



COLORADO

**Department of
Regulatory Agencies**

Division of Real Estate

1560 Broadway, Suite 925
Denver, CO 80202-5111

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING April 2, 2024

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
April 2, 2024
Colorado Division of Real Estate
Meeting Conducted Via Webinar

A Colorado Real Estate Commission public meeting was conducted via Webinar and was held on April 2, 2024. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach - Vice Chair; Josh Brodbeck; Joe Chang; and Renee Lynde. Also attending were Marcia Waters, Director; Eric Turner, Deputy Director; David Donnelly, Education, Communication and Policy Manager; Melissa Phipps, Senior Advisor; Penny Elder, ESP Program Manager; Sarah Halloran, Investigations Team Lead; Eddie Rose, Investigations Team Lead; Nicole Tribelhorn, Investigations Team Lead; and other members of the Commission's Staff. Angela Little attended from the Office of the Attorney General.

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

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

ORDER OF BUSINESS

Approval of Minutes - February 6, 2024

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve the Minutes of February 6, 2024 as written.



CREC

Minutes_February 6, 2

Motion unanimously carried.

PUBLIC PRESENTATION:

- Garry Wolff

POLICY MATTERS:

2024 CREC Education Task Force -

It was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to approve the 2024 CREC Education Task Force members.

Patrick Armbrust
Heather Bustos
Damian Cox
David Donnelly
Jesse Farnlof

Tod Franklin
John Gillam
Patricia Hardy
AJ Jackson
Holly Krell
Rob Lynde
Beth Ann Mott
M. Eric Romero
Dana Garrett

Motion unanimously carried.

The Division thanks Joe Chang and Josh Brodbeck for their dedicated service on the Real Estate Commission.

COMPLAINT MATTERS:

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

A. Complaints A. #2023-2468 (RP) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2468 (RP) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant hired the respondent's husband to complete an auction and estate sale following the death of his wife. The respondent and her husband photographed and inventoried the complainant's household possessions and arranged for an auction to be held within weeks. The complainant alleged that the estate company held an auction and sale but did not pay him the proceeds from the sale. Additionally, the respondent allegedly took a clock with an estimated value of \$3,500 to their shop, sent a sales form to the complainant to sign, but never provided any proceeds or returned the clock. The respondent failed to respond to the complaint as required by Commission rule; 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)(w), C.R.S. - dishonest dealing;
 - c. Commission Rule 6.25 - must submit written response to complaint; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked;
- F. She will be required to pay a fine to the Commission in the amount of \$5,000; and
- G. This case will be directly referred to the Attorney General's Office.

Motion unanimously carried.

B. Complaint #2023-2424 (AW) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2424 (AW) 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 criminal complaint investigation was opened by CREC after the respondent failed to report his November 2, 2023, conviction for Assault in the Third Degree, 18-3-204(1)(a), C.R.S. (M1). A Notification Letter was sent on December 6, 2023. The respondent sent a response letter along with some of the required documents on December 27, 2023; 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. He will be required to pay a fine to the Commission in the amount of \$500; and
- E. The respondent will be on probation concurrent with the criminal sentence.

Motion unanimously carried.

C. Complaints #2023-1832 (RS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1832 (RS) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, a licensed broker and the buyer, accused the respondent of negligence and dishonesty, stating he allegedly failed to obtain repairs bids, ignored messages, and did not have inspection items repaired to the contractual requirements. The respondent said he effectively represented his Sellers, abided by the terms of the contract, and closed the transaction. An amendment was made to the contract that stated the Seller would have a licensed general contractor complete the repair items with the payment coming from the Sellers' proceeds. The complainant provided some repair item text messages from after the closing, but there were no written records of who was responsible to get the bids prior to closing. He told the Investigator that his contractor repaired it, but the Seller told the Investigator that he had, in fact, fixed the issue; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(c), C.R.S. - deliberate misrepresentation/false promise;

- b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice; 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; and
- E. He will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

