



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

1560 Broadway, Suite 925
Denver, CO 80202-5111

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING February 7, 2023

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
February 7, 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 February 7, 2023. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach - Vice Chair; Joe Chang; and Renee Lynde. Kim Rediker is excused. Also attending were Marcia Waters, Director; Eric Turner, Deputy Director; David Donnelly, Education, Communication and Policy Manager; 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 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 6, 2022

It was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to approve the Minutes of December 6, 2022 as written.



CREC Minutes_Dec 6,
2022.pdf

Motion unanimously carried.

PUBLIC COMMENT

- Doug Barber

POLICY MATTERS:

A. Forms Committee -

a. Appointment to Forms Committee -

It was moved by Commissioner Kaltenbach and seconded by Commission Lynde to appoint Eric Nesbitt, Esq. to the Forms Committee to replace the position previously held by Alan Stein.

Motion unanimously carried.

b. Disclosure Form to Address Benchmark Data for Commercial Properties over 50,000 Square Feet -

It was moved by Commissioner Lynde and seconded by Commission Kaltenbach to authorize the Forms Committee to begin working on a disclosure form to address benchmark data for commercial properties exceeding 50,000 square feet.

Motion unanimously carried.

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 #x2022-56 (SR) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-56 (SR) 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 routine audit opened on 05/10/2022. The audit identified deficiencies in the areas of trust accounting including commingling of broker funds and negative ledger balances; trust account labeling; commission and attorney-prepared forms; conflict of interest and license status disclosures; listing contracts in writing; and transaction file requirements. The broker has corrected many of these items as of the date of the commission report; 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;
 - a. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
 - b. Commission Rule 5.10 - commingling prohibited;
 - c. Commission Rule 5.14 - recordkeeping requirements;
 - d. Commission Rule 6.17 - duty to disclose conflict of interest and license status;
 - e. 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 \$1,000; and
- E. She will be required to successfully complete real estate education in Contracts.

Motion unanimously carried.

B. Complaint #2022-1992 (MC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1992 (MC) 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. On 10/17/22, the respondent was convicted of (1) Assault in the second degree, a Class 4 Felony and (2) Assault in the third degree, a Class 1 misdemeanor. The respondent entered into a 2-year deferred judgment and sentence for count (1) only with 2-years of probation. Count (2) will remain on the respondent's record; 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; and
- D. He will be required to pay a fine to the Commission in the amount of \$250.

Motion unanimously carried.

C. Complaint #x2022-104 (EF) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-104 (EF) 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 the respondent's second follow-up Division audit based on two previous Stipulation for Diversions in 2020 and 2021. Findings in the previous audits included lack of supervision, improper management of money belonging to others including diversion of money and missing journal reports, missing disclosures, non-compliant real estate forms, and failure to adhere to license law and Commission rules related to the advertising of the brokerage's property management business. All of these prior deficiencies were the result of the respondent permitting an associate broker to operate a separate and unsupervised property management company. The respondent was able to achieve compliance over the course of the follow up audits. The present audit found a new issue related to the respondent's lack of supervision. The associate broker referenced above continued to perform property management services, including signing approximately 10 real estate documents (leases, management agreements, disclosures, etc.), throughout the nine-month period of time the associate broker's 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 or part 4;
 - b. § 12-10-217(1)(r), C.R.S. - failure to supervise associates;
 - c. Commission Rule 6.3 - employing broker's responsibilities and supervision; and
- C. The respondent's settlement offer includes a Letter of Concern/Dismissal.

Motion unanimously carried.

D. Complaint #2022-1711 (WS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1711 (WS) 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 as part of an audit on the respondent's employing broker. The audit and investigation found that the respondent had an inactive real estate license for a nine-month period during 2022 which time the respondent acted as a licensed broker performing property management services, including the signing of at approximately 10 real estate documents (leases, management agreements, disclosures, etc.); 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 3.9 - errors and omissions insurance;
 - c. Rule 6.26 - actions when license suspended, revoked, expired, or inactive; 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 \$1,000.

