



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

1560 Broadway, Suite 925
Denver, CO 80202-5111

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING June 6, 2023

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
June 6, 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 June 6, 2023. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach - Vice Chair; Joe Chang; and Renee Lynde. Josh Brodbeck has been appointed to the Commission and is excused for the meeting. 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 - April 4, 2023

It was moved by Commissioner Chang and seconded by Commissioner Lynde to approve the Minutes of April 4, 2023 as written.



CREC Minutes_April
4, 2023.pdf

Motion unanimously carried.

PUBLIC PRESENTATION:

- Garry Wolff

POLICY MATTERS: None

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 #x2023-8 (JB) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-8 (JB) 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 was a routine audit opened on 10/04/22. The respondent reported that they manage 41 residential properties and another 8 of her broker-owned properties. The respondent maintains, separate trust accounts for the 3rd party property management, security deposits, and her broker-owned properties; however, she has not kept a journal or ledger for any of the accounts and has not been performing monthly 3-way reconciliations of the accounts. The broker does reconcile her bank statements with her manual reports of transactions to keep track of cleared deposits and withdrawals but was unaware that her monthly “reconciliations” were not compliant until the audit began. The bank statement heading on one of the trust accounts did not include the word trust or escrow which was corrected during the audit. However, the account heading still does not include a label identifying the purpose of the account. Additionally, the respondent has not provided a conflict of interest and license status disclosure to the tenants of her broker-owner properties. The respondent affirmed that she would include the disclosure moving forward but has not provided documentation that she provided this disclosure to her current tenants. The broker has been actively working to become fully compliant in her trust accounting process and reporting as well as practice issues such as conflict of interest and license status disclosures; 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 5.9 - diversion, conversion prohibited;
 - c. Commission Rule 5.10 - commingling prohibited;
 - d. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - e. Commission Rule 6.17 - duty to disclose conflict of interest and license status;
 - f. Commission Rule 7.1 - attorney-drafted forms; and
- C. The respondent’s settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$1,500;
- E. He will be required to successfully complete real estate education in Trust Accounts and in Property Management; and
- F. The respondent will be required to submit to a follow-up audit within three months.

Commissioner Lynde is opposed. **Motion carried.**

B. Complaint #x2023-7 (MG) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-7 (MG) 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. A routine audit was opened on the respondent which identified multiple issues including the respondent's property management agreement and lease did not include the required disclosures for attorney drafted forms. However, this was corrected during the audit. Additionally, the respondent was not providing the Broker's Disclosure to Tenant. The respondent attested they will do so going forward but did not provide proof of providing this to any current tenants. Also, the respondent's trust accounts don't appear to have the proper labeling and both the security deposit and rental trust accounts contained negative ledger balances. The respondent stated this was due to paying bills on behalf of owners without sufficient funds available for that owner. The respondent also manages one property owned by a former associate broker of hers, who still holds a Colorado real estate license. The funds belonging to this broker and property are held in the respondent's primary trust account that holds money belonging to others. The respondent was requested to segregate these funds but did not do so based on her attorney's response stating that this broker is no longer an associate of the respondent's brokerage; therefore, these funds can be held in the respondent's primary rent trust account with money belonging to others; 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;
 - g. Commission Rule 5.9 - diversion, conversion prohibited;
 - h. Commission Rule 5.10 - commingling prohibited;
 - i. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - a. 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 \$1,500;
- E. She will be required to successfully complete real estate education in Trust Accounts and in Property Management; and
- F. The respondent will be required to submit to a follow-up audit within three months.

Commissioner Lynde is opposed. **Motion carried.**

C. Complaint #x2022-188 (CM) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-188 (CM) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This was a follow-up audit was opened due to the Stipulation for Diversion signed by the respondent. The respondent's initial responses to this audit indicated ongoing issues with negative ledger balances, non-compliant reconciliations, and that money belonging to others held by the respondent were not in established fiduciary trust

accounts. After correction, the respondent changed the trust accounts to actual fiduciary trusts. The account titles now contain the word trust or escrow but do not contain a clear label identifying the purpose of the account. It appears that the respondent has ongoing negative ledger balances due to either accrual accounting methods or paying expenses for owners without sufficient funds. Additionally, broker funds were being held in the trust accounts as a cushion to cover potential negative balances; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.9 - diversion, conversion prohibited;
 - d. Commission Rule 5.10 - commingling prohibited;
 - e. Commission Rule 5.14 - recordkeeping requirements; 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 \$2,500; and
- E. The respondent will be required to submit to a follow-up audit within six months.