D. Complaint #x2023-108 (LB) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-108 (LB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This audit was a stipulation audit, which resulted from a previous complaint. Though the respondent has made movement towards compliance, the reconciliations include ongoing negative ledger balances, which indicates other owner's funds are covering payments, the attorney drafted forms do not include the full verbiage required by Commission Rule 7.1, The Broker's Disclosure to Tenant is being obtained after confidential information is given and the full registered DBA is not being utilized in all circumstances; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.9 - diversion, conversion prohibited;
 - d. Commission Rule 5.14.B - recordkeeping requirements - negative ledger balances;
 - e. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - f. Commission Rule 7.1 - standard forms;
 - g. Commission Rule 6.10 - advertising - using more than one trade name; and

It was moved by Commissioner Brodbeck and seconded by Commissioner Chang to dismiss the complaint since the outstanding audit issues were resolved after supervision of the brokerage was transferred.

Motion unanimously carried.

E. Complaint #x2023-124 (JB) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-124 (JB) was presented to the Commission with accompanying documentation and information against the same respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This audit was opened on the respondent during the required stipulation audit being conducted on his wife. This was due to the fact that this respondent became the Responsible Broker during that audit. During that audit it appeared that the majority of the items that the brokerage firm had been disciplined for, continued to be ongoing concerns for which this respondent was now responsible. Concerns included lack of compliance with Rule 7.1B Attorney Forms, Providing the BDT in a timely manner, Trust Account Labeling, Reconciliations that included negative ledger balances indicating conversion, Interest being sent to CARHOF without tenant consent and concerns surrounding advertising. By the conclusion of the audit, these issues were corrected; and
- B. This is a possible violation of:
 - h. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - i. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - j. Commission Rule 5.9 - diversion, conversion prohibited;
 - k. Commission Rule 5.14 - recordkeeping requirements;
 - l. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - m. Commission Rule 7.1 - standard forms;
 - n. Commission Rule 6.10 - advertising; and

It was moved by Commissioner Brodbeck and seconded by Commissioner Lynde to dismiss the complaint with a Letter of Concern.

Motion unanimously carried.

F. Complaint #x2023-120 (CT) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-120 (CT) 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. The following was observed: Prior to the audit, the broker was holding security deposits and rents in her own personal account that included her own personal transactions. Trust accounts were segregated during the course of the audit and are now in fiduciary accounts, however the respondent has not been able to provide a compliant reconciliation for either account. The respondent was conducting business under a non-licensed company, and that was corrected during the audit. The respondent was not providing a BDT, BDA, Conflict of Interest, Lead Based Paint or Radon Disclosures. This has only been partially corrected during the audit. The respondent had drafted her own lease and management agreement. Forms have been partially corrected during the audit. The respondent did not have an Accounting Control or Broker's Relationship Policy- those were provided during the audit; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received
 - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;

- d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. Commission Rule 5.1 - establishment of internal accounting controls;
 - f. Commission Rule 5.14 - recordkeeping requirements;
 - g. Commission Rule 5.10 - commingling prohibited;
 - h. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
 - i. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - j. Commission Rule 6.17 - disclosure of conflict of interest;
 - k. Commission Rule 7.1B - attorney forms;
 - l. Commission Rule 6.4 - brokerage relationship policy; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
 - D. The respondent will be required to pay a fine to the Commission in the amount of \$1,000;
 - E. She will be required to successfully complete real estate education in Trust Accounts; and
 - F. She will be required to submit to a follow up audit in 90 days.

Motion unanimously carried.

G. Complaint #x2023-78 (SS) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-78 (SS) 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 opened after Division staff learned that the respondent purchased the business from a broker who had his license downgraded due to numerous violations. Given this respondent had been audited in recent years, the audit focused on a review of the absorption of the purchased business. During the audit it was determined that the respondent's reconciliations did not reconcile prior to the purchase of the business and have remained out of balance, with negative ledger balances after the purchased business was absorbed. A compliant reconciliation on any of the six accounts the respondent now has, was never provided. Additionally, minor concerns with attorney drafted forms and advertising were noted, but corrected during the audit; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received
 - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. Commission Rule 5.14 - recordkeeping requirements;
 - f. Commission Rule 6.3 - employing broker's responsibilities and supervision;
 - g. Commission Rule 5.9 - diversion, conversion prohibited;
 - h. Commission Rule 7.1 - standard forms;
 - i. Commission Rule 6.10 - advertising;
 - j. Commission Rule 5.1 - accounting control; and
- G. The respondent's settlement offer includes a Stipulation for Diversion;

- H. The respondent will be required to pay a fine to the Commission in the amount of \$1,500; and
- I. He will be required to submit to a follow up audit within three months.