Motion unanimously carried.

E. Complaint #2022-1362 (DC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1362 (DC) 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 7/19/2022 the respondent entered a guilty plea in the El Paso County, Colorado District Court to Sexual Exploitation of a Child, a Class 3 Felony. On 12/20/2022 the respondent was sentenced to a deferred judgment of 90 days in jail suspended pending successful completion of 4 years of Colorado Sex Offender Intensive Supervision probation program starting on 12/21/2022. The respondent is required to pay a total of \$7,073.50 in court costs and fees and must register as a sex offender. There is a remaining balance of \$7,073.50. The Division was notified of the guilty plea by a CBI report; 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)(p), C.R.S. - failure to immediately notify CREC;
 - 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 and Final Agency Order;
- D. His real estate broker's license shall be publicly censured; and
- E. The respondent's real estate broker's license shall be revoked.

Motion unanimously carried.

F. Complaint #2022-255 (JR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-255 (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. The complaint alleged that the respondent is providing an MLS 'entry only' services to home sellers, using non-CREC approved forms and failing to provide minimum duties. The investigation found that the respondent was using non-CREC approved listing contracts, disclosures, and failed to provide minimum duties required as a transaction broker. Additionally, the respondent's transaction files were incomplete; and
- B. This is a possible violation of:
 - a. § 12-10-407, C.R.S. - failure to provide minimum duties;
 - b. § 12-10-217(1)(k), C.R.S. - failure to maintain files for 4 years;
 - 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. Commission Rule 7.1 - standard forms;
 - f. Commission Rule 6.11 - square footage disclosure;
 - g. Commission Rule 6.19 - closing responsibility;
 - h. Commission Rule 6.2 - competency - must possess experience, training, and knowledge;
 - i. Commission Rule 6.20 - transaction file requirements; 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 two years;
- F. She will be required to pay a fine to the Commission in the amount of \$10,000;
- G. She will be required to successfully complete 48 hours of Real Estate Law and Real Estate Practice (QE class) and 48 hours of Contracts (QE class);
- H. The respondent's real estate broker's license shall be downgraded to associate broker level for two years and she must reapply and requalify for employing broker status; and
- I. This case will be directly referred to the Attorney General's Office due to another pending case.

Motion unanimously carried.

G. Complaints #2021-2149; #2022-1192 & #2022-1449 (YZ) -

The investigative report concerning complaints filed against the respondent in Complaints #2021-2149; #2022-1192 & #2022-1449 (YZ) 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.

- A. Complaint #2021-2149 -- A complaint was filed by the listing agent of a property alleging that the respondent presented a contract which failed to disclose the fact that the buyers' ability to qualify for financing was contingent upon the sale of their current residence. The complaint also alleged that the respondent failed to notify the listing agent of the buyers' changing lenders late in the process and failed to provide an updated lender letter. The transaction file reflects that the respondent failed to update the Contract to Buy and Sell (CBS) after her clients changed lenders. The respondent was identified as a Buyer's Agent in the CBS, but her transaction file did not contain an executed listing agreement.

Complaint #2022-1149 -- The complainant alleged that the respondent failed to provide to the title company an Amend/Extend to the Contract to Buy and Sell that called for a \$1,000.00 seller credit to the buyer, resulting in the complainant not receiving the \$1,000.00 credit at closing. The complainant was later made whole by the seller. The respondent did not ensure there was an accurate closing statement; failed to provide to the Commission all requested documents and failed to provide to the buyers a Brokerage Disclosure to Buyer form.