Motion unanimously carried.

D. Complaint #x2023-4 (JR) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-4 (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. This was a stipulation audit opened on the respondent based on both a previous investigation and audit. The respondent has made some corrections, but it appears that the respondent's trust accounts are not actual fiduciary accounts. Additionally, the respondent's 3-way reconciliation journals do not contain the required elements listed in the accounting rule. The accounts also appear to contain negative ledger balances due to bounced checks, which the broker has continued to try and remedy to prevent the possible conversion of owner funds going forward; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.2 - money belonging to others must be deposited in trust or escrow;
 - d. Commission Rule 5.9 - diversion, conversion prohibited;
 - e. Commission Rule 5.14 - recordkeeping requirements; 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 \$5,000; and
- E. He will be required to submit to a follow-up audit within 6 months.

Motion unanimously carried.

E. Complaint #x2022-190 (RT) -

The investigative reports concerning a complaint filed against the respondent in Complaint #x2022-190 (RT) 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 as a result of a previously signed stipulation. It appears that the respondent did not have a Power of Attorney in place to allow non-licensed on-site managers to sign leases, although the respondent did provide one during this audit which he retroactively dated. Additionally, the respondent's trust accounts were not Fiduciary Trust Accounts but were corrected during the audit. Furthermore, the respondent's reconciliations do not appear compliant. The respondent has provided a plan to ensure current tenants receive interest accrued on the security deposit trust account, but he did not provide requested documentation regarding potential interest earned on the original accounts holding money belonging to others. At the time of the audit, the respondent acknowledged that the Broker's Disclosure to Tenant and license/ownership status was still not being provided in advance of receiving confidential information. However, the respondent indicated that online applications are no longer being accepted in an effort to remedy this; 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 5.14 - recordkeeping requirements;
 - c. Commission Rule 6.5 - brokerage relationship disclosures in writing; 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 \$2,500; and
- E. He will be required to submit to a follow-up audit within 6 months.

Motion unanimously carried.

F. Complaint #x2022-122 (JW) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-122 (JW) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. This was a routine audit opened on the respondent . The respondent requested and was granted a significant extension for the respondent to bring their operations, trust accounts and reconciliations into compliance. The respondent's brokerage conducts both sales and property management. At the onset of the audit, the respondent's property management business was conducted in a name different than the name registered with the Division. The respondent's property management forms did not include the required disclosures and did not appear to have been drafted for the respondent and the brokerage firm. However, the respondent corrected the name and

forms issues during the audit. The respondent also had broker-owned rentals as well as 3rd party property management. The respondent's broker-owned rental reconciliations were missing the required journals but were also corrected during the audit. However, the respondent's 3rd party property management accounting records and 3-way reconciliations did not appear to balance. The reconciliations contained ongoing negative ledger balances, a broker ledger ranging around \$20K, and possible missing funds from the account; and

B. This is a possible violation of:

- f. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
- g. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
- h. Commission Rule 5.9 - diversion, conversion prohibited;
- i. Commission Rule 5.10 - commingling prohibited;
- j. Commission Rule 5.14 - recordkeeping requirements; and

C. The respondent's settlement offer includes a Stipulation for Diversion;

D. He will be required to pay a fine to the Commission in the amount of \$1,500; and

E. He will be required to submit to a follow-up audit within 6 months.

Motion unanimously carried.

G. Complaint #2022-1251; Complaint H #2022-2020; Complaint I #2022-2103; Complaint J #2023-56; and Complaint K #2023-202 (WC) -

The investigative reports concerning complaints filed against the respondent in Complaint #2022-1251; Complaint H #2022-2020; Complaint I #2022-2103; Complaint J #2023-56; and Complaint K #2023-202 (WC) 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. Five complaints (2022-1251, 2022-2020, 2022-2103, 2023-56, & 2023-202), were filed against the respondent stating that the respondent failed to remit owner statements and rental proceeds and/or security deposits to the complainants after they terminated property management services with him. Complaint #2022-1251 also alleges that the respondent attempted to charge the complainant over \$15K in renovation charges but wouldn't provide invoices or documentation to support the costs. The respondent didn't provide a written response, or requested documents for review, to any of the complaints. The respondent's bank records were subpoenaed and show that the respondent transferred funds from his rental trust account to his business operating account in amounts that appear inconsistent with the rental proceeds received. The respondent took over the property management company sometime between 2003-2006 and failed to update the accounts to remove the previous employing broker who was still listed as the managing broker on the accounts despite that broker's license expiring over 12 years ago. The respondent deposited \$85K into his business operating account, which he stated came from a refinance. After making the \$85K deposit, the respondent did not transfer any funds from the rental trust account to the business operating account for approximately 5 months. The bank records went through 12/2022 and showed approximately \$249K in the rental trust account. The respondent stated he shut down business in 10/2022 but a previous

