

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING February 1, 2022

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MINUTES - APPROVAL

December 7, 2021

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POLICY MATTERS:

A. Selection of Vice Chair

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
February 1, 2022
Colorado Division of Real Estate
Meeting Conducted Via Webinar

A Colorado Real Estate Commission public meeting was conducted via Webinar and was held on February 1, 2022. Those Commissioners in attendance were Michelle Espinoza - Chair; Joe Chang; Graham Kaltenbach and Kim Rediker. There is one vacancy on the Commission. Also attending were Marcia Waters, Director; Eric Turner, Deputy Director; Natalie Lutz, Senior Advisor; Penny Elder, Expedited Settlement Program Manager; Gary Kujawski, Education, Communication & Policy Program Manager; Sarah Halloran, Investigations Team Lead; Eddie Rose, Investigations Team Lead; Nicole Tribelhorn, Investigations Team Lead; Doreen Archuleta, Board Management; and other members of the Commission's Staff. Angela Little 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.

Due to closures of public spaces because of the Coronavirus pandemic, 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 - December 7, 2021

It was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach to approve the Minutes of December 7, 2021 as written.



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2021.pdf

Motion unanimously carried.

PUBLIC PRESENTATION: None

POLICY MATTERS:

A. Selection of Leadership -

Due to the resignation of Carolyn Rogers, former Vice-Chair of the Real Estate Commission, Commissioner Kaltenbach volunteered for the position of Vice-Chair. It was moved by Commissioner Rediker and seconded by Commissioner Chang to select Graham Kaltenbach as Vice Chair.

Motion unanimously carried.

B. Agenda Items for Next Meeting - None

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. Complaint #x2020-113 (MT) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2020-113 (MT) 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.

- A. This report is based on a stipulation audit opened on 11/30/20. The respondent initially stated that he sold his book of business of 3rd party property management to another local firm. Through various document requests, it was determined that the respondent assigned his book of business for no monetary exchange. Ultimately, the respondent was unwilling/unable to provide all the records verifying the transfer of all the respective rental funds and security deposits as part of the assignment. The respondent provided 3-way reconciliations from 11/20 - 01/21 which showed the commingling of broker funds and negative ledger balances in both the rental and security deposit accounts. The rental accounts also showed transactions for 3rd party owners through 02/21 which contradicts the respondent's statements that he ceased managing properties in 05/20. The respondent stated that he closed his security deposit trust account, but he was either unwilling/unable to provide updated reconciliations, account closure documents, documents showing correction and payment of all negative ledger balances, and proof all applicable funds were returned. Multiple transaction files obtained through another audit showed that the respondent did not use proper commission approved forms and disclosures; did not disclose his license status and conflict of interest on broker-owned/business partner properties; and was party to approximately 166 transactions in which he acted as property manager/owner on properties his exclusive agent had a contract to lease; however, an affiliated broker instead represented the tenants as exclusive tenant listing agent for a success fee while the respondent also received a property management setup fee upon lease execution while the respondent's exclusive agent did not participate in any of these transactions; and

- B. This is a possible violation of:

- a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
- a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
- a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
- b. § 12-10-403(4)(c), C.R.S. - failure to use commission-approved forms;
- c. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
- d. Commission Rule 5.9 - diversion, conversion prohibited;
- e. Commission Rule 5.10 - commingling prohibited;
- f. Commission Rule 5.14 - recordkeeping requirements;

- g. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
- h. Commission Rule 6.17 - duty to disclose conflict of interest and license status;
- i. Commission Rule 7.1 - attorney-drafted 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 revoked;
- E. His real estate broker's license shall be publicly censured; and
- F. He shall pay a fine to the Commission in the amount of \$22,500.

Motion unanimously carried.

B. Complaint #x2021-15 (ES) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2021-15 (ES) 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.

- A. The respondent was subject to a follow-up audit per the FAO on Remand in February 2019. The respondent initially stated they did not perform any real estate activity in the past year but then followed-up that they acted as an exclusive tenant listing agent on 166 transactions exclusively with one other affiliated firm. The affiliation is due to the respondent's brokerage receiving an assignment on the other firm's 3rd party property management portfolio. In these exclusive tenant listing transactions, the respondent received a success fee averaging around \$500 per contract paid by the tenants. However, as part of this assignment, the respondent's associate broker received an Exclusive Right to Lease these same properties; however, she did not participate in any of these transactions. Multiple tenants stated that they were required to complete an exclusive tenant listing agreement with the respondent although they never had any communication with him during the transaction and all tenant agent communications and duties were performed by an unlicensed office assistant. Furthermore, it does not appear that the respondent disclosed the conflict of interest regarding his relationship with the property owner and other firm. Neither firm has provided actual proof that the selling firm and property owner has paid commissions for the respective leasing of these properties; 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. - failure to promote the interests of the tenant;
 - e. Commission Rule 6.1 - broker must not lend their license;
 - f. Commission Rule 6.17 - duty to disclose conflict of interest and license status;
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be revoked;
- E. The respondent's real estate broker's license shall be publicly censured;
- F. He shall pay a fine to the Commission in the amount of \$12,500.

