

LAWS AND RULES REVIEW COMMITTEE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.state.hi.us/hirec

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: Wednesday, August 14, 2002

Time: 9:00 a.m.

Place: Kapuaiwa Room
Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Iris Okawa, Chair
Louis Abrams, Vice Chair
Marshall Chinen, Member
Patricia Choi, Member
Mitchell Imanaka, Member
Kathleen Kagawa, Ph.D., Member
John Ohama, Member
Peter Rice, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Diane Choy Fujimura, Senior Real Estate Specialist
Cynthia Yee, Senior Condominium Specialist
Lorene Arata, Real Estate Specialist
Cheryl Leong, Condominium Specialist
Shari Wong, Deputy Attorney General (Late Arrival)
Irene Kotaka, Secretary

Others: Nicki Ann Thompson, Hawaii Association of REALTORS
Edward Neizman
Robert Sadaoka, Regulated Industries Complaints Office
Suzanne King, Honolulu Board of REALTORS

Excused: Vern Yamanaka, Member

Call to Order: The Chair called the meeting to order at 9:04 a.m., at which time quorum was established.

Chair's Report: No Chair's report was presented.

SEO's Report: **Additional Distribution**

The following materials were distributed to the Commissioners prior to the start of the meeting:

6. Special Issues
 - c. Request for Reconsideration – In the Matter of the Real Estate Broker's Licenses of Edward A. Neizman and Kaiman Realty, Inc., REC 199-89-L; REC 2000-4-L; REC 2000-7-L and REC 2000-36-L
9. Morgan Stanley Dean Witter

Minutes of Previous Meetings

Upon a motion by Commissioner Abrams, seconded by Commissioner Choi, it was voted on and unanimously carried to accept the minutes of the July 10, 2002 Laws and Rules Review Committee meeting as circulated.

Special Issues:

The Chair called for a recess from the meeting at 9:06 a.m., to discuss and deliberate on the following adjudicatory matter, pursuant to Chapter 91, HRS:

Request for Reconsideration – In the Matter of the Real Estate Broker's Licenses of Edward A. Neizman and Kaiman Realty, Inc., REC 1999-89-L; REC 2000-4-L; REC 2000-7-L; and REC 2000-36-L

Edward A. Neizman was present to request a reconsideration of the Commission's previous order to revoke his real estate broker's license.

Mr. Neizman stated that he was sorry that he didn't get the restitution paid on time. He had fallen upon hard times. He stated that several transactions fell apart at the last minute. The sellers changed their minds when the escrow didn't close on time. He also stated that he had health problems and had suffered a stroke. He has been diabetic for over twenty years. He did not pay the restitution in a timely manner.

Mr. Neizman's request for reconsideration was received in a timely manner.

The Chair informed the Commissioners that they needed to decide on whether or not to grant the Respondents' request for reconsideration. The Commission would then need to determine if further sanctions should be imposed upon Mr. Neizman and Kaiman Realty, Inc.

Commissioner Abrams moved to grant the Respondents' request for reconsideration. Commissioner Rice seconded the motion.

Mr. Sadaoka apologized for not being appropriately dressed. He stated that he had just returned from vacation this morning when he learned of the hearing. Mr. Sadaoka stated that RICO had a duty to report the delinquency of the fine payment to the Commission. The Commission can decide whether or not they would like to impose further sanctions against the Respondents. RICO does not oppose the Respondents' request for reconsideration.

The motion was voted on and unanimously carried.

The Chair reminded Mr. Neizman that he had entered into the settlement agreement willingly, and under the terms of the settlement agreement, the Respondents needed to complete certain steps in order to be in compliance with the settlement agreement. The Respondents were ordered to pay a fine and to make restitution. If these conditions were not met by the date agreed upon by the parties, the Respondents' licenses would be revoked. RICO had submitted an affidavit stating that the payments were not made in a timely manner. The Commission then notified the Respondents' of its intent to take further action.

Mr. Neizman stated that the restitution was made last year, but the fines were not paid in a timely manner. He was unable to pay the fines because he was undergoing hardship.