Motion unanimously carried.

H. Complaint #2023-1889 (SE) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1889 (SE) 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 engaged in a deceptive business practice involving flipped houses. On 06/15/2023, the respondent pled guilty to a Felony 3 charge of Securities - Fraud or Deceit. She was sentenced to 90 days incarceration, ten (10) years of supervised probation, Court fines/fees in the amount of \$381.00, and restitution, with interest, in the amount of \$1,791,432.53. It was confirmed that a payment plan of \$25.00 per month is in place; and
- B. This is a possible violation of:
 - a. § 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 shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. She will be required to pay a fine in the amount of \$2,500 to the Commission.

Motion unanimously carried.

I. Complaint #2024-189 (CH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-189 (CH) 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 shared access information to the property with his buyer without authorization; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. Commission Rule 6.16 - access information - broker prohibited from sharing without prior authorization; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine in the amount of \$1,500 to the Commission.

Motion unanimously carried.

J. Complaint #2023-1096 (TN) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1096 (TN) 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 broker of the subject property, alleges that the respondent was practicing real estate with an inactive license at the time of the transaction, which eventually terminated. The investigation also found that the respondent conducted two other transactions while the respondent's license was inactive; and
- B. This is a possible violation of:
 - a. § 12-10-204, C.R.S. - errors and omissions insurance required;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
 - d. Commission Rule 6.20 - transaction file requirements;
 - e. 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. The respondent's real estate broker's license shall be publicly censured;
- E. He will be required to pay a fine to the Commission in the amount of \$3,000;
- F. He will be required to successfully complete real estate education in Contracts and in Legal Issues; and
- G. The respondent's real estate broker's license shall be restricted for a period of two years with an employing broker who agrees in writing to provide a high level of supervision.

Motion unanimously carried.

K. Complaint #2023-1876 (BP) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1876 (BP) 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 buyer of the property listed by the respondent, alleged that it was not properly disclosed that the property contained asbestos levels above the allowable standards; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine in the amount of \$2,500 to the Commission.

Motion unanimously carried.

L. Complaint #x2023-50 (BC) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-50 (BC) 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 signed a Stipulation & Final Agency Order in November 2021 as a result of a 2018 Division audit. The terms of the stipulation involved a fine, suspended license until compliant 3-way reconciliation records were provided, 18-month license downgrade, two follow-up audits, and continuing education. A Division oversight led to the respondent downgrading her license prior to submitting the required compliant three-way reconciliations. Pursuant to the stipulation, the Division initiated the first post suspension audit. While the respondent was unable to provide compliant reconciliations during the term of her suspended license, the Division was able to eventually verify that the property management funds were transferred to a new brokerage that the respondent's husband and respondent's mother retain ownership in; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(g), C.R.S. - failure to timely place deposit funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.14 - recordkeeping requirements;
 - d. Commission Rule 5.21 - production of documents and records; 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 revoked; and
- F. She will be required to pay a fine to the Commission in the amount of \$7,500.

Motion unanimously carried.

M. Complaint #x2023-51 (RR) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-51 (RR) 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 the owner and employing broker of a now defunct brokerage. He signed an agreement in March 2022 transferring the property management to another brokerage he owns. The respondent did not transfer the security deposits funds to the new brokerage until July 2023 and did not notify clients of the brokerage change until December 2023. The notification of the brokerage change came in the form of a mass email that was sent to clients indicating that the property management had shifted to a new firm with a new broker, but with the same support staff that they have always had. The respondent is actively involved with the new brokerage's activities.

