to suspend processing registration of Pukuniahia condominium project as it appears inconsistent with the Commission's previously recognized interpretation of Chapter 514A, Hawaii Revised Statutes, and the apartment may not qualify as real estate. The Commission affirmed that county approval pursuant to §514A-36, HRS, is required for projects whose notice of

Honolulu

intention and registration pursuant to §514A-31, -32, HRS, are received after December 1, 1994. County approval may be evidenced by copies of the building permits or for conversions, the verified county statement pursuant to §514A-40(b)(1), HRS. The Commission reviewed the registration requirements of Chapter 514A, HRS, and affirmed that "[n]o effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and **floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings**" pursuant to §514A-36, HRS.

- b. Beard/Carter - Apartment questionable - Recommend to suspend processing registration of Beard/Carter condominium project as it appears inconsistent with the Commission's previously recognized interpretation of Chapter 514A, Hawaii Revised Statutes, and the apartment may not qualify as real estate. The Commission affirmed that county approval pursuant to §514A-36, HRS, is required for projects whose notice of intention and registration pursuant to §514A-31, -32, HRS, are received after December 1, 1994. County approval may be evidenced by copies of the building permits or for conversions, the verified county statement pursuant to §514A-40(b)(1), HRS. The Commission reviewed the registration requirements of Chapter 514A, HRS, and affirmed that "[n]o effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and **floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings**" pursuant to §514A-36, HRS. (Emphasis added.)
 - c. "Frustrated Developers" - Anonymous - Recommend affirmation of policy that the Commission is unable to respond to any anonymous letters, especially where there is no specific example or explanation of an alleged problem area.
6. Rulemaking, Chapter 107 - Budget and Reserves
Recommend approval of the technical, non-substantive amendments to the proposed reserve rules, as described in the October 11, 1994 memorandum subject to the following changes:
- h) Page 8: To §16-107-65(f), amend the first sentence to begin, "If a board [collects] plans to assess less than one hundred per cent ..."
 - h2) Page 8: To §16-107-65(f), delete (f)(1) and renumber sections (2) and (3).
 - j) Page 10: To §16-107-67(a), Amend the first and second sentences to read:
"(a) An association whose [estimated] replacement reserves and contingency reserves have been substantially depleted by

an emergency shall have three budget years to re-establish a minimum of fifty per cent of an adequate replacement reserve. The three years shall be calculated from the end of the budget year in which the association makes [the date of] the payment

which substantially depletes the association's replacement reserve."

- p) Page 1 and throughout: Replace the term adequate with full so that the rules refer to full replacement reserve.
- q) Page 2: Add a definition of replacement reserve minimum (fifty per cent of a full-reserve) to the definition section.

Laws and Rules Review Committee

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nomura, it was voted on and unanimously carried to accept the report of the October 12, 1994 Laws and Rules Review Committee meeting, as follows:

1. Accepted minutes of the September 14, 1994 meeting.
2. HREREC Report (distributed written report)
 - a. Advertising Brochure - fourth draft distributed to REB staff and awaiting REB response on cited concerns.
 - b. Fair Housing Brochure - need to amend due to State law amendment, will amend on next printing, will provide balance of initial printing after distribution at Summit I, and will provide amended copy for REB printing.
 - c. PB/BIC Brochure - working on REB comments received and scheduled for completion in early 1995.
 - d. Professional Responsibility Course - awaiting REB comments.
 - e. Broker Experience Certification - received responses from almost all states, HREREC to work with Commissioner Kuriyama and REB staff on concerns, this program is of higher priority.
 - f. Summit I - Honolulu, 10/27/94, Judge Burns Luncheon speaker. Molokai - REB Staff to work with HREREC to finalize, abbreviated format (Chair, Maui Commissioner, REB Staff, Dr. Ordway [luncheon speaker also], RICO, Licensing Branch, OCP, Time Share?), attempt to complete during November or early December, work within airline schedule, work with Larry/Diane Swenson [SEO already confirmed assistance] and Molokai Board.
2. Program of Work
 - a. License Renewal: Batch Renewal Workshops starts on October 27, 1994, schedule distributed.
 - b. Mandatory Continuing Education Legislation
Legislative Auditor's Report: Recommend approval of Commission's position that the industry, preferably Hawaii Association of Realtors, be the lead member of the proposed "Coalition for Mandatory Continuing Education for Real Estate Licensees", which should be open to everyone within the community. This recommendation is based on consultation with DCCA and the Attorney General's Office. The Commission shall be an active member of this coalition along with HREREC and