Mr. Sadaoka stated that his office had received a cashier's check for the entire amount of the fine on August 8, 2002. He also stated that he believes that the Respondents did not pay the fine because of hardship.

Mr. Sadaoka was asked to confirm that the Respondents have paid whatever was due. He confirmed that the Respondents have paid the fine and the restitution.

Mr. Sadaoka was asked if he had been contacted by the Respondents after the payments were rescheduled in April, explaining why the fines were not paid. Mr. Sadaoka stated that he had not. Mr. Sadaoka stated that he had called the Respondents prior to May 30 and had told Mr. Neizman that if no payments were received by June 30, he would have to pursue this matter further.

Mr. Neizman stated that several real estate transactions fell apart and he had been expecting to receive the funds from the transactions to pay the fine.

Mr. Neizman appealed to the Commission for another chance. Real estate has been his only profession for over thirty years.

The Chair thanked both Mr. Neizman and Mr. Sadaoka for appearing before the Commission.

The Chair stated that the parties had agreed to the deadlines placed within the settlement agreement. Mr. Neizman is asking for something that is over and beyond the terms of the settlement agreement. The Commission understands Mr. Neizman's financial hardships and health problems; however, it was very important that the Respondents communicate with RICO.

Mr. Neizman asked if he could perhaps be allowed to pay another fine within 90 days instead of having his license revoked or suspended.

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

Following the Commission's review, deliberation and decision on this matter, pursuant to Chapter 91, HRS, the Chair announced that the Committee was reconvening its scheduled meeting at 9:18 a.m.

Hawaii Association of REALTORS: REALTORS

Ms. Thompson was present to request clarification from the Commission on its advertising rules as it relates to the Hawaii Association of REALTORS ("HAR").

Ms. Thompson stated that the National Association of REALTORS has changed its policy so that the use of Realtor and Realtor-Associates cannot be tied to a license. As a result of this, two of HAR's local boards will no longer be recognizing levels of license. The members of the two local boards that are affected will no longer differentiate its members who hold a real estate salesperson's license by the designation "Realtor-Associate" or "RA". There will only be one designation, "Realtor" or "R".

The purpose of noting the "R" and "RA" was so that the consumer would know whether or not they are dealing with a real estate broker or a real estate salesperson.

The SEO pointed out that §16-99-11(e) (3), Hawaii Administrative Rules, does not say that the licensee is permitted to use "RA" or "Realtor-Associate" instead of "RS" or "Real Estate Salesperson."

Ms. Thompson stated that if the purpose of the disclosure was to let the consumer know the level of licensing, the licensee could use "B" to indicate a real estate broker's license or "S" to indicate a real estate salesperson's license.

The SEO stated that the original intent was to let the public know that they are dealing with a licensee, not the level of licensure.

Ms. Thompson was asked to explain how HAR would be dealing with this issue. Mr. Thompson stated that it was a decision that would be left up to the local boards. Members want to know who they are dealing with, whether the individual is a broker or a salesperson. The National Association of REALTORS is pushing this trend.

Commissioner Choi stated that the term "Realtor" has become more synonymous within the last ten years.

The Deputy Attorney General reminded those present that not everyone that is licensed is a Realtor.

Ms. Thompson stated that in order to be a Realtor, one must have a real estate license and belong to the three levels of licensing.

The Deputy Attorney General stated that the rule does say that the licensee must specify that the licensee is a broker (B), or salesperson (S),

or if they are a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor-Associate (RA).

Ms. King was introduced to those present. Ms. King represents the Honolulu Board of REALTORS.

The Deputy Attorney General clarified that the Commission is not doing away with the requirement that either "Broker" or "(B)" or "Salesperson" "(S)" be included in the advertising.

Commissioner Kagawa stated that from the industry's standpoint, this decision could have a major impact on the industry.

The SEO stated that the intent of the laws and rules was to make the consumer aware that they were dealing with a licensee.

Commissioner Ohama stated that from what he read, it sounded like there was some level of concern.