Additionally, he owns and is the employing broker of another brokerage that only conducts sales transactions. The reconciliations of both brokerages he owns are non-compliant. It also appears that the respondent has not disclosed the affiliated business arrangement between the sales brokerage firm and the property management brokerage firm; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(g), C.R.S. - failure to timely place deposit funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. Commission Rule 5.7 - time limits for deposit of money belonging to others;
 - e. Commission Rule 5.8 - transfer of security deposits;
 - f. Commission Rule 5.14 - recordkeeping requirements;
 - g. Commission Rule 5.22 - employing or independent broker responsible for firm's compliance with Chapter 5 rules;
 - h. Commission Rule 6.3 - employing broker's responsibilities and supervision;and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent shall be required to pay a fine to the Commission in the amount of \$5,000;
- E. He will be required to successfully complete real estate education in Brokerage Relationships; Brokerage Administration; Ethics and in Property Management; and
- F. He will be required to submit to a follow-up audit within three months.

Motion unanimously carried.

N. Complaint #x2023-65 (TL) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-65 (TL) 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 is the employing broker for a brokerage opened in July 2022 to engage solely in the property management book of business transferred from another brokerage. The initial funds for money belonging to others were not transferred to the respondent's brokerage until November 2022. Security deposits were not transferred until July 2023. The respondent did not notify the clients that their property management business had changed brokerages. The respondent was not a signatory on the property management bank accounts until July and October 2023, respectively. Additionally, the respondent's bank accounts, and three-way reconciliations appear non-compliant. Lastly, the respondent's brokerage firm shares office, staff, and telephone number with another brokerage that has common ownership. It does not appear that affiliated business arrangement between the respondent's property management brokerage firm and the related sales brokerage firm has been disclosed; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(g), C.R.S. - failure to timely place deposit funds;

- b. § 12-10-217(1)(h), C.R.S. failure to account for funds received;
- 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 5.2 - money belonging to others must be deposited in trust or escrow;
- f. Commission Rule 5.6 - trust or escrow funds must be available immediately;
- g. Commission Rule 5.22 - employing or independent broker responsible for firm's compliance with Chapter 5 rules;
- h. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
- i. Commission Rule 6.10 - advertising; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He shall be required to pay a fine to the Commission in the amount of \$5,000;
- E. The respondent shall be required to successfully complete real estate education in Brokerage Relationships, Brokerage Administration, Contracts, Ethics, Trust Accounts and in Property Management;
- F. His real estate broker's license shall be on probation for a period of 24 months; and
- G. He will be required to submit to a follow-up audit within 3 months.

Motion unanimously carried.

O. Complaint #2023-2533 (AA) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2533 (AA) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On December 15, 2023 the respondent pled guilty to Assault 2- (strangulation), a Class 4 Felony. The respondent received a Deferred Judgment and Sentence and is serving 2 years of probation. The conviction was reported the Division of Real Estate within the required 30 days post-conviction; 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 shall be required to pay a fine to the Commission in the amount of \$250; and
- E. The respondent's real estate broker's license shall be on probation concurrent with the terms of the criminal sentence.

Motion unanimously carried.

P. Complaint #2023-2421 (SB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2421 (SB) 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 November 11, 2023, the respondent pled guilty to Sexual Contact - no consent a Class 1 Misdemeanor. The respondent received a Deferred Judgment and Sentence and is currently serving 24 months of probation. The charge resulted from an incident in which the respondent was accused of touching two women sexually without their consent when he was intoxicated; 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 shall be required to pay a fine to the Commission in the amount of \$250; and
- E. The respondent's real estate broker's license shall be on probation concurrent with the terms of the criminal sentence.

Motion unanimously carried.