Motion unanimously carried.

C. Complaint #x2021-45 (LC) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2021-45 (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. The respondent was audited in relation to corresponding audits of the respondent's associate brokers and brokerage owners (Complaint #x2021-15) and (Complaint #x2021-77). The audit identified that the respondent relied heavily on the broker-owners for the operation of the brokerage including property management and leasing activities. The audit found that the respondent delegated supervisory authority to one of these associate & broker-owners despite that broker having an FAO requiring a high-level of supervision. In general, the audit found that the respondent was either unfamiliar or unable to answer general questions regarding the brokerage, including, the brokerage's trust accounting; aged unreconciled checks; broker-owned properties; broker affiliated businesses, subsidiaries, and conflicts of interest; maintenance mark-ups; and the brokerage's acquisition/assignment of another firm's 3rd party property management portfolio. The audit also found that the respondent was not a signor on the brokerage's trust accounts prior to 7/28/21 and the rental trust account does not appear to include the word trust or escrow in the title; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. Commission Rule 5.3 - accounts in name of brokerage firm or broker;
 - d. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
 - e. Commission Rule 6.3 - employing broker's responsibilities and supervision; 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's real estate broker's license shall be suspended for a period of 60 days;
- F. She shall pay a fine to the Commission in the amount of \$5,000;
- G. She will be required to successfully complete real estate education in Brokerage Relationships, Brokerage Administration and in Property Management; and
- H. The respondent's license shall be downgraded to the level of associate broker for two years.

Motion unanimously carried.

NOTE: Discipline is combined for Complaint D - x2021-77 (RJ) and Complaint P - 2021-1164 (RJ) against the same respondent.

D. Complaint #x2021-77 (RJ) and P. Complaint #2021-1164 (RJ) -

The investigative reports concerning complaints filed against the respondent in Complaints #x2021-77 (RJ) and #2021-1164 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).

D. Complaint #X2021-77 (RJ) -

The respondent was audited in relation to corresponding audits of the respondent's employing broker (X2021-45) and associate brokers/firm owners (X2021-15). The respondent was the subject of a FAO in 09/18 that included a 2-yr license downgrade. The audit found that the respondent was delegated supervisory authority for all leasing and property management functions of the firm despite the respondent's discipline. The respondent's delegated supervisory authority for all leasing and property management functions was updated in 05/20, also prior to the respondent's completion the Stipulation terms. The respondent is a part-owner of her firm and in general, the respondent's employing broker was unfamiliar with the operations of the firm and relied heavily on the broker-owners for the day-to-day functions. The firm acquired an assignment of another firm's 3rd party property management portfolio and the respondent's Exclusive Right to Lease the associated firm's broker-owned properties. The corresponding audit (X2021-15) found that an associate broker/owner entered into 166 exclusive tenant listing transactions in which the tenants were responsible for paying a success fee averaging \$500/transaction while the respondent had an exclusive right to lease contract for these properties to earn 3% from the property owner. The respondent did not execute any of these leases and was not involved in any of these transactions despite an active exclusive right to lease. A random sample of tenants stated their only contact with the respondent's firm regarding rental terms was with an unlicensed office assistant. Furthermore, the respondent's rental trust accounts do not appear to be labeled properly and documentation was provided showing that the employing broker was not a signor on the account until only recently. The firm's 3-way reconciliations appear to have removed all negative ledger balances and broker-owner accounts.