Commissioner Imanaka questioned whether or not the Commission had the authority to do away with requiring that the advertising contain the "B" or the "S."

The Deputy Attorney General stated that the broker could put a B regardless of whether or not you are a Realtor.

Commissioner Abrams stated that if you used the R or Realtor, you did not need to use a B.

Commissioner Imanaka again asked if the Commission has the authority to not require the "S." He was informed that the licensee has to use the "S", but the broker does not matter.

Upon a motion by Commissioner Imanaka, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend that if a real estate broker is a member of the Hawaii Association of REALTORS, and does not indicate that they are a "broker" or "(B)" in their advertising and indicates they are a "Realtor" or "(R)", it is not considered a violation of §16-99-11(e) (3), HAR. If a real estate salesperson is a member of the Hawaii Association of REALTORS, and does not indicate that they are a "salesperson" or "(S)" in their advertising and indicates that they are a "Realtor-Associate" or "(RA)", it is not considered a violation of §16-99-11(e)(3), HAR. A real estate salesperson, who is a member of the Hawaii Association of REALTORS, and permitted by the Hawaii Association of REALTORS to use the term, "Realtor" or "(R)" in advertisements, will be required to include the term "salesperson" or "(S)" or "R(S)" in order to be in compliance with §16-99-11(e)(3), HAR.

Program of Work, FY03:

Licensing, Registration, and Certification Administration

Trade Name – More Than One

SVO Pacific, Inc. is requesting that the Commission allow them to register another trade name. They are currently licensed with the trade name, “Westin Kaanapali Ocean Resort Villas and would like to register a second trade name, “Westin Vacation Ownership”.

Commissioner Rice stated that it was his guess that the licensee may be building separate facilities and will ultimately convert the hotel to interval ownership.

If the Commission denies their request, one of the options may be to delete the current trade name and add on “Westin Vacation Ownership.”

Commissioner Imanaka suggested deferring this matter in order to obtain more information.

The SEO stated that the Commission could also deny the request and continue its existing interpretation that allows only one trade name. Some of the latest rule amendments does say “any” trade name.

Commissioner Imanaka stated that he was concerned that they are being requested to make a policy decision without obtaining all of the facts.

The Commissioners were considering requesting that the applicant be asked to appear before the Commission to provide further information on the management structure and to also provide assurances that the public would be able to locate the company if they were granted permission to have more than one trade name.

The SEO pointed out that the rules allow for someone to declare a license name versus a legal name. For example, they would allow Louie Abrams even though the legal name is Louis Abrams, subject to submission of the required forms.

Upon a motion by Commissioner Ohama, seconded by Commissioner Abrams, it was voted on and unanimously carried to deny SVO Pacific, Inc.’s request to use more than one trade name pursuant to §467-8(a)(7), HRS, unless the Commission receives further evidence to warrant a change of position.

Licensing Application Requirement – HPD Abstract of Criminal Record

A copy of an abstract of criminal record was distributed to the Commissioners for their information. In the past, the Commission had required that a criminal record abstract be submitted with an application for license.

Neighbor Island Outreach

The next neighbor island outreach is tentatively scheduled to be held on the island of Maui, on Friday, January 10, 2003, subject to room availability.

Licensing Renewal

Real Estate Specialist Arata informed the Commissioners that the notice to principal brokers was mailed out on August 2, 2002. The notice informs the principal brokers of the licenses associated with their firm and also whether or not the licenses associated with them have completed their continuing education requirements.

Commissioners' Education Program

A copy of the July 2002 issue of OpenLine, was distributed to the Commissioners for their information.

ARELLO, Other Organizations and Jurisdictions:

Latest News

A copy of the memorandum, dated July 2, 2002, from Craig Cheatham, was distributed to the Commissioners for their information. The memorandum informed the Commissioners of the latest news on ARELLO's activities and issues.

The Commissioners were also asked to inform staff if they were interested in serving on any of ARELLO's committees. Staff will coordinate the submission.

Chair Okawa is currently a member of the Awards Committee and is reviewing the ARELLO award submissions. Commissioner Ohama is assisting in the review of the award submissions.