Q. Complaint #2023-2149 (AP) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2149 (AP) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On July 19, 2022, the respondent pled guilty to Assault 3, a Class 1 Misdemeanor, and was sentenced to 18 months of probation on a Deferred Judgment and Sentence in Arapahoe County. The respondent failed to notify the Division of Real Estate of this plea. On October 20, 2023, in a separate criminal case, the respondent pled guilty to Assault 3, a Class 1 Misdemeanor and was sentenced to 2 years of probation in Adams County. This conviction revoked the previous Deferred Judgment and Sentence in Arapahoe County, and the respondent was sentenced to probation to run concurrent with the Adams County case. The respondent failed to notify the Division of Real Estate of this criminal conviction. The respondent did not provide the requested response and documents by the deadline given on the Notification Letter. A final Notice to Comply was sent on January 16, 2024, with a deadline of January 26, 2024. The respondent failed to respond to that deadline. On February 13, 2024, the respondent made contact with the Division of Real Estate and sent in a Written Explanation for both convictions on February 28, 2024. None of the other requested documentation was provided by the respondent; 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;
 - e. Commission Rule 6.25 - must submit written response to complaint; and

- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent shall be required to pay a fine to the Commission in the amount of \$1,500; and
- E. The respondent's real estate broker's license shall be on probation concurrent with the terms of the criminal sentence.

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

NOTE: Complaint R - #2023-2517 (FR) - was removed from the Agenda and the Commission's consideration.

S. Complaint #2023-95 (DS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-95 (DS) 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 explained that the respondent listed the complainant's business for sale, which included a lease assignment. The complainant alleged that after the respondent showed the business to a friend, it seemed that the respondent was solely representing the buyers. The complainant alleged that the respondent discouraged other buyers from viewing the property. Finally, the complainant stated that she later found out that the respondent's license was inactive while he was engaged in the transaction. Additional potential violations uncovered during the investigation are that respondent provided the Division with altered E&O certificates and correspondence; failed to ensure he had an active license; failed to provide written disclosure of his brokerage relationships, or lack thereof, to the parties of the transactions; used a non-Commission and non-attorney drafted document; failed to disclose certain documents he drafted were not Commission approved forms; failed to enter into a written lease listing agreement with the landlord of the subject property; and failed to maintain a complete transaction file including fully executed documents; 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. § 12-10-408(2), C.R.S. - transaction brokerage disclosures in writing;
 - c. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - d. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - e. § 12-10-403(4)(c), C.R.S. - duration of relationship;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - g. Commission Rule 6.7 - brokers or teams working with consumers on both sides of the same transaction;
 - h. Commission Rule 6.14(C) - listings must be in writing;
 - i. Commission Rule 7.1 - standard forms; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's license shall be publicly censured;
- E. The respondent's license shall be revoked; and
- F. He shall be required to pay a fine to the Commission in the amount of \$20,000.

Motion unanimously carried.

T. Complaint #2023-49 (JL) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-49 (JL) 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 explained that the respondent listed the complainant's business for sale, which included a lease assignment. The complainant alleged that after the respondent's co-respondent showed the business to a friend, it seemed that the respondent was solely representing the buyers. The complainant alleged that the respondent discouraged other buyers from viewing the property. The complainant explained that the respondent lied that two buyers had viewed the property and business when they had not. Additional potential violations uncovered during the investigation are that the respondent failed to provide a high-level of supervision to his co-respondent; failed to ensure that his co-respondent held an active real estate license; failed to provide written disclosure of his brokerage relationships, or lack thereof, to the parties of the transactions; engaged in dual agency; used a non-Commission and non-attorney drafted document; failed to ensure that the LOIs his co-respondent drafted included the disclosure that they were not Commission approved forms; failed to ensure his co-respondent enter into a written lease listing agreement with the landlord of the subject property; failed to maintain a complete transaction file including fully executed documents and settlement statements; and failed to have a written brokerage relationship policy; 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 per Rule E-31;
 - c. § 12-10-403(4)(c), C.R.S. - use of Commission approved forms;
 - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - f. § 12-10-408(2), C.R.S. - disclosures in writing;
 - g. Commission Rule 6.3(D) - employing broker's responsibilities and supervision;
 - h. Commission Rule 6.4 - brokerage firm's policies;
 - i. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - j. Commission Rule 6.7 - brokers or teams working with consumers on both sides of the same transaction;
 - k. Commission Rule 6.14(C) - listing must be in writing;
 - l. Commission Rule 7.1 - standard forms; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. The respondent shall be required to pay a fine to the Commission in the amount of \$27,500.

Motion unanimously carried.

