

Minutes
Special Meeting
New Mexico Real Estate Commission
Greater Albuquerque Association of Realtors
1635 University Boulevard NE
Albuquerque, New Mexico
June 27, 2019
MINUTES

Commissioners Present: **Gretchen Koether, President**
Bill Davis, Vice President
Greg Foltz, Secretary
Kurstin Johnson, Member
Lindsay Rollins, Member

Staff Present: **Wayne W. Ciddio, Executive**
Secretary
Lyn Carter, Chief Investigator
Perry Bryant, Investigator
Germelyn Vivar,
Administrative Secretary

Others Present:

**Lori Chavez Assistant Attorney
General and Commission
Counsel**

**1. 10:00 a.m. - Call to Order and Welcome- Gretchen Koether
President**

Commission President Gretchen Koether called the meeting to order at 10 a.m. and welcomed all in attendance.

2. Determination of Quorum

With all five Commissioners present, the Commission President determined that a quorum was present,

3. Pledge of Allegiance

Commissioner Koether led the Commission and all present in the Pledge of Allegiance.

4. Introductions

Commissioner Koether asked Commissioners, Commission staff, and Commission Counsel to introduce themselves.

5. Approval of the Agenda of the June 27, 2019 Special Commission Meeting

Commissioner Greg Foltz moved approval of the agenda for the June 27, 2019 Special Commission meeting. Commissioner Kurstin Johnson seconded the motion and it carried unanimously.

6. Approval of the Minutes of the May 20, 2019 Regular Commission Meeting

Commissioner Johnson moved approval of the minutes of the May 20, 2019 Regular Commission Meeting. Commissioner Bill Davis seconded the motion and it carried unanimously.

7. Broker and Public Forum

Broker Sandylee Pasquale asked the Commission two questions:

- Do the Commission Rules require property managers to use licensed practitioners for all jobs related to property management?
- What is the reason for the recently announced 2.5 % transaction fee on online renewals?

Commission Executive Secretary Wayne Ciddio quoted from Part 16.61.24.17 of the Property Management Rule, which is entitled “Vendors” and says:

“All brokers hiring vendors or employers to perform maintenance, repair or renovation activities shall use only vendors and

employees who are certified, licensed, insured and/or bonded as required by local, state and/or federal law.”

The 2.5% transaction fees are bank fees, not fees charged by the Real Estate Commission or the Regulation and Licensing Department (RLD). Mr. Ciddio said RLD is working on making other payment options available that would not involve fees charged for debit and credit card transactions.

8. Discussion and possible action on language in Part 61.16.19.8 A (4), Broker Duties of the Real Estate Commission Rules, requiring “written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction.”

The discussion was a continuation of a discussion begun at the May 20, 2019 Regular Commission Meeting when Rules Task Force member Mary Kay Gutierrez said she believed the intent of the Rules Task Force was to add “any written agreement the broker has with a licensed transaction coordinator” to the list of required disclosures, but unintentionally expanded the scope of the rule by leaving in the “or any other written agreement” language in Part 19 while drafting a separate rule on transaction coordinators.

Ms. Gutierrez said she became aware of the problem when New Mexico Association of Realtors (NMAR) General Counsel Ashley Strauss-Martin said at an NMAR Legal Update session that the language could arguably be interpreted to include written referral agreements with relocation companies, photographers, and other individuals and entities.

Mr. Ciddio said he had learned from conversations with other brokers since the last meeting that the most significant issue with the rule language was that referral and relocation companies do not allow brokerages using their services to disclose the details of their agreements with brokerages to the brokerages' customers and clients, including the percentage of commissions the companies charge brokerages for their services.

Commissioner Davis said he thought it would be nice for brokerage customers and clients to know the details of the brokerage's agreements with these companies. Commissioner Johnson said she reads the rule to require written disclosure of the existence of such written agreements, but not necessarily the details of those agreements.

Commissioner Johnson moved to create a policy where the Commission would interpret the rule as intended, which is specifically regarding Transaction Coordinators, and to agree to address the issue in the next rule hearing. The motion was seconded by Commissioner Foltz. Discussion ensued and the motion carried unanimously.

9. Executive Session

Commissioner Davis moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to consider matters listed on the agenda under Item 9, Executive Session. Commissioner Foltz seconded the motion.

Mr. Ciddio called the roll. Commissioners Koether, Davis, Foltz, Johnson, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

At the conclusion of the Executive Session, Commission President Koether declared that the Commission was back in open session and attested that the only matters discussed in Executive Session were those matters specified in the motion to go into Executive Session.