- others. Recommend that REB staff and HREREC immediately work on an extensive/in-depth analysis of RICO complaints records, as well as any other extensive/in-depth research into any other area to justify MCE.
3. ARELLO and Other Organizations
 - a. ARELLO Annual Conference Reports deferred to Education Review Committee.
 - b. Federation of Association of Regulatory Boards (FARB) - Recommend that due to budgetary concerns and priorities, the Commission decline invitation to participate in "Attorney Certification Course in Professional Regulatory Law" at Scottsdale, Arizona.
 4. Next meeting:
Wednesday, November 16, 1994, 11:00 a.m.
Sandalwood II Room
Nanihoa Hotel
Hilo, Hawaii

Education Review Committee

Upon a motion by Commissioner Imamura, seconded by Commissioner Butuyan, it was voted on and unanimously carried to accept the report of the October 26, 1994 Education Review Committee meeting, as follows:

1. HREREC Report - distributed written report
 - a. Evaluation System for Schools, Providers, Instructors, and CE Courses - reported on 10/13/94 workshop for monitors. Either HREREC or REB will notify Arizona and seek permission, if necessary. Suggested to involve instructors on review and comment on program.
 - b. Real Estate Summit I - To date, 415 registered plus 50 guests. Will include time for coalition on MCE.
 - c. The research and drafting of a response/report on MCE with REB on the Legislative Auditor's report is consuming most of the HREREC's resource time. Therefore, a number of programs are placed on hold.
2. Continuing Education Administration, Curriculum, Courses, Providers and Instructors
 - a. Application and Certification - Instructor
 - 1) Teney K. Takahashi - Recommend approval as CE instructor for course categories "Investment" and "Development".
 - 2) Leslie W. Brown - Recommend denial as CE instructor for course categories of "Real Estate Law Update and Ethics" and "Property Management", and the elective course "Residential Property Management: Laws and Rules". Based on no evidence that applicant possess command knowledge of the subject matter as required by HAR §16-99-104(d).

- b. Application and Certification - Provider
University of Hawaii at Hilo, College of Continuing Education & Community Service - Recommend approval as CE provider.
3. Prelicensing Education Administration, Curriculum, Schools and Instructors
Application and Certification - Instructor
Martha Lee Ruggles - Recommend approval as prelicensing broker and salesperson instructor subject to submission of passing score report for Instructor Exam by November 30, 1994 and attendance at the next Commission-approved Instructor Development Workshop.
4. Instructor Development Workshop - January 12-13, 1995, Montgomery, AL.
5. Division and Department Programs - the schedule for Batch Renewal Workshops for Real Estate Licensees distributed.
6. Interactive Participation with Organizations - HAR Annual Convention 0
Recommend that any participation by REB and HREREC be under a mini-Summit type agenda with breakouts.
7. Neighbor Island Outreach - CCRC, LRRC, and ERC meetings at Hawaii Naniloa Hotel, Hilo, November 16-17, 1994.
8. MCE Legislation, Auditor's Report, Commission's Report, Coalition for MCE for Real Estate Licensees, and Other MCE Concerns
Auditor's Report reviewed and discussed. Committee made recommendations on responses/positions, directed areas of further research, etc. Report presented from Ann Davidson on the "Coalition for MCE for Real Estate Licensees".
9. ARELLO Research and Education Fund Report, October 6, 1994 -
Recommend acceptance of report.
10. Next meeting:
Thursday, November 17, 1994, 9:00 a.m.
Sandalwood II Room, Hawaii Naniloa Hotel
93 Banyan Drive
Hilo, Hawaii 96720

Licensing:

Restoration of Forfeited License

Karen R. Foard

Salesperson

Karen R. Foard was present to answer any questions the Commission may have had regarding her application for restoration of her forfeited real estate salesperson's license.

