



**COLORADO**

Department of  
Regulatory Agencies

Division of Real Estate

1560 Broadway, Suite 925  
Denver, CO 80202-5111

## MINUTES

### COLORADO REAL ESTATE COMMISSION MEETING

October 3, 2023

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**MINUTES**  
**COLORADO REAL ESTATE COMMISSION MEETING**  
**October 3, 2023**  
**Colorado Division of Real Estate**  
**Meeting Conducted Via Webinar**

A Colorado Real Estate Commission public meeting was conducted via Webinar and was held on October 3, 2023. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach - Vice Chair; Josh Brodbeck; Joe Chang; and Renee Lynde. Also attending were Marcia Waters, Director; Eric Turner, Deputy Director; David Donnelly, Education, Communication and Policy Manager; Melissa Phipps, Senior Advisor; Penny Elder, ESP Program Manager; Sarah Halloran, Investigations Team Lead; Eddie Rose, Investigations Team Lead; Nicole Tribelhorn, Investigations Team Lead; and other members of the Commission's Staff. Angela Little and Zach Fitzgerald attended from the Office of the Attorney General.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

The meeting was conducted via Webinar. The meeting was called to order by Commissioner Espinoza - Chair, at 9:00 a.m.

**ORDER OF BUSINESS**

**Approval of Minutes - August 1, 2023**

It was moved by Commissioner Brodbeck and seconded by Commissioner Chang to approve the Minutes of August 1, 2023 as written.



CREC

Minutes\_August 1, 20

**Motion unanimously carried.**

**PUBLIC PRESENTATION: None**

**POLICY MATTERS:**

**A. Delegations of Authority -**

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve updated Delegations of Authority as presented.



CREC Delegations

Policy\_2023\_Approve

**Motion unanimously carried.**

## **B. Selection of Leadership -**

It was moved by Commissioner Lynde and seconded by Commissioner Chang to nominate Michelle Espinoza to remain as Chair of the Commission.

### **Motion unanimously carried.**

It was moved by Commissioner Chang and seconded by Commissioner Lynde to nominate Grant Kaltenbach to remain as Vice-Chair of the Commission.

### **Motion unanimously carried.**

**Agenda Items for Next Meeting - Broker CE Portal (Uploading Certificates of Completion)**

## **COMPLAINT MATTERS:**

**NOTICE:** The following complaint matters contain summaries of investigative findings and disciplinary recommendations of Division staff. Ultimate settlement terms, imposition of discipline or findings of license law violations may differ from those originally considered by the Commission.

### **A. Complaints A. #x2022-117; B. #2022-2038; C. #2022-2040; D. #2022-2131; E. #2022-2210; and F. #2023-60 (JA) -**

The investigative report concerning complaints filed against the same respondent in Complaints A. #x2022-117; B. #2022-2038; C. #2022-2040; D. #2022-2131; E. #2022-2210; and F. #2023-60 (JA) were presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law.

- A. In August 2022, an audit was initiated on the respondent. At the beginning of the audit, the respondent stated he wasn't involved in property management and didn't maintain bank accounts for such purpose. This appeared inconsistent with his social media advertising and consumer calls as well as complaints received by the Division. Between 11/2022 & 01/2023, the Division received 5 separate complaints against the respondent. All 5 complaints allege that the respondent misappropriated approximately \$30,000 in combined rental money and security deposits belonging to their properties that the respondent was managing on their behalf. One complaint also alleges that the respondent's failure to properly manage her rental property resulted in water damage totaling over \$30,000. The respondent provided a written response only for this complaint in which he stated in part, "this is true". The respondent didn't provide a written response to the audit or other 4 complaints. Additional witnesses to the audit and complaints, that wouldn't file their own complaints, stated that the respondent also misappropriated their funds totaling approximately \$150,000 combined. The respondent didn't provide requested documentation or financial information for any of the complaints but agreed to several interviews where he confirmed that he lied to Division staff as he was managing properties. The respondent told Division staff that he commingled client funds with security deposits, and he took between \$80,000 to \$120,000 from his clients and tenants and he intends to make restitution. Bank statements were received via subpoena and revealed numerous

accounts that routinely converted, diverted, and commingled money belonging to others; and

