

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
REAL ESTATE COMMISSION

**MINUTES OF MEETING
TELECONFERENCE
DECEMBER 21, 2004**

“These draft minutes were prepared by the staff of the Division of Occupational Licensing. They have not been reviewed or approved by the Board.” Authority of AS 08.01.070(2), and in compliance By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate Commission was held September 30, 2004, at the Atwood Building, Room 1500, Anchorage, Alaska.

Tuesday, December 21, 2004

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 1:05 p.m.

Roll Call

Members Present:

Barbara Ramsey, Associate Broker, 3rd Judicial District
Glenn Clary, Public Member, via teleconference
Larry J. Bauer, Broker, 1st Judicial District, via teleconference
Susan Rainey, Associate Broker, 4th Judicial District, via teleconference
Bradley Fluetsch, Public Member, via teleconference
David B. Somers, Broker at Large, via teleconference
Rita Wilson, Broker at Large, via teleconference

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner
Barbara Gabier, Program Coordinator, via teleconference
Gayle Horetski, Assistant Attorney General, via teleconference
David Brower, Assistant Attorney General, via teleconference
Margo Mandel, Investigator

Public Members present:

Ann W. Resch, Attorney, Brown, Waller & Gibbs, representing Mr. Despain, via teleconference

Thomas Despain Licensing Matter

Gayle Horetski, Assistant Attorney General, gives a quick summary regarding the Thomas Despain licensing issue. She was contacted by Barbara Gabier about this matter involving Mr. Despain and that is how it led to this teleconference today. She also thanked the Chair for working with us. She became aware that the Real Estate Commission, at their past meeting had voted to suspend the license of Broker Thomas Despain over concern of alleged inadequate supervision of his office in the state of Alaska. The reason for this meeting although there are certain offenses where a licensee may have his or her license suspended or revoked or otherwise disciplined under the statute AS 08.01.090, the Administrative Procedure Act applies to actions of this board. The APA itself appears in AS 44.62 it is in the Alaska Statutes but not in your booklets. Even if someone has allegedly done something for which suspension or revocation is a appropriate penalty, ultimately, under the APA unless there is a public safety emergency that would justify a summary suspension, and that is clear and immediate danger to the public, under AS 08.01.075(c). Unless that is occurring the way in which a licensee is disciplined is that an investigation is conducted, an accusation is filed, the matter is referred to the Hearing Officer, David Stebing, a proposed decision is issued following a full hearing on the merits, right to counsel, right to cross examine witness, etc. Then the Commission receives the proposed decision and discusses it, amends or adopts as appropriate. Apparently from the record the sufficient procedural safeguards where not taken and where not afforded to Mr. Despain. The Department of Law and the Division would strongly urge the Real Estate Commission to rescind it's recent action immediately that was taken at the preceding board meeting. Thereby, retro-actively reinstating Mr. Despain's broker license and also to the extent that through operation of law any salesperson's licenses that where at all effected by that action that the Board would also retro actively rescind this action to those licensees as well. Ms. Horetski wanted to make clear that the point of doing this on the record and making it clearly retro-active is to avoid a break in service. Also, to avoid anybody having to say that their license was suspended as a result of this conduct because the due process was not afforded in advance to these licensees. Ms. Horetski also said she would be glad to talk with any board members now on the record or at any other time about the procedures for summary suspension if there were a clear and immediate danger and about

cease and desist orders and things of that nature. Under the APA a person has the right notice, a right to be heard, and `a right to hearing,

A motion was made by Mr. Clary to adjourn the meeting. Motion failed due to do second.

On a motion made by Mr. Somers, seconded by Ms. Rainey, and passed unanimously, it was

RESOVLED for the Real Estate Commission to rescind its recent former action thereby retroactively reinstating the Alaska Brokers license for Mr. Despain and extend any other salesperson licenses that were arguably suspended by operation of law as a result of the former action. Also retroactively reinstating those salespersons licenses as well.

On a motion made by Ms. Rainey, seconded by Mr. Somers, and passed unanimously, it was

RESOVLED to adjourn the meeting.

Meeting adjourned at 1:42 p.m.

Prepared and submitted by Division Staff.

Approved:

Barbara Ramsey, Chairperson
Real Estate Commission

Date: _____