



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
May 18 and 19, 2004
Meeting**

Chairman Carlos L. Valdes called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at the Miami Airport Hilton, Miami, Florida, on this 18th day of May, 2004.

The Chair introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Carlos L. Valdes, Chairman; Guy Sanchez, Jr., Vice-Chairman; Matey H. Veissi, Poul Hornsleth, Noel P. McDonell, Nancy B. Hogan and Bob Beals. The Chair declared a quorum present. Daniel Villazon appeared as counsel for the Commission.

Department and Division staff present at the meeting: Diane Carr, Secretary; Julie Baker, Deputy Secretary; Michael J. Murphy, Director of Service Operations; Juana C. Watkins, Acting Director; Keith Chapman, Deputy Director; Christopher J. DeCosta, Acting Chief Attorney; Kathleen Koeberich, Bureau Chief; James Harwood and Jason W. Holtz, Prosecutors; Brian Piper, Investigator Supervisor; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. Associated Reporting Service, Inc. (954-467-8204) provided court reporter services.

Legal Matters

At approximately 8:30 a.m., the Commission took up the Legal Agenda, consisting of 19 items. It heard 18 items and continued 1. The Commission's decisions on these matters are attached to the official minutes.

Division of Administrative Hearings Recommended Order

Mr. DeCosta presented a Recommended Order issued by Division of Administrative Hearings Law Judge J. D. Parrish styled Antonella Diabella v. DBPR, Division of Real Estate. Commissioner McDonell moved to adopt the Recommended Order. Commissioner Hogan seconded it. The motion carried unanimously. A copy of the Commission's decisions on this matter is attached to the official minutes.

Chairman Valdes expressed his concern at the lack of interest on the part of the licensees in attending this FREC meeting in Miami. Mr. Valdes stated that one of his goals during his tenure as Chairman was to take the meeting to various areas throughout the state. He further stated that last month the Commission voted to have a meeting in Ft. Walton Beach. Mr. Valdes stated that he feels that Ft. Walton Beach is not the most appropriate venue to reach the majority of the licensees and he requested that the Commission reconsider having the meeting in Tallahassee. Mr. Valdes stated that he spoke with Secretary Carr regarding the meeting being held in Tallahassee in a month other than October.

Approval of the Minutes

Commissioner Veissi moved to approve the Minutes of the April 20 and 21, 2004, General meeting, as written. Commissioner Hogan seconded it. The motion carried unanimously.

Unfinished Commission Business

Report regarding unlicensed activity

Mr. Brian Piper provided a summary of the report. Mr. Piper stated that the Division has begun license compliance sweeps visiting 29 locations verifying 250 licenses and identifying 12 concerns. Additionally, the Department initiated the first arrest warrant regarding unlicensed activity which is pending. Mr. Piper introduced the investigators from the Miami and Ft. Lauderdale area. Mr. Piper further stated that the Department has a proposal for outdoor billboard advertising. Chairman Valdes inquired about the money earmarked for public service announcements. Ms. Watkins stated that the Public Service Announcements (PSA) have moved forward and the costs were significantly less than initially anticipated. Mr. Valdes stated that the minutes of a previous FREC meeting reflect that the Department told the Commissioners that they would be shown expenditures prior to any money being spent on the PSAs. Chairman Valdes expressed his concerns at how the Department is handling the matter and he has additional concerns as to what is going to happen with the unused money. Ms. Watkins responded that the Department is moving forward with the other aspects of the agreement such as the sweeps and stings. Ms. Watkins also stated that the only change to the advertisement presented to the Commission at the February meeting was the addition of the Department's web address. Chairman Valdes stated that the Department is aware of his position that billboards are not the appropriate use of the unlicensed money and would prefer that the Department hire more investigators. Vice-Chairman Sanchez concurred and inquired if the Department was interacting with other related agencies to address unlicensed activities. Ms. Watkins stated that the Department has exerted great efforts to open up the dialog with the State Attorney's Office. The Commission expressed their disappointment at the lack of concern by other agencies. Commissioner McDonell suggested that perhaps Secretary Carr should contact the Department of Banking and Finance to discuss this issue, as she would have more authority than representatives from the Division of Real Estate would.

Chairman Valdes requested that Ms. Watkins relay this discussion to Secretary Carr. The Commission respectfully suggested that the Chairman send a letter to the Secretary outlining the Commission's concerns.

The Commission received comments from members of the audience regarding this issue.

Report regarding Education Foundation Scholarship Program

Ms. Watkins stated that the scholarships are scheduled to be awarded in the fall. Ms. Watkins reported that Ms. Hartley requested three specific provisions in the contract be modified, which the Department should have finalized in time for the fall semester.