- B. This is a possible violation of:
  - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
  - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
  - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
  - e. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - f. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
  - g. Commission Rule 5.5 - trust or escrow required for rental receipts and security deposit;
  - h. Commission Rule 5.9 - diversion, conversion prohibited;
  - i. Commission Rule 5.10 - commingling prohibited;
  - j. Commission Rule 5.14 - recordkeeping requirements;
  - k. Commission Rule 5.21 - production of documents and records;
  - l. Commission Rule 6.25 - must submit written response to complaint; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. His real estate broker's license shall be revoked;
- F. He will be required to pay a fine to the Commission in the amount of \$147,500; and
- G. He will be referred to criminal law enforcement.

**Motion unanimously carried.**

**G. Complaint #2023-1459 (ND) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1459 (ND) was presented to the Commission with accompanying documentation and information. It was moved by Commissioner Brodbeck and seconded by Commissioner Keltenbach that the case be investigatively dismissed due to insufficient evidence.

**Motion unanimously carried.**

**H. Complaints #2022-2216 (NW) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2216 (NW) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This complaint was opened on behalf of CREC in relation to previous audits on brokers that own and manage the brokerage firm that this respondent works for. The respondent's property management activities appear to reflect that she and her brokerage firm continue to use Exclusive Tenant Listing (ETL) contracts in a dishonest manner. Specifically, it appears that the respondent and the brokerage firm require consumers/tenants to use these ETL contracts without providing these tenants any benefit or value. The respondent and the brokerage firm collect a "success fee" as an

additional form of commission that is not disclosed to the landlord. These landlords have either a signed Exclusive Right to Lease (ERL) or property management agreement (PMA) with the brokerage firm and the brokerage firms charge these landlords a fee for leasing these properties. Based on interviews and emails, no disclosure is made to the landlords of this tenant relationship. Additionally, one of the sampled property management files indicated that the respondent violated the exclusive tenant agency relationship by divulging their client's willingness to pay higher rent to the landlord's agent; and

- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
  - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - d. § 12-10-405(1)(c), C.R.S. - brokerage relationships - failing to promote interests of the tenants;
  - e. Commission Rule 6.17 - duty to disclose conflict of interest and license status; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. Her real estate broker's license shall be suspended for a period of three months;
- F. Following suspension, the real estate broker's license shall be placed on probation for a period of 12 months;
- G. She will be required to pay a fine to the Commission in the amount of \$7,500; and
- H. She will be required to successfully complete real estate education in Brokerage Relationships and in Ethics.

**Motion unanimously carried.**

**I. Complaint #x2023-43 (LC) -**

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-43 (LC) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This is a sub-audit in relation to an audit on the respondent's employing broker. The scope of this audit focused on the respondent's personal rental properties as reported in the respondent's employing broker's audit. The respondent was issued a Final Notice to Comply on two separate occasions during the audit, including one to obtain the respondent's initial response to the audit letter. Additionally, the respondent did not provide the documentation requested in the second Final Notice. The respondent did issue an email response to the second Final Notice, but the response did not provide full evidence of correction or all of the items requested. Additionally, regarding specific audit requests, the respondent initially stated in writing that they "do not have" brokerage relationship disclosures, written license status and conflict of interest disclosures, trust accounts, and 2-way reconciliations for the properties they personally own and manage; and
- B. This is a possible violation of:

- a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
- b. § 12-10-217(1)(i), C.R.S. - failure to keep funds of others in an escrow/trust account;
- c. Commission Rule 5.11 - money belonging to others for non-real estate activity;
- d. Commission Rule 6.5 - brokerage relationship disclosures in writing;
- e. Commission Rule 6.17 - duty to disclose conflict of interest and license status; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. She will be required to pay a fine to the Commission in the amount of \$1,500;
- E. She will be required to successfully complete real estate education in Ethics and in Legal Issues; and
- F. She will be required to submit to a follow up audit within three months.