P. Complaint #2021-1164 (RJ) -

On 7/12/21, the Complainant filed a complaint against the respondent for failure to adequately represent her for property management services. The complainant stated the respondent didn't notify her when the respondent's brokerage acquired the property management agreement from another brokerage; that the respondent didn't provide new brokerage relationship disclosures; that the respondent didn't offer advice or guidance with pandemic rental assistance programs; that the respondent didn't disclose conflicts of interest regarding the respondent's ownership in the brokerage and brokerage maintenance company; that the respondent didn't perform required landscaping/maintenance on the property yet billed the complainant for the work; and that the respondent paid expenses to the brokerage maintenance company from the complainant's security deposit without her approval or acknowledgment. The investigation found that the respondent provided the complainant with a generic introduction letter that was not personally addressed to the complainant introducing the respondent as the complainant's new Landlord Agent. However, the respondent didn't provide the complainant with any new brokerage relationship disclosures, property management agreements, or disclosure of the respondent's ownership interest in the brokerage or brokerage management company. The property management agreement in place from the previous brokerage lists the relationship as transaction broker. The respondent's brokerage maintenance company did bill the complainant which was paid out of the complainant's security deposit without approval and in dispute of the work actually

being performed. Shortly after receiving the complaint, the respondent did refund the complainant.

- A. Possible violations in Complaint D - #2021-77:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. § 12-10-404(1), C.R.S. - single agent duties;
 - e. Commission Rule 6.2 - competency - must possess experience, training and knowledge; and
- B. Possible violations in Complaint P - #2021-1164:
 - 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;
 - c. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - d. § 12-10-404(1), C.R.S. - single agent duties;
 - e. Commission Rule 5.9 - diversion, conversion prohibited;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - g. Commission Rule 6.17 - duty to disclose conflict of interest and license status; and
- C. The respondent's settlement offer for both cases includes a Stipulation and Final Agency Order;
- D. Her real estate broker's license shall be revoked;
- E. The respondent's real estate broker's license shall be publicly censured; and
- F. She shall pay a fine to the Commission in the amount of \$25,000.

Motion unanimously carried.

NOTE: Complaint E was taken out of agenda order and considered by the Commission following Complaints F and G.

F. Complaint #2021-405 (BF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-405 (BF) 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, an associate broker alleges the respondent used her advertising listing verbiage and photos in the respondent's listing of a neighboring property; 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 6.10 - advertising; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. She shall pay a fine to the Commission in the amount of \$500;
- E. She will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

G. Complaint #2021-361 (JM) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-361 (JM) 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 is also a real estate broker, represented himself in the listing and sale of his property. The respondent represented the buyer, who is also her husband, in the attempted purchase of the property. The complaint alleged that the respondent gave out the lock-box code to a contractor without authority. The investigation found that the complainant provided the lock-box code directly to the buyer, who then provided the lock-box code to his contractor. The contractor provided the lockbox code to his employee, who stayed in the property for an unknown amount of time. The investigation found that the respondent failed to execute the exclusive right to buy prior to submitting the contract to buy and sell on behalf of the buyer; 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. Commission Rule 6.16 - access to information - broker prohibited from sharing without prior authorization; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

E. Complaint #2021-1926 (CS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1926 (CS) 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 10/13/2021, the respondent was convicted of §18-6-803.5(1)(a) - Violation P/O-Criminal and §18-6-803.5(1)(a) - Violation P/O Civil, a Class 1 and Class 2 misdemeanor, respectively. The respondent was sentence to 2-years supervised probation as well as 60 days in jail with 50 days suspended upon successful completion of the probation. This sentence runs concurrent with a different criminal conviction and case. The respondent's probation is ongoing; 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's real estate broker's license shall be on probation concurrent with the criminal sentence; and
- E. She will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

H. Complaint #2021-2115 (TV) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-2115 (TV) 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 11/05/2021, the respondent pled guilty to a Misdemeanor 2/Violation of Protection Order - Civil. He was sentenced to six (6) months supervised probation and anger management education, which will be deferred upon successful completion on 05/05/2022. His court fees/fines in the amount of \$539.50 have been paid in full; 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)(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; 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 shall pay a fine to the Commission in the amount of \$500; and
- F. The respondent will be directly referred to the Attorney General's Office.

Motion unanimously carried.

I. Complaint #2021-581 (SL) -

The investigative reports concerning complaints filed against the respondent in Complaint #2021-581 (SL) 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 the respondent had listed a property for sale without an active real estate license. The respondent acknowledged to the investigator that she only worked one transaction during the time her license was inactive. However, her employing broker provided transaction files for five properties that the respondent worked during the time her real estate license was inactive; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice

- c. Commission Rule 6.26 – actions when license suspended, revoked, expired, or inactive; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. She will be required to successfully complete real estate education in Ethics and Legal Issues (12 hours) and in Contracts.

Motion unanimously carried.

J. Complaint #2021-53 (LC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-53 (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. The complainant alleges that the respondent sent the complainant's father an unsolicited offer in the form of a Contract to Buy and Sell, with the respondent shown as the Listing Agent to be paid by Seller, even though neither the complainant, nor her father, had a brokerage relationship with the respondent; 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. § 12-10-408(2)(b), C.R.S. – must enter into written agreement;
 - d. Commission Rule 6.5(a) – written disclosures required pursuant to § 12-10-408; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. She will be required to successfully complete real estate education in Contracts; Brokerage Relationships and in Ethics.