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

Questionable Applications

Kenneth David Josephson

Kenneth David Josephson was present to request consideration of his application for a real estate broker's license.

Mr. Josephson was asked if he would like his application to be considered during executive session, but he declined the offer.

Mr. Josephson stated that he had new documentation verifying that tax payments were made on his account as he had stated previously.

Mr. Josephson said that the denial letter that he had received from the Commission stated that he lacked a reputation for honesty, truthfulness, fair dealing and financial integrity. He stated that he has a good reputation. He has fourteen letters from professionals stating that he does possess a reputation for honesty, truthfulness, fair dealing and financial integrity. He stated that he was not sure why his license was denied. He stated that he had sketchy information to prove that his tax payments were made. He stated that he had made almost \$9,000 in payments against his tax liens. He stated that he has talked with the IRS and stated that his house is on the market and he is aggressively trying to pursue the sale. Mr. Josephson stated that he has displayed his financial integrity by finding another way to pay off his tax lien, i.e., the sale of his house.

Mr. Josephson stated that if he had to, he could fill the room with his satisfied clients. He stated that he has taken a lot of distressed properties and put them back on their feet. He manages time share associations, several of which were on the brink of financial disaster. Mr. Josephson stated that he feels that he meets all of the requirements which were stated in the denial.

Mr. Josephson stated that he is in full contact with the IRS, that they have his Hawaii address. He stated that the IRS had even suggested that he hold out on the sale of his property in order to get a higher price so that he may avoid the capital gains tax. There is a \$98,000 mortgage on the property. \$42,000 is owed to the IRS, of which \$18,000 are for taxes owed and the remainder is for interest owed.

Mr. Josephson was asked if he had informed the California Department of Taxation of his change in address. Mr. Josephson stated that California does have his Hawaii address. He has changed his address with the IRS. He is paying his taxes on time now. Everything is current except for the tax liens. He does not intend to owe any taxes ever again.

Mr. Josephson was asked if he has any intentions towards amending his payment plan to take care of his obligations. Mr. Josephson stated that he has contacted both agencies and has asked them if they would accept a payment plan. He was told that they have to transfer his files from the Ogden office to the

Fresno office. Once the files are transferred, he can work out a payment plan. He has filled out the forms and submitted his request to the IRS, but he cannot do anything until the files are transferred.

Mr. Josephson submitted to the Commission copies of his Change of Address form which was filed with the IRS, a copy of his Monthly Income and Expense Analysis and Collection Information Statement for Individuals which was filed with the Honolulu Office of the IRS.

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

Executive Session:

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to enter into executive session 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;"

Commissioner Kuriyama was excused from the meeting.

Upon a motion by Commissioner Imamura, seconded by Commissioner Butuyan, it was voted on and unanimously carried to move out of executive session.

Licensing:

Restoration of Forfeited License

Catalina C. de Castro	Salesperson
Tae Sang Chun	Salesperson
Pamela J. Heath	Salesperson
Mary C. Ortel	Salesperson
Jutaro Sotomura	Salesperson
Helen R. Simutis	Salesperson
Kanani Kawae-Idemoto	Salesperson

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

Karen R. Foard Salesperson

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

Genevieve Phyllis Miyamoto

Salesperson

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

Questionable Applications

Huffman & Co., Inc.

After a review of the information submitted by the applicant, Commissioner Ching moved to approve the real estate corporation application of Huffman & Co., Inc. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Drake Properties, Inc.