**Motion unanimously carried.**

**J. Complaint #x2023-9 (FH) -**

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-9 (FH) was presented to the Commission with accompanying documentation and information against the same respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. A routine audit was opened on the respondent that identified multiple issues. Broker's Disclosure to Tenant (BDT) and Broker's Duties Addendum's (BDA) were not in place prior to the audit. BDT's were obtained during the audit. The leases that were in place prior to the audit and the property management agreements retroactively obtained during the audit, did not identify the preparing attorney, and did not fully state they are not approved by the Commission. However, all leases expire by June, 30th, and the respondent is no longer offering property-management services. A 10% management fee was clearly indicated on owner statements but was charged when the respondent could not prove a property management agreement was in place. Reimbursements for repair/maintenance services of the amount stated on the receipts were also charged. The rent, security deposit and sales escrow account signature cards indicated the accounts are not actually fiduciary trust accounts. Ledgers and journals did not appear to have all information required by Commission Rule 5.14, and the accounts contained extra funds that the respondent referred to as a "cushion" ranging from \$87.10 to \$2,714.56. This does not appear to be an ongoing issue because the respondent has closed all trust/escrow accounts and is no longer providing property-management services; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
  - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - c. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
  - d. Commission Rule 5.10 - commingling prohibited;
  - e. Commission Rule 5.14 - recordkeeping requirements;
  - f. Commission Rule 6.5 - brokerage relationship disclosures in writing;

- g. Commission Rule 7.1 - standard forms;
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. She will be required to pay a fine to the Commission in the amount of \$500.

**Motion unanimously carried.**

**K. Complaint #2022-985 (JR) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-985 (JR) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On 06/09/2022, the complainant filed Complaint No. 2022-985 against the respondent stating that the respondent assisted the complainant as a transaction broker in purchasing a vacant lot. The complainant stated that the respondent agreed to help him subdivide the lot into six parcels with the intention of selling them for a profit. The complainant stated the respondent agreed to receive one of the divided lots as compensation. The complainant stated he presented a Spanish document to the respondent that detailed what he would agree. However, upon translating the document to English, the respondent added language to the agreement that the complainant never agreed to. The complainant stated the respondent failed to disclose what the document fully stated, including that the respondent inserted language giving himself ownership interest in the property and an exclusive right to sell the subdivided lots in the future without any specified time frame. The complainant stated he signed the document not knowing that the listing agreement should have a termination date and that the respondent was now an owner and equal member of the company created to subdivide the lot. The complainant stated upon attempting to terminate the agreement with the respondent, he was informed he had a valid listing contract and would need to pay the respondent a commission. The complainant stated he obtained legal counsel and paid the respondent a \$31,000.00 settlement regarding the commission dispute. The complainant also gave the respondent the agreed upon subdivided parcel as payment for subdividing the lot. The investigation noted that the respondent failed to get the change of status form signed during the transaction from the seller as he was first a seller's agent then represented both parties as a transaction broker; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(b), C.R.S. - making false promise to influence;
  - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - c. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
  - d. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - e. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
  - f. Commission Rule 6.9 - change of status disclosure in writing;
  - g. Commission Rule 6.14(D) - listings must have termination date; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;



- E. He will be required to pay a fine to the Commission in the amount of \$7,500; and
- F. He will be required to successfully complete real estate education in Brokerage Relationships and in Contracts.