Report regarding Board privatization

Chairman Valdes inquired as to the status of the information regarding privatization. Ms. Watkins stated that the public record request resulted in two boxes of documents and that a representative from the Department would be available at the June meeting to address this issue. Chairman Valdes requested assistance from the other Commissioners to review this information. He added that he would also like to hear of the pros and cons from the Boards who have privatized. Chairman Valdes listed several factors as to why he would like the Commission to investigate privatization. Commissioner McDonnell stated that, however, when comparing the different Boards they need to be mindful not to compare apples to oranges. Chairman Valdes restated that he feels that privatization is an option to be studied.

FREC Newsletter

Ms. Watkins reported that the original publication date was scheduled for the end of April, however due to several unforeseen circumstances with the vendor the publication has been delayed. Ms. Watkins further reported the newsletter was forwarded to the mailers today and should be sent out by the end of the week.

FREC meeting in the Panhandle

Commissioner Veissi moved to rescind the previous decision of holding the FREC meeting in Ft. Walton Beach, change the venue to Tallahassee and schedule the meeting for a month other than October. The motion carried unanimously.

Real estate license photo identification

Chairman Valdes stated that the Commission requested that the Department provide licenses with a photo to real estate licensees. Chairman Valdes stated that he disagrees with the report last month in that issuing a photo ID would require a statutory change. He explained that mandating the licensee to have a photo ID would require statutory change but the Department could automatically issue a license with a photo. Ms. Watkins stated that she operated under the belief that the Commission was requesting that the photo be mandatory, however it appears that the Commission wants to make the option available to the licensee. Chairman Valdes stated that initially that was the intent, however, since the statute does not allow this then the Commission will remove the word mandate and the Department can make the decision to automatically put the photo on the license. Ms. Watkins stated that she would meet with Mr. Villazon to discuss this issue in detail.

Clarification of unlicensed activities

Ms. Watkins reported that at last month's meeting the Commission talked about a list activities that an unlicensed assistant may perform, which has been circulating throughout the real estate industry. She further reported that the Commission agreed not to take a position as the list was not formulated by the Commission. Ms. Watkins stated that this issue was left on the agenda in the event Chairman Valdes wanted to address this issue further.

Chairman Valdes introduced Mr. Russell Grooms, FAR President, Mr. Frank Kowalski, President-Elect and Mr. John Sebree, Vice-President of Public Policy.

Expiration of pre-licensure education

Ms. Watkins requested that the Commission address the issue of pre-licensing education in that the Department has no authority to set an expiration date. Mr. Villazon explained that some time in the past the Department instituted a rule setting an expiration date for pre-licensing education, however, it appears that the Department had no statutory authority to enforce this. He added that the rules are not valid, meaning someone can take the exam, fail it and retake the exam five years later without retaking the education course. He stated that the Department is requesting the Commission's approval to move forward with the appropriate steps to initiate the statutory change. Commissioner McDonell moved that the Commission endorse that the Department make the statutory changes. Commission Hogan seconded. The motion carried unanimously.

New Commission business

General correspondence

Mr. Villazon stated that it appears that Mr. Eisenberg is upset with people who are offering MLS services for a flat fee. He stated that with the Commission's permission he would coordinate with the Department and respond to Mr. Eisenberg.

Mr. Villazon stated that Ms. Kaufold is requesting an extension to complete the post-licensing course to renew her license. He stated that the Commission has no authority and with the Commission's permission he would respond to Ms. Kaufold advising her that pursuant to statute the Commission is unable to authorize an extension.

Mr. Villazon stated that Ms. Williams is requesting that the Commission grant an extension of her real estate application and allow her to sit for the exam. He stated that the Commission has no authority and with the Commission's permission he would respond to Ms. Williams advising her that pursuant to statute the Commission is unable to authorize an extension.

Acting Director Watkins requested the Commission ratify the reinstatement of William T. Foyer and Edward A. Quinones, who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

Upon recommendation of the Legal Section, the Commission unanimously issued 49 Escrow Disbursement Orders (EDO) and 2 orders of denial. A list of the Orders is attached to the official minutes.

Commissioner Hogan inquired as to how long the cap for escrow disbursement orders has been \$50,000.00. Mr. Villazon stated that the cap is determined by the recovery fund statutory cap limiting the amount of the money the Department is authorized to disburse, provided one of the parties choose to take the broker to court and obtain a favorable judgment. Mr. Villazon stated that the recovery fund cap was raised to \$50,000.00 effective July 1, 2003.

Recovery Fund Claim

Acting Chief Attorney Christopher J. DeCosta presented Recovery Fund Claim styled Charles Minor v. Florida Real Estate Recovery Fund, Case Number 2004026228. Commissioner Beals moved the approval of payment from the recovery fund in the amount of

\$2,000.00 to the Claimant. Commissioner Hornsleth seconded. The motion carried four to three.