After a review of the information submitted by the applicant, Commissioner Lee moved to approve the real estate corporation application of Drake Properties, Inc. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

Pahio Vacation Ownership, Inc.

After a review of the information submitted by the applicant, Commissioner Aki moved to approve the conditional license of Pahio Vacation Ownership, Inc. Commissioner Lee seconded the motion. The motion was voted on and unanimously carried.

Aurora T. Sarmiento

After a review of the information submitted by the applicant, Commissioner Ching moved to deny Aurora Sarmiento's request for an educational waiver, based on the fact that she had completed the course prior to January 1, 1986 and it was not similar or superior to Hawaii's requirements. Commissioner Lee seconded the motion. The motion was voted on and unanimously carried.

Kenneth David Josephson

After a review of the information presented by the applicant, Commissioner Ching moved to approve Mr. Kenneth David Josephson's request for reconsideration and to approve his application for a real estate broker's license. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Julie Ann Wilson

After a review of the information submitted by the applicant, Commissioner Butuyan moved to approve Julie Ann Wilson's application for real estate sole proprietorship. Commissioner Nomura seconded the motion. The motion was voted on and unanimously carried.

Dan M. Parkovich

After a review of the information submitted by the applicant, Commissioner Lee moved to approve Dan M. Parkovich's application for a real estate salesperson's license. Commissioner Nomura seconded the motion. The motion was voted on and unanimously carried.

Thomas A. Williams

After a review of the information submitted by the applicant, Commissioner Nomura moved to approve Thomas A. Williams' application for a real estate broker's license. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Ratification

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

Real Estate Brokers

H & G, Ltd. dba Apollo Realty
Ho'ala Properties, Inc.
Poipu Ocean View Resorts, Inc.
Pomai, Inc.

Site Office

Maui Pacific Realty Partners, Inc. - Kahana Ridge
Marcus & Associates, Inc. - Iwalani - Village 5 of the Villages of Kapolei
Tongg Realty, Inc. - Olaloa, Projects II and III
C and H Properties, Inc. - Sandalwood at Waimea

Trade Name

Kamaile Rafalovich dba The Pele Group
John Herman Burbach dba Keone and Associates
Tracy Lewis, Inc. dba The Prudential Tracy Lewis Realtors

Corporation Name

Town & County Realty, Inc. fka Century 21 Town & Country Realty, Inc.

Condominium Project Registration - Public Reports Issued September 1994

Olaloa-Project III, Honolulu (Second Supplementary)
Iwalani, Honolulu (Final)

Ahualoa Homestead, Hawaii (Final)
Country Club Village, Building 2, Honolulu (Final)
Country Club Village, Building 3, Honolulu (Final)
68-084 Akule Street, Honolulu (Final)
The Crowne at Wailuna, Phase II, Honolulu (Final)
Spencer Court, Honolulu (Preliminary)
Aliomanu Vista Mauka, Kauai (Final)
Uraku Tower, Hawaii, Honolulu (Second Supplementary)
45-217 Lilipuna Road, Honolulu (Final)
Sand Castles CPR, Kauai (Final)
919 14th Avenue, Honolulu (Final)
Pomaika'i, Kauai (Final)
5921 Kapahi Road Condominium, Kauai (Final)
Lot 217 Wainiha Hui Land, Kauai (Final)
Kaiulani Gardens Lot A, Hawaii (Final)
Kimball I, Hawaii (Final)
Kimball II, Hawaii (Final)
Kipapa Acres, Honolulu (Supplementary)
3241 Pawaina Place, Honolulu (Final)
Westview at Makakilo Heights, Phase II, Honolulu (Final)

Next Meeting:

Wednesday, November 30, 1994
9:00 a.m.
Kuhina Nui Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, Vice Chair Dew adjourned the meeting at 10:35 a.m.

Respectfully submitted by:

Christine Rutkowski
Executive Officer

Date