10. Action on Items Discussed in Executive Session

Prior to the Commission taking action on items discussed in Executive Session, Commissioner Johnson disclosed that she had recused herself from deliberating NMREC Case No. 16-09-03-065, Alicia Feil and Mary Kay Gutierrez at the May 20, 2019 Regular Commission meeting because she was in the midst of a real estate transaction with the Respondent's mother, Susan Feil. That transaction closed on June 26, 2019. Commissioner Johnson said the transaction had been complicated but had gone well, and she did not believe that her involvement in the transaction would affect her ability to objectively consider and take action on the case.

Commissioner Foltz disclosed that he was recusing himself from any discussion, deliberation, or voting on the case involving Mary Kay Gutierrez because Ms. Gutierrez is his wife's qualifying broker.

NMREC Case No. 16-09-03-065. Alicia Feil and Mary Kay Gutierrez

The Commission took the following actions on Respondents' motions entered at the disciplinary hearing in the above-referenced case.

Respondent Feil filed a motion to dismiss the case on the grounds that the Commission violated the Open Meetings Act by voting on the above-referenced matter in Executive Session. There was no Commission motion on Respondent Feil's motion. Respondent Feil's motion was therefore denied.

Respondent Feil filed a motion to dismiss the case on the grounds that the Commission investigator assigned to the above-referenced case did not follow the Commission's procedures for investigating the case and thereby denied the Respondent due process. Commissioner Davis moved that the case be dismissed on this basis. The motion died for lack of a second and was therefore denied.

Respondent Feil moved to dismiss the case on the grounds that she was denied the opportunity to examine a proposed letter of reprimand being offered by the Commission to settle the case and was thereby denied due process. Commissioner Davis moved that the case be dismissed on this basis. The motion died for lack of a second and was therefore denied.

Respondent Gutierrez moved to dismiss the case on the grounds that the Commission violated the Open Meetings Act by voting on the above-referenced matter in Executive Session. There was no

Commission motion on Respondent Gutierrez's motion and the motion was therefore denied.

Respondent Gutierrez moved to dismiss the case on the grounds that the assigned Commission investigator did not follow the Commission's procedures for investigating the case and she was thereby denied due process. Commissioner Davis moved that the case be dismissed on this basis. The motion died for lack of a second and was therefore denied.

Respondent Gutierrez moved to dismiss on the grounds that she was denied the opportunity examine a proposed letter of reprimand being offered by the Commission to settle the case and was thereby denied due process. Commissioner Davis moved to dismiss the case on this basis. The motion died for lack of a second and was therefore denied.

Respondent Gutierrez moved to dismiss the case on the grounds that the Notice of Contemplated Action (NCA) was not introduced as an exhibit at the disciplinary hearing. There was no Commission motion on Respondent Gutierrez's motion and the motion was therefore denied.

11.Executive Session

Commissioner Davis moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to consider matters listed on the agenda under Item 9, Executive Session. Commissioner Foltz seconded the motion.

Mr. Ciddio called the roll. Commissioners Koether, Davis, Foltz, Johnson, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

At the conclusion of the Executive Session, Commission President Koether declared that the Commission was back in open session and attested that the only matters discussed in Executive Session were those matters specified in the motion to go into Executive Session.

12.Action on Items Discussed in Executive Session

NMREC Case No. 16-09-03-065, Alicia Feil and Mary Kay Gutierrez

Commissioner Koether moved that Respondent Feil be found in violation of Section 61-29-10.2 of the Real Estate License Law. The violation occurred when Respondent Feil failed to disclose in writing broker duties to the Complainant and failed to receive written acknowledgement of receipt of broker duties from the Complainant.

Commissioner Davis seconded the motion and it carried unanimously.

Commissioner Koether moved that Respondent Feil be found in violation of and Part 16.61.19.8 (A) of the Commission Rules.

These violations occurred when Respondent Feil failed to exercise honesty and reasonable care to ensure that all parties to the transaction had signed listing and purchase agreements for the subject property.

Commissioner Lindsay Rollins seconded the motion and it carried on a 4-1 vote with Commissioners Koether, Foltz, Johnson, and Rollins voting in favor of the motion and Commissioner Davis voting against the motion.

Commissioner Koether moved that Respondent Feil be found in violation of Parts 16.61.19.8 (C) and (D) of the Commission Rules by failing to perform on any and all written agreements made with the customer or client and failing to equally assist all parties to the transaction in completing the transaction. This violation occurred when Respondent Feil failed to ask the buyer for a three (3) day extension on the closing of the transaction as requested by the Complainant.