Unfinished business continued

Computer-based testing contract

Vice-Chairman Sanchez expressed his concerns regarding the computer-based testing contract in that he has issues regarding the way the services are conducted and the shape of the equipment. He added that he has received complaints from other instructors and applicants regarding these same issues. Mr. Sanchez stated that he read through the contract and there is additional language that should be in the contract. Mr. Michael Murphy, Director of Service Operations, reported that there have been a few things that the Department has ironed out with Promissor. He stated that the Department is not currently negotiating the contract, but refining the service delivery. Mr. Murphy stated that he would take a look at Mr. Sanchez's concerns. Vice-Chairman Sanchez listed several other concerns regarding Promissor's failure to resolve certain issues, which he believes should be addressed in the contract. Mr. Murphy stated the Department is in constant negotiations with the vendor to improve services, holding them accountable to fix any problems. He further reported that the Department continues to collect the end-of-exam surveys and all complaints are cataloged in a spreadsheet according to category, type and service delivery and are maintained in a database for future use in negotiating new contracts. Mr. Valdes requested that the Department provide a monthly report to the Commission of the issues that the Department is addressing with Promissor and keep this issue under unfinished business until it is resolved.

Acting Director's Comments

Ms. Watkins stated that she addressed everything under each topic and had nothing further to add. Chairman Valdes wanted to reiterate that he personally does not expect more than what the Division already provides, adding that years ago we had more staff and less licensees, now we have more licensees and less staff. He further stated that the Commission would continue to address these same issues every month.

Public comments

Mr. Evan Butterfield of Dearborn thanked Chairman Valdes for accommodating him. He stated that it has come to their attention that many copywriters are infringing on their copyrighted books and inquired if they should be regularly reporting this to the Commission. Commissioner Hogan asked Mr. Villazon if there was any way to invalidate a course when it is taught with a copyrighted infringement. Mr. Villazon believes the Bureau of Education and Testing may have that authority. Mr. Butterfield stated that Dearborn has taken action against a particular company and he wants to inform people that they intend to pursue this violation to the fullest extent possible. The Commission asked Mr. Butterfield to keep them informed should any more offenses of this nature occur.

The Commission considered the Summary of Applicants Consent Agenda, requiring 10 applicants from the Consent Agenda to appear before it.

The Chair recessed the meeting at approximately 3:30 p.m., May 18, 2004.

Chairman Carlos L. Valdes reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:35 a.m., at the Hilton Miami Airport, Miami, Florida, on this 19th day of May, 2004.

The following Commission members were in attendance: Chairman Carlos L. Valdes; Vice-Chairman Guy Sanchez, Jr.; Matey H. Veissi, Noel McDonell, Poul Hornsleth, Nancy B. Hogan and Bob Beals. The Chair declared a quorum present. Daniel Villazon appeared as counsel for the Commission.

Division staff present at the meeting: Juana C. Watkins, Acting-Director; Keith Chapman, Deputy Director; Christopher J. DeCosta, Acting Chief Attorney; Kathleen Koeberich, Bureau Chief; Brian Piper, Investigator Supervisor; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant; Jeannie Adkinson, Regulatory Specialist II; Associated Court Reporters (954-467-8204) provided court reporter services.

Summary of Applicants-Bureau of Licensing

At approximately 8:40 a.m. Jeannie Adkinson, Regulatory Specialist II, presented the Summary of Applicants requesting to sit for the real estate examination. The Commission's orders on these matters are attached hereto and made a part of these minutes.

Public Comments

Chairman Valdes asked Mr. Danny Daniels to address the Commission. Mr. Daniels stated he was here to express his concerns regarding unlicensed activity and the fact that the complaints are not investigated in a timely manner. Commissioner McDonell stated that the Department has minimal authority, and that it should be made very clear to the State Attorney's Office that they need to prosecute this activity. Commissioner Hornsleth added that the Department is taking steps to educate the State Attorney's Office. Chairman Valdes stated that the only way we are going to tackle this problem is for the leaders of this profession to take a stand and demand action. He added that the Commission and Department made great efforts to get this FREC meeting to be held in Miami and that he was embarrassed by the fact the leaders of the industry did not support the efforts of the Commission and Department. Chairman Valdes stated further that every executive officer of the local Realtor boards should have attended this meeting representing the membership but for whatever reason decided not to be here.

Mr. Daniels stated that his second issue is that the Department needs to investigate or audit the real estate schools to ensure that they are hiring individuals with a proper instructor license and perhaps the Department should take action against the student who receives a license after having received instruction from an unlicensed instructor. Mr. Villazon stated that generally in the past the Commission has not taken action against the student. Chairman Valdes thanked Mr. Daniels for his comments and advised him to submit a complaint to the Department as it is its obligation to protect the public. The Commission received additional comments from the audience regarding this matter.

The Commission received a comment from an audience member who wanted to share with the Commission his positive experience with the Division stating he received invaluable assistance from Jeannie Adkinson, Carol Super and JoEllen Peacock.

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There being no further business and no objection, the Chair adjourned the meeting at approximately 1:20 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for June 15 and 16, 2004, at the Division Headquarters in Orlando, Florida.

Carlos L. Valdes
Chairman

Juana C. Watkins
Acting Division Director

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