Complaint #2022-1449 - The respondent failed to provide to the Commission a written response to the complaint and requested documents; and

- B. This is a possible violation of:
- a. 2 counts: § 12-10-217(1)(k), C.R.S. - failure to produce documents;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-408(2)(c), C.R.S. - failed to provide to customer proper disclosure;
 - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. § 12-10-405(3)(a), C.R.S. - Single Agent for Buyer, Fail to Disclose Material Fact;
 - f. Commission Rule 6.25(C) - failed to produce requested records;
 - g. Commission Rule 6.19 (c) - closing responsibility - review closing documents;
 - h. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - i. Commission Rule 6.25 - failed to submit written response to the complaint, or requested documentation; 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. She will be required to pay a fine to the Commission in the amount of \$9,000;
- F. She will be required to successfully complete real estate education in Contracts; Brokerage Relationships and in Ethics; and
- G. The respondent's real estate broker's license shall be downgraded to associate broker level for two years and she must reapply and requalify for employing broker status.

Motion unanimously carried.

H. Complaint #2022-1930 (EF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1930 (EF) 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 admitted to the allegation that she provided her buyer/client with the lockbox code to gain entry into a property that was listed for sale. The investigation noted that the respondent's husband, who is also a licensee accompanied the buyer; 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 6.16 - access information - broker prohibited from sharing without prior authorization; 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.

Motion unanimously carried.

I. Complaint #2022-1978 (RN) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1978 (RN) 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 01/31/2022, the respondent pled guilty to a misdemeanor assault and was sentenced to one year Deferred Sentence, that included one year probation and a Sexual Boundaries Class. Court fines and fees were in the amount of \$839.50 and have been paid in full. The respondent failed to report his guilty plea to the Commission as required; 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)(p), C.R.S. - failure to immediately notify CREC;
 - c. Commission Rule 6.23 - immediate notification of conviction, plea or violation required;
- 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 \$250.

Motion unanimously carried.

J. Complaint #2022-827 (JR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-827 (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. The allegations made by the complainant, who was the seller of the property, could not be substantiated. However, the investigation found that the respondent received an Agreement to Amend/Extend the closing date from the listing agent. The Amend/Extend was provided to the respondent's buyer and was executed. The respondent, however, failed to return the Amend/Extend to the listing agent. The complainant subsequently terminated which led to a legal dispute between the Buyer and complainant. Additionally, the respondent was unable to provide several required documents that should have been signed by the buyer; 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. 12-10-405(1)(b), C.R.S - buyer's agent- exercise reasonable skill and care
 - d. § 12-10-217(1)(k), C.R.S. - failure to maintain files for 4 years;
 - e. Commission Rule 6.20 - transaction file requirements; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent shall pay a fine to the Commission in the amount of \$2,500; and
- E. He will be required to successfully complete real estate education in Contracts and in Brokerage Relationships.

Motion unanimously carried.

NOTE: Complaint K - #2021-1968 (YY) was removed from the Agenda and the Commission's consideration.

NOTE: Commissioner Espinoza recused herself from consideration of Complaint L - #2022-1950 (BZ) and leaves the room at 9:49 a.m. Commissioner Kaltenbach assumes the duties as Chair.

L. Complaint #2022-1950 (BZ) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1950 (BZ) 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 11/21/2022, the respondent plead guilty to Sexual contact - No Consent, a Class 1 Misdemeanor. The respondent was ordered to complete two years of supervised probation and pay \$1,976.00 in court costs. The court costs have 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. He shall pay a fine to the Commission in the amount of \$250;
- E. The respondent's real estate broker's license shall be on probation to run concurrent with the criminal sentence; and

- F. His real estate broker's license shall be downgraded to associate broker status while he is under probation.

Motion carried.

NOTE: Commissioner Espinoza returns to the webinar at 9:52 and resumes the duties as Chair.

M. Complaint #2022-1731 (PA) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1731 (PA) 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 listing agent for a property said that her seller had a video of a buyers entering her home without their broker. After viewing the video, the complainant saw that the person who entered the home did not look like the broker. The respondent acknowledged that he was running late to the showing and wouldn't make it in time, so he gave the entry code to his buyer; 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 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 shall pay a fine to the Commission in the amount of \$500.