U. Complaint #2022-2122 (AL) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2122 (AL) 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 of Real Estate received a complaint which alleged that the respondent failed to disclose all of the repairs done on a home which he himself owned and sold to the complainant. The complainant was represented by a buyer's broker and received documentation about repairs made as part of an insurance claim. The complainant saw the property while some repairs were still being completed; and
- B. This is a possible violation of:
 - a. § 12-10-404(3)(a), C.R.S. - failure to disclose;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and

Following discussion, it was moved and seconded by the Commission to dismiss the complaint with a Letter of Concern.

Motion unanimously carried.

V. Complaint #2023-2422 (NS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2422 (NS) 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 November 11, 2023, the respondent pled guilty to theft, Felony 4. The respondent was ordered to serve public service, probation, and pay restitution. The respondent failed to notify the Colorado Real Estate Commission, and did not respond to the investigation; 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;
 - e. Commission Rule 6.25 - must submit written response to complaint; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. She will be required to pay a fine to the Commission in the amount of \$10,000.

Motion unanimously carried.

W. Complaint #2023-609 (ER) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-609 (ER) 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 03/30/2023, the complainant filed Complaint No. 2023-609 against the respondent stating that the respondent failed to remit monthly rental proceeds on the two properties she managed on his behalf from August 2022 to March 2023 and failed to provide owners statements. The investigation noted the respondent provided figures on the owner statements and owner disbursements reports that did not reconcile to actual payments made to the complainant's IRA account. The complainant appears to be owed an additional \$15,834.40 in rental proceeds. From 01/2023 to 08/2023 it appears the respondent made personal purchases directly from the rental account (#2666) in an amount totaling approximately \$111,194.13. Additionally, on 08/15/2023, a \$95,000 transfer/withdrawal was made from the rental account (#2666) and deposited into the respondent's personal account (#2674). A combined total of \$473,476.13 was transferred from the rental account (#2666) into the respondent's personal account (#2674) which includes the apparent personal expenses of the respondent. From 01/2023 to 11/2023, the account holding security deposits had a total balance ranging from \$64,494.62 to \$0.00 at account close out. The respondent failed to provide 3-way reconciliation reports and monthly journals or ledgers for accounts holding funds of others including the security deposit account. The respondent failed to provide management fee reports to detail what she was owed each month in management fees. The accounts used by the respondent regularly appear to commingle trust funds with broker funds as well as appear to be used for the respondent's personal expenses; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
 - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - f. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
 - g. Commission Rule 5.9 - diversion, conversion prohibited;
 - h. Commission Rule 5.10 - commingling prohibited;
 - i. Commission Rule 5.14 - recordkeeping requirements;
 - j. Commission Rule 5.15 - maintenance and production of reports to beneficiaries;
 - k. Commission Rule 5.21 - failure to produce documents/records;
 - l. Commission Rule 6.25 - failure to submit written response to the complaint;and

- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. She will be required to pay a fine to the Commission in the amount of \$27,500.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2024-174 (LB) - 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 December 22, 2021, the applicant pled guilty to a Misdemeanor harassment-strike/shove/kick. The applicant was sentenced to 18 months of probation and a fine of \$327.50. The case is closed.

On November 12, 2021, the applicant pled guilty to a Felony DUI with 3+ priors. The applicant was sentenced to 240 days in jail, 3 years of probation, and a fine of \$1,882.50 with a current balance of \$460.00. Jail and probation has been completed successfully. The case is closed.

On November 12, 2021, the applicant pled guilty in a separate case of Felony DUI with 3+ priors. The applicant was sentenced to 240 days in jail, 3 years of probation, and a fine of \$5,287.50 with a balance of \$5,237.50. This case sentencing is concurrent with both above cases. Jail and probation has been completed successfully. The case is closed.

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to deny the license application based on lack of truthfulness, honest and good moral character.

Motion unanimously carried.

Licensing Matter B - Complaint #2024-424 (MC) - 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 August 31, 1999, the applicant pled guilty to a Class 4 Felony Theft more than \$400 but < \$15,000.