**Motion unanimously carried.**

**L. Complaint #2023-141 (LB) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-141 (LB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, who was the owner of three (3) properties managed by the respondent, alleged that the respondent altered legal documents, falsified communications, failed to disclose responsibilities to her tenants, commingled funds, used multiple trade names for the brokerage firm, and failed to promote the interests of the landlord. The investigation noted that the respondent has potential license law compliance issues with Advertising, Disclosures, Trust Accounting, Licensing, Attorney Forms, and E&O Insurance; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
  - c. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
  - d. § 12-10-204(1), C.R.S. - E&O insurance to cover all activities;
  - e. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
  - f. Commission Rule 5.14 - recordkeeping requirements;
  - g. Commission Rule 6.5 - brokerage relationship disclosures in writing;
  - h. Commission 6.10 - advertising;
  - i. Commission Rule 7.1 - standard forms; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. She will be required to pay a fine to the Commission in the amount of \$5,000;
- E. She will be required to successfully complete real estate education in Trust Accounts and in Property Management; and
- F. She will be required to submit to a follow up audit within three months.

**Motion unanimously carried.**

**M. Complaint #2023-283 (DB) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-283 (DB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, who was the owner of two (2) duplexes managed by the respondent, alleged that the respondent did not pay the rental proceeds for January 2023 and February 2023, refused to provide the property leases (from the previous Property Manager), and did not return the keys for the properties until the termination of their Property Management Agreement. The investigation found that all rental proceeds, leases, and keys were returned to the complainant upon termination of the Property Management Agreement in April of 2023. Additionally, the investigation noted that the respondent has potential license law compliance issues with Attorney Forms, Disclosures, and Trust Accounting; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
  - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
  - c. Commission Rule 5.8 - transfer of security deposits;
  - d. Commission Rule 5.14 - recordkeeping requirements;
  - e. Commission Rule 6.5 - brokerage relationship disclosures in writing;
  - f. Commission Rule 7.1 - standard forms; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. He will be required to pay a fine to the Commission in the amount of \$5,000;
- F. He will be required to successfully complete real estate education in Trust Accounts and in Property Management; and
- G. He will be required to submit to a follow up audit within 3 months.

**Motion unanimously carried.**

**N. Complaint #2022-2129 (TF) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2129 (TF) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant/buyer alleged that the respondent/listing agent knew that there was a sewer odor in the subject property but failed to disclose it; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - b. § 12-10-404(3)(a), C.R.S. - disclosure of adverse material fact;
  - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. He will be required to pay a fine to the Commission in the amount of \$7,500 and
- F. He will be required to successfully complete real estate education in Ethics and in Legal Issues.

**Motion unanimously carried.**

**O. Complaint #2023-1243 (AA) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1243 (AA) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant alleged that the buyers who were under contract on his property entered it without their real estate broker. The respondent acknowledged that he provided the lock box code to his buyers so that they could take measurements. He said that he could not attend the showing with his buyers because he was at an open house; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - b. Commission Rule 6.16 - access information - broker prohibited from sharing without prior authorization; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. He will be required to pay a fine to the Commission in the amount of \$500.

**Motion unanimously carried.**

**P. Complaint #2023-1127 (EH) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1127 (EH) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On 05/24/2023, the respondent pled guilty to a Misdemeanor 1 - Child Abuse - Knowing/Reckless - B that resulted in a 12 month Deferred Judgment Sentence of supervised probation, a course in "Let's Connect", and court costs/fees in the amount of \$1,013.50 that has been paid in full; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(n) C.R.S. - conviction/plea to specified crimes; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent will be required to pay a fine to the Commission in the amount of \$250; and
- E. His real estate broker's license shall be on probationary status concurrent with the criminal sentence.

**Motion unanimously carried.**

**Q. Complaint #2023-1050 (JN) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1050 (JN) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to

refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. In March of 2023, the respondent was convicted of Stalking - Threat and Follow/Contact/Surveil, a class five felony. This matter was not reported to the Division within 30 days. The respondent was ordered to complete a two-year deferred sentence, two years of probation concurrent with the deferred sentence; 60 hours community service, domestic violence evaluation, and pay \$11,538.49 in court costs and restitution. The respondent has paid \$26.00 toward the balance. The deferred sentence is ongoing with an expected completion of March 2025; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(p) C.R.S. - failure to immediately notify CREC;
  - b. § 12-10-217(1)(n) C.R.S. - conviction/plea to specified crimes;
  - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - d. Commission Rule 6.23 - immediate notification of conviction, plea or violation required; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent will be required to pay a fine to the Commission in the amount of \$500; and
- E. His real estate broker's license shall be on probationary status concurrent with the criminal sentence.