employee of his stated he was still managing approximately 100 properties. The respondent acknowledges that he owes owners money and stated the rental trust account has approximately \$160K as of 03/2023. The respondent provided one short interview but otherwise didn't participate in any of the investigations; 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. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - d. Commission Rule 5.3 - accounts in name of brokerage firm or broker;
 - e. Commission Rule 5.15 - maintenance and production of reports to beneficiaries;
 - f. Commission Rule 5.21 - production of documents and records;
 - g. 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. His real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked;
- F. He will be required to pay a fine to the Commission in the amount of \$75,000; and
- G. He will be referred to criminal law enforcement.

Commissioner Kaltenbach is absent. **Motion carried.**

L. Complaint #2022-1706 (GD) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1706 (GD) 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 09/28/2022, the respondent self-reported discipline he has had in several states as a result of a Stipulation and Agreement entered into with California in 2021. The respondent has also signed consent orders with North Carolina, Virginia, and Delaware due to the California Stipulation. The California discipline was due to a property management audit conducted by the California Department of Real Estate (CADRE) that stemmed from a tenant security deposit complaint. The audit was concluded on 10/31/19 and found issues with the accounts not being set up as trust accounts; non-licensee/non-employee signors on the accounts; and incomplete/inaccurate accounting records. Based on the findings of the audit, an accusation was filed by CADRE in March 2021 and the respondent entered into the Stipulation on 12/7/2021. The respondent agreed to pay CADRE the costs of the investigation (\$5,073.80) and enforcement (\$2,496.00) totaling \$7,569.80 in addition to paying \$11,014.40 for the Commissioner's cost of the audit. It also ordered a 30-day suspension stayed for (2) years upon payment of the audit fee and no further disciplinary action for (2) years. The Consent Orders with North Carolina, Virginia, and Delaware all required the payment of fees and continuing education; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of an Commission rule or part 4
 - b. § 12-10-217(1)(x), C.R.S. - license discipline in other jurisdiction;

- c. Commission Rule 6.23 - immediate notification of violation required; 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.

Commissioner Kaltenbach is absent. **Motion carried.**

M. Complaint #2022-270 (SE) -

The investigative reports concerning a complaint filed against the respondent in Complaint #2022-270 (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 complainants filed their complaint against the respondent after purchasing a home the respondent was both the agent and majority managing member of the LLC that was the seller of the subject property. The complainants allege that the respondent failed to disclose material defects of the property, specifically a rodent/raccoon infestation in the property. After purchasing the home, the complainants discovered air fresheners/odor eaters hidden within the walls and sealed-off access panels in the basement of the home. The complainants are currently in the process of remediation. Prior to remediation, the complainants had an environmental inspection performed that identified increased levels of histoplasma fungus present in the basement where their child's room was located. The respondent acknowledged that his contractors placed the odor eaters/air fresheners in the walls and sealed-off access panels but the respondent does not admit to concealing the issue; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. § 12-10-404(3)(a), C.R.S. - failure to disclose adverse material facts; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. He will be required to pay a fine to the Commission in the amount of \$7,500; and
- F. He will be required to successfully complete real estate education in Contracts and in Ethics.

Commissioner Kaltenbach is absent. **Motion carried.**

N. Complaint #2023-194 (DF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-194 (DF) 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 02/01/2023, the respondent entered guilty pleas to (1) Theft-\$20,000-\$100,000-Att (\$18-4-401(1),(2)(h)) and (2) Forgery-Government Issued Document (\$18-5-102(1)(e)), both Class 5 felonies. On 05/01/2023, the respondent was sentenced to 38 months of probation, 14 days in jail, and ordered to pay \$2,491.50 in court fees/costs and \$35,600.00 in restitution. The respondent notified the Division of the guilty pleas 2 days after the plea date. Additionally, the respondent inactivated her license on 02/02/2023; 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 and Final Agency Order; and
- D. The respondent's real estate broker's license shall be revoked.