Motion unanimously carried.

K. Complaint #x2021-113 (CG) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2021-113 (CG) 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 submitted responses to a routine audit that indicated that he only had one established trust account, holding both security deposits and rents. Additionally, the respondent indicated he was not obtaining the Broker's Disclosure to Tenant in advance of receiving confidential information from tenants. During the course of the audit, the respondent opened an additional trust account and has since segregated rental proceeds from security deposits as well as provided compliant 3-way reconciliations for both accounts. Lastly, the broker has affirmed that moving forward,

he will obtain the Broker's Disclosure to Tenant at or before the time of application;
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 5.5 - trust or escrow required for rental receipts and security deposit;
 - c. Commission Rule 6.5 - brokerage relationship disclosures in writing; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. He will be required to successfully complete real estate education in Trust Accounts.

Motion unanimously carried.

L. Complaint #x2021-130 (CS) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2021-130 (CS) 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 audit was conducted in accordance with a Stipulation for Diversion the respondent signed on 02/05/2021 in relation to a previous audit that identified deficiencies in trust accounts. Although the broker has corrected some of the previously identified violations, there appear to be ongoing issues with the broker's trust accounts. The broker stated that she has not been consistently performing proper 3-way reconciliations of the rental trust account and she was unable to explain why the account contained approximately \$12,000 in funds labeled "Holding for Rent Online Checks" or who these funds belong to. Additionally, it appears she still may not be obtaining the Broker's Disclosure to Tenant prior to receiving confidential information; 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. Commission Rule 5.10 - commingling prohibited;
 - e. Commission Rule 5.14 - recordkeeping requirements;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing; 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 successfully complete real estate education in Trust Accounts, Property Management and in Legal Issues; and
- F. She will be required to submit to a follow-up audit within three months.

Motion unanimously carried.

M. Complaint #x2021-111 (SC) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2021-111 (SC) 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 was a routine audit opened on 10/15/2021. The audit identified deficiencies in the trust account record keeping requirements, specifically a lack of performing monthly 3-way reconciliations. Additionally, trust account records indicate that multiple properties contain negative ledger balances; 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;
 - c. Commission Rule 5.9 - diversion, conversion prohibited;
 - d. Commission Rule 5.14 - recordkeeping requirements; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to successfully complete real estate education in Trust Accounts, Property Management and in Legal Issues and Risk; and
- E. The respondent will be required to submit to a follow-up audit within three months.

Motion unanimously carried.

N. Complaint #2021-456 (DB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-456 (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. On 04/02/2021, the complainant filed Complaint No. 2021-456 against the respondent stating the complainant represented the buyers that put an offer on vacant land that the respondent had listed for sale. The complainant stated the respondent failed to disclose he had ownership in the land. The buyers and complainant became aware of the respondent's ownership interest in the property when the respondent signed the contract as the managing broker of the selling entity. The complainant stated the respondent failed to amend the contract when he became aware the name of the seller was not correct. The investigation noted that the respondent signed both the CBS and Amend with the wrong seller name. Once the buyers terminated the contract and requested release of their earnest money, the respondent delayed the signing due to not having the correct seller name. The respondent ultimately crossed out the seller name and hand-wrote the correct seller name; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. 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. He will be required to successfully complete real estate education in Contracts, Ethics and in Legal Issues.

Motion unanimously carried.

O. Complaint #2021-828 (JC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-828 (JC) 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 05/24/2021, the complainant filed Complaint No. 2021-828 against the respondent stating that the respondent and complainant entered into an Exclusive Right to Buy Contract as a buyer's agent. The complainant stated the respondent failed to protect his interest and contacted his employer directly without permission from the complainant. The complainant stated the respondent also disclosed to the listing agent his financial situation without permission. The complainant stated he terminated the contract but the seller refused to release the earnest money. The respondent acknowledged that he contacted Buyer's employer directly in hopes of saving the earnest money. The respondent acknowledged he informed the listing agent that the complainant was no longer employed. The contract terminated in May 2021 and the seller did not sign the release of earnest money until September 2021; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-405, C.R.S. - single agent engaged by buyer; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to successfully complete real estate education in Brokerage Relationships and in Legal Issues.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2021-2030 (EL) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

The applicant surrendered his Colorado Real Estate license in January 2019 (this was treated as a revocation) after CREC voted to revoke in connection with a theft. The applicant received a negative preliminary advisory opinion in June 2021. On November 12, 2021 the applicant paid the previously stayed CREC fine of \$3,450.00.