**Motion unanimously carried.**

**R. Complaint #2022-1370 (IS) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1370 (IS) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. A complaint was filed against the respondent who was acting as a mortgage broker and a buyer's agent in a transaction. The complainant explained that the respondent presented a pre-qualification letter for the buyers indicating that their credit and income information had been reviewed and that they had been approved for a loan. The complainant stated that she accepted the offer based on the letter and later learned that the borrowers' credit was not pulled until 2 days after the property went under contract. One borrower was eventually removed from the contract due to low credit score and the deal was subsequently terminated due to the buyers being unable to acquire financing. The Dual Status disclosure was dated several days after the property went under contract. Additionally, the respondent's real estate transaction file was missing the Exclusive Right to Buy Listing Agreement and the Definitions of Working Relationships disclosure. The respondent acknowledged that these documents should have been in the file but could not explain why they were missing; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;

- b. § 12-10-218(2)(b) C.R.S. - affiliated business disclosure must be disclosed at time of contract;
- c. Commission Rule 6.5 - brokerage relationship disclosures in writing;
- d. Commission Rule 6.18 - affiliated business arrangement disclosure; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent will be required to pay a fine to the Commission in the amount of \$7,500; and
- F. He will be required to successfully complete real estate education in Ethics.

**Motion unanimously carried.**

**S. Complaint #2023-964 (MB) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-964 (MB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On May 15, 2023, the Division of Real Estate was notified that the respondent had new criminal convictions. The notification was done through the respondent's attorney. The respondent was on a Deferred Judgment and Sentence for prior criminal charges and his Colorado Real Estate license is currently on a probationary status pending successful completion of his sentence. The respondent has new criminal cases in El Paso County. The notification of the new criminal charges was within the DRE required timeline. The new convictions are as follows: Harassment a Class 2 Misdemeanor and Stalking-Emotional Distress a Class 5 Felony. The respondent was sentenced to 2 years in the Department of Correction on the Felony Charge, and 60 days for the lesser charges, all to run concurrent with his previous criminal convictions; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
  - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. His real estate broker's license shall be on probationary status for no less than 5 years of active licensure.

**Motion unanimously carried.**

**T. Complaint #2023-1400 (JH) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1400 (JH) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. In a letter dated July 6, 2023, the respondent notified the Colorado Division of Real Estate of discipline he received in another state. The Commonwealth of Massachusetts Board of Regulation for Real Estate Brokers and Salespersons accused the respondent of falsely representing his continuing education hours. The respondent admitted to completing the required 12 hours in 7 hours by completing multiple classes online at one time. On June 26, 2023, the respondent signed a Consent Agreement with the Massachusetts Board of Regulation in which he agreed to a \$500 fine and a ninety day suspension which went into effect July 3, 2023. The respondent provided proof that the fine has been paid; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(x), C.R.S. - license discipline in other jurisdiction;
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- G. He will be required to pay a fine to the Commission in the amount of \$250.

Commissioner Brodbeck is opposed. **Motion carried.**

**U. Complaint #2023-1016 (RP) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1016 (RP) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant stated that her elderly father hired the respondent's estate sale company to complete an auction and estate sale. The complainant's father also hired the respondent to sell his real estate. The complainant explained that the sale of the real estate went fine and was uneventful. The complainant alleged that the estate company held an auction and an estate sale but never paid them the proceeds from the sale. In addition, the estate company never provided the family with receipts from the auction and estate sale as well as donation receipts from the leftover items that were not sold. During the investigation, the respondent admitted that she used the money because she had a family emergency. Because the real estate transaction occurred without incident, this investigation focuses on the complainant's allegations regarding the auction and estate sale. In addition, this investigation addresses the potential violation regarding the respondent operating a real estate business under a corporate name without first properly registering that name with the Division; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
  - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
  - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
  - d. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - e. Commission Rule 5.11 - money belonging to others not placed in trust account;
  - f. Commission Rule 6.10- advertising; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. Her real estate broker's license shall be suspended for a period of three months;

- F. She will be required to pay a fine to the Commission in the amount of \$5,000 and
- G. She will be required to successfully complete real estate education in Ethics.