Motion unanimously carried.

N. Complaint #2022-445 (DD) -

The investigative reports concerning a complaint filed against the respondent in Complaint #2022-445 (DD) 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 purchased a property that was listed and owned by the respondent. The complainant stated that the respondent provided her with a previous inspection that had been conducted on the property, of which she relied on to determine the property's condition. The complainant alleged that the respondent did not disclose information from a second previous inspection which contained issues regarding the structure of the property. The complainant stated that she had to pay \$5,500 to correct the known issues with the subject property. Subsequent to the complainant submitting her complaint, the respondent through settlement negotiations paid the complainant \$5,500. The investigation noted potential violations that the respondent

failed to establish his brokerage relationship, or lack thereof, in writing with two of the potential buyers; and

- B. This is a possible violation of:
 - a. § 12-10-404(3)(a), C.R.S. - disclose known adverse material facts;
 - b. § 12-10-408(2)(c)(I), C.R.S. - establish written brokerage relationship, or lack thereof;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. Commission Rule 6.5 - brokerage relationship disclosures in writing; 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 \$2,500; and
- E. He will be required to successfully complete real estate education in Ethics and in Contracts.

Motion unanimously carried.

O. Complaint #2022-164 (RA) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-164 (RA) 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 01/25/2022, CREC opened Complaint No. 2022-164 against the respondent as there appeared to be a discrepancy on the education certificates the respondent provided compared to what the provider stated the respondent completed. The respondent acknowledges that she filled out the dates on the education certificates and acknowledges that she did not take a course on 02/17/2020 and did not attend a course on that date. The respondent states she does not know how she obtained an education certificate that is dated on a date she admits was not offered nor did she take; 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)(s), C.R.S. - misstatement on license application;
 - c. Commission Rule 4.5 - continuing education requirements; 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 \$500;
- E. She will be required to successfully complete real estate education in Ethics and one hour of missing CE to complete/comply with 24 hour CE audit.

Motion unanimously carried.

P. Complaint #x2022-158 (WS) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-158 (WS) 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 routine audit was opened on this respondent on 9/29/2022 in addition to sub-audits on the respondent's associate brokers that managed their personally owned rental properties. This audit identified potential issues with the respondent's use of nonfiduciary accounts to hold money belonging to others; lack of compliant 3-way reconciliations and accounting of money belonging to others; and lack of written agreements addressing interest earned on accounts holding money belonging to others. Lastly, one of the respondent's associate brokers was holding security deposit funds for her personally owned rental property in an account in the name of the respondent's brokerage. The respondent was not a signor on this account; 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)(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 5.14 - recordkeeping requirements;
 - e. Commission Rule 5.3.C - employing broker must be on account; 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 \$500;
- E. He will be required to successfully complete real estate education Trust Accounts; and
- F. The respondent will be required to submit to a follow-up audit within 3 months.

Motion unanimously carried.

Q. Complaint #x2022-186 (SD) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-186 (SD) 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 sub-audit was opened in relation to a full-scope audit on the respondent's employing broker (X2022-158). This audit focused on the respondent's broker-owned rental property. During the course of the audit, the broker was holding the security deposit for her personally owned rental in a non-fiduciary account in the name of her brokerage firm that her employing broker was not part of. Additionally, she was not performing a reconciliation of the funds. The account was interest-bearing with the interest transferred monthly to CARHOF; however, the respondent did not have a written agreement with the tenant addressing the interest earned nor did the respondent's lease address the interest. Lastly, the respondent had not provided a broker disclosure to the tenant nor written disclosure of license status and any conflict of interest to the tenant. The respondent corrected all items identified during the audit with the exception of past interest earned on the account totaling approximately \$8 that was transferred to CARHOF and may actually belong to the tenant; 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 5.2 - money belonging to others must be deposited in trust or escrow;
 - c. Commission Rule 5.11 - money belong to others for non-real estate brokerage services;
 - 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 Letter of Concern/Dismissal.