Commissioner Kaltenbach abstains from voting. **Motion carried.**

O. Complaint #x2022-246 (GS) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-246 (GS) 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 required by the broker's Stipulation for Diversion dated October 2022. Recurring deficiencies involving record keeping requirements (negative balances) and duty to disclose conflict of interest as well as new deficiencies related to commingling of funds; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
 - b. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. Commission Rule 5.9 - diversion, conversion prohibited;
 - e. Commission Rule 5.14 - recordkeeping requirements;
 - f. Commission Rule 6. 17 - duty to disclose conflict of interest and license status; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$2,500; and
- E. The respondent will be required to submit to a follow-up audit within 3 months.

Commissioner Lynde is opposed. **Motion carried.**

P. Complaint #x2022-243 (KW) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2022-243 (KW) 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 third audit after executing two different Stipulations for Diversion stemming from previous audits that both identified trust accounting issues that resulted in discipline requiring follow-up audits. Since 09/2022, the respondent no longer participates in property management but did not correct any of the trust accounting issues previously identified. Specifically, the rental trust account still holds a few thousand dollars that the broker cannot account for but believes are commissions due to her and the security deposit trust account held funds belonging to non-real estate activity mixed with two outstanding security deposits belonging to tenants that vacated their properties years ago. During the audit, the respondent returned one of the security deposits to the respective tenant and did escheat the remaining deposit to the Great Colorado Payback; 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 5.14 - recordkeeping requirements; and
- C. The respondent will be required to close the remaining trust accounts and this audit/case will be dismissed with a Letter of Concern.

Motion unanimously carried.

Q. Complaint #2022-1365 (BD) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1365 (BD) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant alleged that the respondent did not have an active real estate broker's license. The investigation found that the respondent had an Exclusive Right to Buy Listing Contract representing buyers as a buyer's agent and submitted two offers to purchase while his 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. Commission Rule 6.26 - actions when license suspended, revoked, expired, or inactive; and
- C. This case will be dismissed with a Letter of Concern.

Commissioner Lynde is opposed. **Motion carried.**

R. Complaint #2022-1429 (TK) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1429 (TK) 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 was represented by the respondent as a buyer's agent and also as a seller's agent. The complainant directed the respondent in writing to terminate the contracts with her brokerage firm and remove her property from the MLS as she no longer wanted the respondent to represent her. However, the respondent provided the complainant an Amend/ Extend stating that she would only "expire" the property from the MLS and terminate the relationship after the complainant reimbursed her in the amount of \$1,535.00. The property remained active in the MLS for a month after the written request was made; 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. She will be required to pay a fine to the Commission in the amount of \$500; and
- E. She will be required to successfully complete real estate education in Brokerage Relationships and in Ethics.

Motion unanimously carried.

S. Complaint #2022-1257 (SS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1257 (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. The complainants worked with the respondent in the purchase of a property. The respondent was also the listing broker for the property. The complainants alleged that the respondent failed to disclose known adverse material facts. According to the respondent, she was not aware of the adverse material facts. The complainants also alleged that the respondent only appeared to be working for the sellers, not for them. The investigation found that the respondent may not have properly disclosed her brokerage relationship to the buyers. The respondent indicated that she was originally a buyer's agent for the buyers, but she did not provide a copy of the ERTB as requested. The respondent ultimately was an agent for the sellers and treated the buyers as customers; 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 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 Brokerage Relationships.

Motion unanimously carried.

T. Complaint #2022-1493 (JE) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1493 (JE) 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 was represented by the respondent in the purchase of the subject property. Several allegations against the respondent were made by the complainant. However, the only allegation that could be substantiated was that several of the respondent's transaction documents were written inaccurately; 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. She will be required to pay a fine to the Commission in the amount of \$500; and
- E. She will be required to successfully complete real estate education in Contracts and Forms.

Motion unanimously carried.

U. Complaint #2023-535 (SH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-535 (SH) 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 March 10, 2023, the respondent entered a plea of guilty to Assault 3 - Knowingly/Recklessly Cause Injury, a class one misdemeanor. The respondent was sentence to two years of probation and ordered to pay \$1,684.50 in court costs and restitution. All fines have been paid and probation is ongoing with possibility of consideration for early termination. On March 17, 2023, the respondent's attorney reported the respondent's conviction to the Division on his client's behalf; 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 will be required to pay a fine to the Commission in the amount of \$250; and
- E. The real estate broker's license shall be on probation concurrent with the criminal sentence.

Motion unanimously carried.