**Motion unanimously carried.**

**V. Complaint #2023-1054 (AP) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1054 (AP) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. In April 2023, the respondent entered a plea of guilty to Assault 2-Peace Officer, a class 5 Felony. The respondent was sentenced on May 8, 2023. The respondent did not notify the Division of the conviction. The Division was notified of the conviction via a CBI report. The respondent accepted a 2-year Deferred Sentence, substance abuse evaluation and treatment, mental health evaluation and treatment, domestic violence evaluation and treatment, and anger management treatment. The respondent agreed to pay court costs and fines in the amount of \$1,646.50. The respondent has paid all of his court costs. The respondent also agreed to pay \$2,307.14 plus interest in restitution for a total of \$2,322.52. The respondent owes \$2,322.52 in restitution; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and
  - b. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
  - c. § 12-10-217(1)(p), C.R.S. - failure to immediately notify CREC;
  - d. Commission Rule 6.23 - immediate notification of conviction, plea or violation required;
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$500; and
- E. His real estate broker's license shall be on probationary status concurrent with the criminal sentence.

**Motion unanimously carried.**

**W. Complaints #2022-1774 and #2023-843 (JW) -**

The investigative reports concerning complaints filed against the same respondent in Complaint #2022-1774 and #2023-843 (JW) were presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

**Complaint #2022-1774 -**

- A. The complainant stated that on July 2022, the respondent prepared and obtained a signature on a Letter of Intent (LOI) for his purchase of a property listed by the respondent. Included was a \$500,000 non-refundable earnest money deposit that was

to be deposited into the respondent's trust account. Instead, the check was deposited into the respondent's checking account and shortly thereafter was withdrawn by the respondent. The investigation revealed that in May 2022, the respondent had obtained a \$100,000 nonrefundable earnest money deposit under an LOI for the same property which was also deposited into the respondent's checking account. Those funds appear to be used for the respondent's personal expenses. The LOIs did not contain information regarding the attorney who drafted them, did not include language that they were non-binding, and did not include language that they were not Commission approved forms. The investigation also noted potential violations that the respondent engaged in dishonest dealing with the parties of the two failed transactions, failed to establish her brokerage relationships, or lack thereof, with the parties to the transactions, failed to timely deposit funds of others into a trust account, and diverted, converted, and commingled funds belonging to others; and

- B. This is a possible violation of:
  - a. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - b. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
  - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;;
  - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and
  - c. § 12-10-217(1)(t), C.R.S. - undisclosed compensation;
  - d. § 12-10-408(2)(a)(II), C.R.S. - brokerage disclosure, or lack thereof, in writing;
  - e. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
  - f. Commission Rule 5.7 - time limits for deposit of money belonging to others;
  - g. Commission Rule 5.9 - diversion, conversion prohibited;
  - h. Commission Rule 5.10 - commingling prohibited;
  - i. Commission Rule 6.5 - brokerage relationship disclosures in writing;
  - j. Commission Rule 6.20 - maintain transaction file;
  - k. Commission Rule 7.1 - standard forms; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be public censured;
- E. Her real estate broker's license shall be revoked; and
- F. She will be required to pay a fine to the Commission in the amount of \$30,000.

**Motion unanimously carried.**

**Complaint #2023-843 -**

- A. The complainant alleged that a company controlled by the respondent held an estate sale for the complainant's family and stole the proceeds from the sale as well as the leftover items that were not sold. The complainant stated that he obtained a default judgment against the company in the total amount of \$48,222.28; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
  - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;;
  - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and
  - d. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
  - e. Commission Rule 5.11 - money belonging to others not placed in trust account; and



- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be public censured;
- E. Her real estate broker's license shall be revoked; and
- F. She will be required to pay a fine to the Commission in the amount of \$10,000.