Motion unanimously carried.

R. Complaint #2021-2002 (KB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-2002 (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. On 11/24/2021, the complainant filed Complaint No. 2021-2002 against the respondent stating that in 2018, the complainant invested \$140,00.00 with the respondent and her Colorado fix and flip company. The respondent's marketing materials provided to the complainant mentioned the respondent's status and connections as a licensed Colorado real estate broker and that the complainant's funds would be used for fix and flip projects in Colorado. The marketing materials state that the complainant's investment would be secured with a promissory note and mortgage deed and the respondent also told the complainant that his investment would be secured with a promissory note and mortgage deed on a property in Toledo, Ohio. Contrary to the statements and marketing materials provided by the respondent stating that the funds would be used for fix and flip properties, the respondent used the complainant's funds to pay off another 2nd lien investor without the complainant's knowledge or consent. Additionally, the respondent provided the complainant with both a deficient promissory note and mortgage deed. As such, the complainant did not have collateral on his investment. The respondent defaulted on the balloon payment on the complainant's promissory note and then failed to disclose to the complainant that the Toledo, OH property was surrendered as a deed in lieu of foreclosure to the first lien position lender. Shortly after the complainant initiated a lawsuit against the respondent, the respondent filed for bankruptcy, which was approved, and lists the complainant as an unsecured creditor because the deficient note and mortgage were never recorded. At least 2 other investors have filed civil claims against the respondent; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(a), C.R.S. - false advertising;
 - b. § 12-10-217(1)(b), C.R.S. - making false promise to influence;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing; 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 revoked; and

F. She shall pay a fine to the Commission in the amount of \$7,500.

Motion unanimously carried.

S. Complaint #2022-247 (JM) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-247 (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. On 02/09/2022 the Colorado Division of Real Estate received a complaint against the respondent regarding property management and billing practices in a large apartment complex in Broomfield, CO. The respondent is an employing broker of a Colorado licensed brokerage involved solely in property management, currently managing approximately 15,000 residential units in Colorado. The respondent is the only licensee with the brokerage. The investigation found that the respondent's property management agreement and lease were not compliant and that the brokerage billed tenants (on the owner's behalf) for common area maintenance charges without supporting documentation and adequate accounting. Additionally, the respondent did not provide a Brokerage Disclosure to Tenant form to the tenant; 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. § 12-10-217(1)(k), C.R.S. - failure to maintain files for 4 years;
 - d. Commission Rule 5.14 - recordkeeping requirements
 - e. Commission Rule 7.1 - standard forms;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing; 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 \$2,500.00;
- E. She will be required to successfully complete real estate education in Contracts; and
- F. The respondent will be required to submit to audit within 3 months.

Motion unanimously carried.

T. Complaint #2022-905 (JN) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-905 (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. The complainant and her husband were first time home buyers represented by the respondent in the attempted purchase of the subject property. The complainant alleges that the respondent did not discuss with her and her husband that their Contract to Buy and Sell did not provide an Inspection Objection and an Inspection

Resolution Deadline which resulted in the loss of their \$5,000.00 earnest money. There was insufficient evidence to prove this allegation. The respondent failed to disclose brokerage relationships prior to obtaining confidential information from the buyers. The respondent failed to complete an agreement to amend/extend the contract prior to the Inspection Termination Deadline to protect the buyers' earnest money deposit while issues regarding the roof were resolved with the seller; 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 6.5 - brokerage relationship disclosures in writing; 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 \$1,000.00; and
- E. She will be required to successfully complete real estate education in Contracts.

Motion unanimously carried.