The Commission has submitted the continuing education core course as an entry for the education award.

Other Organizations

ALQ/Real Estate Intelligence Report

A copy of the Summer 2002 issue of the ALQ Real Estate Intelligence Report was distributed to the Commissioners for their information. The articles highlighted were:

- HUD to rescue consumers(?) Home Buyer Bill of Rights
- Mortgage bankers offer courses in real estate – Preparing bankers to become brokers and agents?
- ERC releases tool to stem referral fee disputes
- Internet Not Replacing Real Estate Agents
- Case Law on Agency and As is

Pennsylvania Real Estate Commission

A copy of a letter from the Pennsylvania Real Estate Commission, dated July 2002, was distributed to the Commissioners for their information. The letter contained information on Pennsylvania's requirements for out-of-state licensees seeking a license in Pennsylvania.

National Association of REALTORS Conference

Upon a motion by Commissioner Ohama, seconded by Commissioner Choi, it was voted on and unanimously carried to recommend approval to send one Commission member to the NAR Conference to be held on November 8 to 11, 2002, in New Orleans, Louisiana, subject to the Governor's fiscal policy and budgetary approval.

Special Issues:

Disciplinary Action: Payment into the Real Estate Education Fund

In the past, respondents have had to pay a fine to the Real Estate Education Fund ("REEF") since staff time and other resources were expended for meetings, in monitoring the sanctions or determining the type of course that should be completed. The fines that were deposited to the REEF would also be used to further education the real estate licensees through such means as the Real Estate Bulletin, seminars, notices and presently, the Commission's webpage or other avenues.

Chair Okawa asked if RICO could be asked to require a payment into the REEF as the Commission would like to see the respondents complete rehabilitative courses and REB staff will have to monitor and ensure that the respondents have completed the courses.

Executive Session:

Upon a motion by Commissioner Rice, seconded by Commissioner Ohama, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a)(4), HRS, "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 Ohama, seconded by Commissioner Abrams, it was voted on and unanimously carried to move out of executive session.

Special Issues:

The Chair called for a recess from the meeting at 10:28 a.m., to discuss and deliberate on the following adjudicatory matter, pursuant to Chapter 91, HRS:

Request for Reconsideration – In the Matter of the Real Estate Broker's Licenses of Edward A. Neizman and Kaiman Realty, Inc., REC 1999-89-L; REC 2000-4-L; REC 2000-7-L; and REC 2000-36-L

Upon a motion by Commissioner Ohama, seconded by Commissioner Choi, it was voted on and unanimously carried to recommend that the Commission vacate its prior decision to revoke the Respondents' licenses and further recommends the following:

- 1) That Respondents pay a fine of \$1,000 to the Real Estate Education Fund by November 30, 2002;
- 2) That Respondent Neizman enrolls in and complete three (3) hours in continuing education in the subject area of contracts by November 30, 2002. This requirement shall be in addition to, and not in place of the existing continuing education requirements; and
- 3) Respondents to be on two (2) years probation, from August 14, 2002, up to and including August 14, 2002 ("Probation Period"). If the Respondents are found to have violated any statute or rule governing the conduct of real estate brokers in Hawaii, and such violation is based upon conduct during the Probation Period, Respondents' licenses shall be revoked without further hearing, upon the Commission's receipt of an Affidavit from the Commission's Executive Officer attesting to such violation.

Following the Commission's review, deliberation and decision on this matter, pursuant to Chapter 91, HRS, the Chair announced that the Committee was reconvening its scheduled meeting at 10:39 a.m.

Open Forum: There were no participants.

Budget and Finance Report – RERF: No report was presented.

Next Meeting: Wednesday, September 4, 2002
9:00 a.m.
Kohala/Kona Rooms
Sheraton Waikiki Hotel
2255 Kalakaua Avenue
Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 10:40 a.m.

Reviewed and approved by:

/s/ Calvin Kimura
Calvin Kimura
Supervising Executive Officer

September 4, 2002
Date

[X] Approved as is.

[] Approved with amendments. See minutes of _____ meeting.