V. Complaint #2022-2109 (OA) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2109 (OA) 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 August 31, 2022, the respondent received an Order of Judgment in a civil case at the conclusion of a jury trial which occurred on August 19, 2022. The jury found that the Plaintiffs were entitled to Judgment against the respondent and his co-Defendant in the amount of:
 - \$200,000 for breach of Fiduciary Duty, Fraud and Deceit, and Civil Conspiracy; and
 - \$250,000 for Civil Theft (which provides for treble damages) resulting in a damage award of \$750,000Total Judgment in the amount of \$950,000 plus post-judgment interest. The respondent stated that that he has not paid any money toward the Judgment. After the report was finalized, the respondent's appeal was dismissed; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(v), C.R.S. - fraud, misrepresentation, deceit, conversion; and
- C. This case will be dismissed with a Letter of Concern.

Motion unanimously carried.

W. Complaint #2022-2194 (BS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2194 (BS) 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 by the respondent. The complainant alleged that the respondent entered misleading information into the MLS regarding the age of the boiler, roof, and windows. The investigation noted the potential violation that the respondent failed to exercise reasonable skill and care for his clients, the sellers; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(a), C.R.S. - false advertising;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-407(2)(b), C.R.S. - exercise reasonable skill and care;
 - d. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. He will be required to pay a fine to the Commission in the amount of \$5,000; and
- E. He will be required to successfully complete real estate education in Brokerage Relationships and in Ethics.

Motion unanimously carried.

X. Complaint #2023-175 (CK) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-175 (CK) 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 12/07/2022, the respondent was convicted of Menacing - a Class 1 Misdemeanor. The respondent was sentenced to 2 years of probation on a Deferred Judgment and Sentence. The respondent did not submit the requested court documentation to the Division of Real Estate and failed to submit a written explanation; 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. He will be required to pay a fine to the Commission in the amount of \$1,000; and
- E. The respondent's real estate broker's license shall be on probation concurrent with the deferred sentence.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2023-148 (DK) - 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 October 11, 2018, the applicant was convicted of Tampering with Physical Evidence-Destroy a Class 6 Felony, and an Assault 3-Know/Reckless Cause Injury a Class 1 Misdemeanor. The applicant was sentenced to 7 months in jail, 3 years of probation, and a fine of \$12,071.49 with \$600 waived and ordered to pay restitution of \$9,073.45 joint with Co-Defendants. Restitution has been paid in full. The applicant has completed the jail and probation sentence.

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

Motion unanimously carried.

Licensing Matter B - Complaint #2023-399 (LM) - 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 2004, the applicant was convicted of Theft of \$500-\$1500, a Class 4 Felony. The applicant was sentenced to two years diversion. However, the diversion was revoked, and she was re-sentenced to a 1-year probation. The applicant has completed all terms of probation and paid the fines and restitution in full. The case is closed.

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

Motion unanimously carried.

Licensing Matter C - Complaint #2023-232 (AE) - 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 2016, the applicant pled guilty to Accessory to a Crime, a class 4 felony. Her probation was terminated early in December of 2021. At the April 2023 meeting, the Commission asked the applicant to provide letters of recommendation. The applicant has supplied one letter of recommendation, which has been added to the report and exhibits.

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

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2022-1303 (MF) - Stipulation Violation -

The Commission was presented with a Stipulation Violation report by Penny Elder regarding ESP Matter A, Complaint #2022-1303 (MF). 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; revocation and a fine in the amount of \$2,500 (+15% mandatory surcharge).

Motion unanimously carried.

EXECUTIVE SESSION:

At 12:01 p.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 to receive advice from counsel regarding the case, and receive a counteroffer from the respondent in case number 2021-1760 (JC).

Motion unanimously carried.

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 12:36 p.m. and resumes meeting via Zoom webinar that is open to the public.

ATTORNEY GENERAL MATTERS:

A. CREC Case No. 2021-1760 (JC) - Counteroffer from Respondent -

Following discussion, it was moved by Commissioner Chang and seconded by Commissioner Lynde to provide settlement guidance to Senior Assistant Attorney General Angela Little for alternate settlement terms as discussed in Executive Session in regard to the Counteroffer from the respondent in Complaint #2021-1760 (JC).

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 12:41 p.m. on June 6, 2023.

Michelle Espinoza, Chair

Graham Kaltenbach, Vice Chair

EXCUSED
Josh Brodbeck, Commissioner

Joe Chang, Commissioner

Renee Lynde, Commissioner

Marcia Waters, Director
Colorado Division of Real Estate