U. Complaint #2022-1367 (MVR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1367 (MVR) 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 Division received a complaint filed by an attorney on behalf of his client. His client purchased a home from a seller who had entered into a "Homeowner Benefit Agreement" (HBA) prior to selling the home. The previous homeowner received \$835 in exchange for a 40-year agreement to exclusively list the home for sale with the respondent. A memorandum of the HBA was recorded against the property. When the home sold and an "early termination" fee was not collected from the previous owner, the respondent contacted the buyer in an attempt to collect \$8,395.50. The respondent through their attorney stated that the buyer was now responsible for the early termination fee. The respondent stated through their attorney that if the early termination fee was not paid by the buyer, the respondent would pursue a judicial foreclosure. A Brokerage Duties Addendum completed in conjunction with the HBA was not filled out in its entirety, the brokerage relationship was not identified in the form and the form used was outdated; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-403(4)(C), C.R.S. - use Commission approved form when appropriate;
 - d. Commission Rule 6.22 - prohibited remedies for compensation; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The company's real estate license shall be publicly censured;
- E. The company's real estate license shall be revoked;
- F. The respondent shall pay a fine to the Commission in the amount of \$7,500.00; and
- G. This case shall be referred directly to the Attorney General's Office.

Motion unanimously carried.

V. Complaints #2022-748 & #2022-750 (AO) -

The investigative report concerning complaints filed against the respondent in Complaints #2022-748 & #2022-750 (AO) 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.

- A. The Division received two complaints, one from the listing broker and one from the seller of the home for sale. The respondent was representing the buyer who was under contract to purchase the subject property. The complainants alleged that the respondent did not understand the contractual mechanism of the inspection objection and inspection withdrawal which resulted in the buyer's contract terminating. The respondent presented an inspection objection on behalf of the buyer. The listing broker presented an inspection resolution which did not correct all the items in the objection. The respondent texted the listing broker and stated that the buyers wanted to terminate the contract. The seller withdrew the inspection resolution before it had been executed and signed an offer which was placed in second position. The listing broker notified the respondent that the seller was moving on to a backup offer, but waited until after the inspection resolution had expired before moving the backup into first position. The respondent failed to withdraw the inspection objection prior to the inspection resolution deadline. Had she done so, the buyer's contract would have stayed in force; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-405(1)(b)- C.R.S.- Reasonable skill and care; 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 \$1,000.00; and
- E. She will be required to successfully complete real estate education in Contracts.

Motion unanimously carried.

W. Complaint #2022-1746 (LR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1746 (LR) 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 09/01/2022 the respondent plead guilty to Assault 3 (Know/Reckless Cause Injury), a class 1 misdemeanor and was sentenced to two years of probation. The criminal charges are a result of a domestic dispute that happened on 02/22/2022 in which the respondent physically assaulted his wife; 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. He shall pay a fine to the Commission in the amount of \$250; and
- E. The respondent's real estate broker's license shall be placed on probation concurrent with his criminal probation.

Motion unanimously carried.

X. Complaint #2022-1919 (DM) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1919 (DM) 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 10/11/2022 the respondent plead guilty to; Promotion of Obscenity to a Minor 18-7-102 (2.5), a class 6 Felony; 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. He shall pay a fine to the Commission in the amount of \$250; and
- E. The respondent's real estate broker's license shall be placed on probation concurrent with his criminal probation.

Motion unanimously carried.

Y. Complaint #2022-1989 (ND) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1989 (ND) 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 09/26/2022 the respondent plead guilty to Identity Theft a Class 4 Felony and received a Deferred Judgment and Sentence. The respondent is currently serving two years of probation. The charges and guilty plea are a result of the respondent writing approximately 11 checks from her former boyfriend's business account; 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)(p), C.R.S. - failure to immediately notify CREC;
 - 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. She shall pay a fine to the Commission in the amount of \$500; and

- E. The respondent's real estate broker's license shall be placed on probation concurrent with her criminal probation.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2022-1671 (EJ) - Licensing Application -

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

On 09/20/2022, the applicant submitted an application for an Independent Level Real Estate Broker - Individual Proprietor. The applicant disclosed that he was previously licensed in Colorado as an Employing Level Real Estate Broker. During the investigation of the applicant's previous license history, it was found that the applicant signed a Stipulation and Final Agency Order on 01/08/2008, wherein his broker's license was suspended for 90 days. Additionally, he was assessed a fine in the amount of \$2,500.00, 12 hours of education, and public censure. The applicant completed the terms of the Stipulation. Again on 07/02/2012, the applicant signed a Stipulation and Final Agency Order wherein his real estate broker's license was revoked. The applicant was also assessed a fine in the amount of \$7,000.00 and public censure. The fine has been paid in full.