It was moved by Commissioner Chang and seconded by Commissioner Rediker to approve the license application with a five-year license restriction at the associate broker level, with a higher level of supervision by an employing broker who agrees in writing. The applicant will be

required to notify any employing broker of his criminal conviction for the 5-year restriction period.

Motion unanimously carried.

Licensing Matter B - Complaint #2021-1594 (DD) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On March 18, 1994, the applicant pled guilty to Forgery 2nd Degree, a Class 4 Felony. The applicant was sentenced to 2 years Deferred Sentence and Judgment; Probation for 2 years, a fine of \$760.00, and restitution in the amount of \$69.40. The applicant has a \$0 balance.

On April 18, 1995, the applicant pled guilty to Theft, a Class 4 Felony. The applicant was sentenced to 4 years of probation, a fine of \$1,250.00, and ordered to pay restitution in the amount of \$2,656.03. The applicant has completed all requirements for Probation and has paid the fine and restitution in full. The case is closed.

It was moved by Commissioner Rediker and seconded by Commissioner Chang to approve the license application.

Motion unanimously carried.

Licensing Matter C - Complaint #2021-1815 (RH) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On May 15, 2003, the applicant pled guilty to Misdemeanor Theft/Stealing. The applicant was sentenced to 2 years of probation, probation was revoked and he was re-sentenced to 30 days home detention in lieu of 55 days in jail. A fine of \$474.50 and 20 hours of Community Service were ordered.

On May 23, 2008, the applicant pled guilty to Felony Conspiracy to Distribute & Possess w/ Intent to Distribute. The applicant was sentenced to 60 months in jail, 12 months of probation, and a fine of \$100.00. Probation was revoked and he was re-sentenced to 10 months in prison and 1-year of supervised release. The applicant completed all terms for jail and probation. The case is closed.

It was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach to approve the license application.

Motion unanimously carried.

Licensing Matter D - Complaint #2021-1997 (RP) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On November 26, 2012, the applicant pled guilty to Accessory After the Fact, a Misdemeanor. The applicant was sentenced to a 6-month jail sentence that was suspended. The case is closed.

It was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach to approve the license application.

Motion unanimously carried.

Licensing Matter E - Complaint #2021-2087 (TG) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On November 19, 1999, the applicant pled guilty to Criminal Attempt to Commit Theft, a Class 5 Felony. The applicant was sentenced to 5 years of probation, a fine of \$721.50, and ordered to pay restitution in the amount of \$10,114.67. The applicant has completed probation successfully and the fine and restitution are paid in full. The case is closed.

It was moved by Commissioner Kaltenbach and seconded by Commissioner Rediker to approve the license application.

Motion unanimously carried.

Licensing Matter F - Complaint #2021-2099 (SP) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On February 06, 2006, the applicant pled guilty to Violent Crime-Used Weapon, Theft of \$500-\$15,000-a Class 4 Felony and Robbery/Aggravated-Menace Victim with Deadly Weapon-a Class 3 Felony. The applicant owes a balance of \$25,212.92. The case is closed.

On May 02, 2019, the applicant pled guilty to a Class 1 Drug Misdemeanor, Controlled Substance-Possession Schedule 3/4/5. The applicant was sentenced to 18 months of probation and a fine of \$2,308.50 with a current balance of \$2,243.50. The applicant has completed probation successfully. The case is closed.

It was moved by Commissioner Rediker and seconded by Commissioner Chang to approve the license application with a two-year license restriction requiring a higher level of supervision by an employing broker who agrees in writing. The applicant will be required to notify any employing broker of his criminal convictions for the 2-year restriction period.

Motion unanimously carried.

NOTE: Due to technical difficulties by Chair Espinoza, Commissioner Kaltenbach assumes the duties as Chair at 10:12 a.m.

Licensing Matter G - Complaint #2021-2098 (NL) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

The applicant had three criminal convictions in 2012, 2013, and 2014. All records have been sealed. The applicant has submitted a written/personal statement along with a recommendation letter. The applicant also submitted a letter the defendant wrote to the court in 2015.

It was moved by Commissioner Rediker and seconded by Commissioner Chang to approve the license application.

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 10:15 a.m. on February 1, 2022.

Michelle Espinoza, Chair

Joe Chang, Commissioner

Graham Kaltenach, Commissioner

Kim Rediker, Commissioner

Vacancy

Marcia Waters, Director
Colorado Division of Real Estate