**Motion unanimously carried.**

**X. Complaint #2022-2254 (KB) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2254 (KB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, a licensed appraiser, alleges that the respondent improperly interfered with the appraisal process when he verbally denied her access to the property for which she assigned to do an appraisal, and requested a change of appraiser with the lender; and
- B. This is a possible violation of:
  - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. He will be required to pay a fine to the Commission in the amount of \$2,000; and.
- E. He will be required to successfully complete real estate education in Ethics.

In addition, the Division of Real Estate will be referring this matter to the CFPB for investigation.

**Motion unanimously carried.**

**Y. Complaint #2022-2206 (RM) -**

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2206 (RM) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The respondent was representing the complainant/buyer as a transaction broker in the purchase of a "For Sale by Owner" transaction. The respondent failed to point out or discuss the success fee that he (the respondent) had put into the Exclusive Right to Buy. The Contract to Buy and Sell also indicated that the "Buyer" would be paying the Brokerage Firm's compensation or commission. Both the complainant and the respondent acknowledge that no conversation regarding success fee and/or commission took place prior to or during the signing of these documents and the first discussion about it took place when the buyer noticed it in the closing details prior to closing; and
- B. This is a possible violation of:

- a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
- b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
- c. § 12-10-407(2)(b)(II), C.R.S. - advising party of transaction; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$1,500; and.
- E. He will be required to successfully complete real estate education in Brokerage Relationships.

Commissioner Kaltenbach is opposed. **Motion carried.**

#### **ESP MATTERS:**

##### **ESP Matter A, Complaint #x2023-4 (JR) - Counteroffer -**

The Commission was presented with a Stipulation Violation report by Penny Elder regarding ESP Matter A, Complaint #x2023-4 (JR). It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to defer this case to the next meeting scheduled for December 5, 2023.

**Motion unanimously carried.**

#### **EXECUTIVE SESSION:**

At 11:12 a.m. it was moved, seconded and approved by more than two-thirds vote by the Commission that pursuant to §24-6-402(3)(a)(II), C.R.S., to convene the Colorado Real Estate Commission into Executive Session for the purpose of receiving legal advice pursuant to C.R.S. §24-6-402(3)(a)(II) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice regarding:

- A. Complaint #2022-1362 (DC) - Counteroffer

**Motion unanimously carried.**

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 11:31 a.m. and resumes meeting via webinar that is open to the public.

#### **ATTORNEY GENERAL MATTERS:**

##### **A. Complaint #2022-1362 (DC) - Counteroffer -**

Following discussion in Executive Session, it was moved by Commissioner Lynde and seconded by Commissioner Kaltenbach to accept the settlement offer for Complaint #2022-1362 (DC).

**Motion unanimously carried.**

**NOTE:** The Commission resumed discussion on ESP Matter A, Complaint #x2023-4 (SR).

**ESP Matter A, Complaint #x2023-4 (JR) - Counteroffer -**

Following notification of additional information from staff and Commission discussion, it was moved by Commissioner Kaltenach and seconded by Commissioner Brodbeck to accept the counteroffer on Complaint #x2023-4 (JR) to include a Stipulation for Diversion, payment of a fine to the Commission in the amount of \$750 (+ mandatory 15% surcharge). Additionally, the respondent will admit to a violation of §12-10-217(1)(m) and to Commission Rule 5.14.

**Motion unanimously carried.**

**ADJOURN:**

The Real Estate Commission adjourned out of their regular meeting at 11:36 a.m. on October 3, 2023.

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**Michelle Espinoza, Chair**

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**Graham Kaltenbach, Vice Chair**

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**Josh Brodbeck, Commissioner**

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**Joe Chang, Commissioner**

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**Renee Lynde, Commissioner**

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**Marcia Waters, Director  
Colorado Division of Real Estate**