Commissioner Rollins seconded the motion and it carried on a 3-2 vote with Commissioners Koether, Johnson, and Rollins voting in favor of the motion and Commissioners Davis and Foltz voting against the motion.

Commissioner Koether moved that Respondent Gutierrez be found in violation of Part 16.61.16.9 (E) of the Commission Rules by failing to supervise Respondent Feil to ensure that she disclosed in writing broker duties to the Complainant and received written acknowledgement of receipt of broker duties from the Complainant; and by failing to ensure that Respondent Feil had obtained the signatures of all parties to the transaction on the listing and purchase agreements for the subject property.

Commissioner Rollins seconded the motion and it carried with Commissioners Koether, Johnson, and Rollins voting in favor of the motion, and Commissioner Davis voting against the motion. Having recused himself from any discussion, deliberation, or voting on the case involving Respondent Gutierrez, Commissioner Foltz did not vote on the motion.

13. Executive Session

Commissioner Johnson moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to consider matters listed on the agenda under Item 9, Executive Session. Commissioner Foltz seconded the motion. Mr. Ciddio called the roll. Commissioners Johnson, Foltz, Koether, Rollins, and Davis voted in favor of the motion. No Commissioners voted against the motion.

Commissioner Davis departed the meeting at this point and did not participate in any further deliberations.

At the conclusion of the Executive Session, Commissioner Koether declared that the Commission was back in open session and attested that the only matters discussed in the Executive Session were those matters specified in the motion to go into Executive Session.

14. Action on Items Discussed in Executive Session

Commissioner Koether moved that Respondent Feil be fined \$2,5000, be assessed three-quarters of the \$4,103.87 in disciplinary hearing costs for a total of \$3,077.90, and be issued a letter of reprimand for the above-referenced violations. Commissioner Rollins seconded the motion and the motion carried on a 4-0 vote.

Commissioner Koether moved that Respondent Gutierrez be fined \$1,250, be assessed one-quarter of the \$4,103.87 in disciplinary hearing costs for a total of \$1,026 for the above-referenced violation. Commissioner Rollins seconded the motion and it carried with Commissioners Koether, Rollins, and Johnson voting in favor the motion. Having recused himself from any discussion, deliberation, or voting on the case involving Respondent Gutierrez, Commissioner Foltz did not vote on the motion.

Commissioner Koether moved that Respondent Gutierrez be issued a letter of reprimand for the above-referenced violation.

Commissioner Rollins seconded the motion. Commissioner Johnson stated she was opposed to the letter being issued. The motion carried with Commissioners Koether and Rollins voting in favor of the motion and Commissioner Johnson voting against the motion. Having recused himself from any discussion, deliberation, or voting on the case involving Respondent Gutierrez, Commissioner Foltz did not vote on the motion.

13. Executive Session

Commissioner Rollins moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to consider matters listed on the agenda under Item 9, Executive Session. Commissioner Foltz seconded the motion.

Mr. Ciddio called the roll. Commissioners Koether, Foltz, Johnson, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

At the conclusion of the Executive Session, Commission President Koether declared that the Commission was back in open session and attested that the only matters discussed in Executive Session were those matters specified in the motion to go into Executive Session.

14. Action on Items Discussed in Executive Session

Request for Reconsideration of Decision and Order, NMREC Case No. 15-10-06-098, Sarah Michelle Carter

Commissioner Koether moved that the Commission deny Ms. Carter's request that the Commission reconsider its Decision and Order in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

Ms. Carter had requested that the order be changed from license revocation to a six-month license suspension; attendance and completion of a minimum of 6 hours of in-person instruction on mortgage foreclosures; payment of assessed fines and fees; and immediate removal of the revoked status on the Commission website and change to reflect six-month suspension.

Request for Reconsideration of Issuance of Notice of Contemplated Action (NCA), NMREC Case No. 17-04-01-023, Andrew Haggerty

Commissioner Koether moved that the Commission accept Mr. Haggerty's counter offer in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

**Withdrawal of Notice of Contemplated Action (NCA), MREC
Case No. 17-05-02-033, Jimmy Randall, Deceased**

Commissioner Koether moved that the Commission request that the Attorney General's Office decline to prosecute the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

15. Adjourn

There being no further business, Commissioner Johnson moved that the meeting adjourn. Commissioner Foltz seconded the motion and it carried unanimously. The meeting adjourned at 2:46 p.m.

Gretchen Koether

President

New Mexico Real Estate Commission