At the Commission's December 2022 meeting they requested letters of recommendation from the applicant. The applicant submitted five letters of recommendation.

It was moved by Commissioner Chang and seconded by Commissioner Lynde to approve the license application at an associate broker's level for five years. The applicant will be on a restricted license requiring a higher level of supervision by an employing broker who agrees in writing for a period of two years. The remaining three years of associate broker level status may be supervised by an employing broker at a more moderate level of supervision.

Motion unanimously carried.

Licensing Matter B - Complaint #2022-2233 (DA) - Licensing 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 14, 2022, the applicant was convicted of Theft of \$20,000-\$100,000, a class 4 Felony and Theft of \$1000-\$2000, a Class 1 Misdemeanor. The applicant was sentenced to a 2-year deferred judgment and sentence on the Felony count. The applicant is ordered to pay restitution in the amount of \$137,316, and has made a \$50,000 payment as provided in her plea agreement.

It was moved by Commissioner Lynde and seconded by Commissioner Kaltenbach to deny the license application based on failure to establish rehabilitation.

Motion unanimously carried.

Licensing Matter C - Complaint #2022-2043 (MH) - Licensing Application -

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

On July 21, 2022, the applicant was convicted of Sexual Contact, a Class 1 Misdemeanor. The applicant was sentenced to 5 years of probation and a fine of \$5,161.50. The applicants' probation is ongoing and set to end on 09/22/2027. The applicant has a current balance of \$5,161.50.

It was moved by Commissioner Lynde and seconded by Commissioner Kaltenbach to deny the license application based on failure to establish rehabilitation.

Motion unanimously carried.

Licensing Matter D - Complaint #2022-2183 (MC) - Preliminary Advisory Opinion -

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

In February 2013, the applicant signed a stipulation to voluntarily surrender her Colorado real estate broker's license in lieu of revocation. The applicant has met all terms of the stipulation, and the fine is paid in full.

It was moved by Commissioner Chang and seconded by Commissioner Lynde to issue a negative opinion.

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2021-1953 (JS) - Stipulation Violation -

The Commission was presented with a Stipulation Violation report by Penny Elder regarding ESP Matter A, Complaint #2021-1953 (JS). After discussion, it was moved by Commissioner Lynde and seconded by Commissioner Kaltenbach to proceed with a stipulation violation of §12-10-217(1)(m), and seek a Final Agency Order, public censure and a fine in the amount of \$2,500.

Motion unanimously carried.

ESP Matter B, Complaint #2021-725 (JS) - Stipulation Violation -

The Commission was presented with a Stipulation Violation report presented by Penny Elder regarding ESP Matter B, Complaint #2021-725 (JS). After discussion it was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to proceed with a stipulation violation of §12-10-217(1)(m), and seek a Final Agency Order, public censure and a fine in the amount of \$2,500.

Motion unanimously carried.

EXECUTIVE SESSION:

At 11:16 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 following purpose:

- To receive legal training from our general counsel along with an overview of cases handled by the Attorney General's Office in 2022;

Motion unanimously carried.

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 12:06 p.m. and resumes meeting via Zoom webinar that is open to the public.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 11:22 a.m. on December 5, 2022.

Michelle Espinoza, Chair

Graham Kaltenbach, Vice Chair

Joe Chang, Commissioner

Renee Lynde, Commissioner

Absent
Kim Rediker, Commissioner

Marcia Waters, Director
Colorado Division of Real Estate