On August 25, 2000, the applicant pled guilty to Possession of Opiates, Opium or Narcotic Drugs and Possession of Paraphernalia to grow, Distribute Marijuana, Both Felonies.

On August 15, 2002, the applicant pled guilty to a Motor Vehicle Theft/Agg1-Under 15,000-CSPa Class 5 Felony.

On January 12, 2006, the applicant pled guilty to Theft \$500-\$15,000 attempt a Class 5 Felony.

It was moved by Commissioner Lynde and seconded by Commissioner Brodbeck to approve the license application.

Motion unanimously carried.

Licensing Matter C - Complaint #2024-122 (JG) - 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.

On July 21, 2014, the applicant was convicted of Robbery, a Class 4 Felony. On June 26, 2014, the applicant was convicted of Theft, a Class 2 Misdemeanor. On September 26, 2014, the applicant was convicted of Theft \$300-\$750, a Class 2 Misdemeanor. On November 06, 2015, the applicant was convicted of a Controlled Substance-Possession Schedule 3/4/5 a Class 1 Drug Misdemeanor. On March 21, 2016, the applicant was convicted of Motor Vehicle Theft/Agg. 2-Under \$1000, a Class 1 Misdemeanor. On September 01, 2016, the applicant was convicted of two Class 6 Felonies- Vehicular Eluding-CSP and Motor Vehicle Theft/Agg. On April 12, 2019, the applicant was convicted of a Theft \$750.-\$2000 a Class 1 Misdemeanor.

It was moved by Commissioner Chang and seconded by Commissioner Kaltenbach to issue a positive opinion.

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

Licensing Matter D - Complaint #2023-2578 (MJ) - 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.

On March 15, 2013, the applicant was convicted of four felony counts in the United States District Court, District of Colorado. The applicant was convicted of Wire Fraud and Aiding and Abetting; Money Laundering; Bank Fraud; and a Forfeiture Allegation. These convictions were related to real estate transactions.

The applicant served his prison time, has completed probation with early termination in 2023. The applicant still owes restitution.

In 2013, the Colorado Real Estate Commission revoked the Applicant's Real Estate License.

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

Motion unanimously carried.

Licensing Matter E - Complaint #2024-123 (TS) - 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 December 19, 2012, the applicant was issued a Cease and Desist order by the Nebraska Real Estate Commission. The order was based on a Nebraska investigation that showed the

applicant had listed two Nebraska properties in a Florida MLS. The Florida MLS shared that information with Realtor.com. As a result of the Nebraska Cease and Desist, the Illinois Department of Financial and Professional Regulation took action on the applicant's Illinois Real Estate Broker License. The applicant was issued a Consent Order on February 25, 2014. The applicant is licensed and active in 30 States; inactive in 3 States and holds an Ohio Law License in good standing.

It was moved by Commissioner Lynde and seconded by Commissioner Brodbeck to approve issuing a restricted license for a period of two years at the associate broker level. The applicant must have an employing broker who agrees in writing to provide a high level of supervision.

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2022-547 (SD) - Counteroffer -

The Commission was presented with a counteroffer from the respondent by Penny Elder regarding ESP Matter A, Complaint #2022-547 (SD). Following discussion, it was moved by Commissioner Brodbeck and seconded by Commissioner Lynde to reject the counteroffer.

Motion unanimously carried.

ESP Matter B, Complaint #2023-1510 (MF) - Counteroffer -

The Commission was presented with a counteroffer from the respondent by Penny Elder regarding ESP Matter B, Complaint #2023-1510 (MF). Following discussion, it was moved by Commissioner Chang and seconded by Commissioner Lynde to accept the counteroffer with the requirement we obtain proof that the buyers were paid restitution. The respondent's settlement will include a Final Agency Order, payment of a fine in the amount of \$5,000 to the Commission (+15% mandatory surcharge) and successful completion of real estate education in Ethics.

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 11:43 a.m. on April 2, 2024.

Michelle Espinoza, Chair

Graham Kaltenbach, Vice Chair

Josh Brodbeck, Commissioner

Joe Chang, Commissioner

Renee Lynde, Commissioner

Marcia Waters, Director
Colorado Division of Real Estate