

IDAHO REAL ESTATE COMMISSION
MINUTES
August 10, 2016

Pursuant to notice given, a meeting of the Idaho Real Estate Commission (Commission) was held at 575 E. Parkcenter Blvd., Suite 180, Boise, Idaho on Wednesday, August 10, 2016, at 1:30 p.m.

Commission Members Present: **Members Absent:**

Mike Gamblin, Chair, Boise
Mike Johnston, Vice Chair, Idaho Falls (by telephone)
Kathy Weber, Member, Moscow (by telephone)
Marvis Brice, Member, Burley

Comprising a quorum of the Commission

Staff Present:

Jeanne Jackson-Heim, Executive Director
MiChell Bird, Education and Licensing Director
Craig Boyack, Chief Investigator
Jessica Valerio, Administrative Assistant 2

Others Present:

Jean Uranga, Commission's Legal Counsel
Pam Howland, Attorney (by telephone for executive session portion)

Meeting was called to order at 1:30 p.m. MT by Commission Chair Gamblin.

Consideration of the Matter of Staff vs. Alex Castañeda:

Having considered the stipulation of the parties and the complete record in the case, and following discussion by the Commission, Michael J. Johnston moved to accept the parties' stipulation and enter a final order as follows:

- Imposing a civil fine in the amount of \$5,000, together with costs and attorney's fees incurred by Commission staff in an amount to be determined by the Commission. Staff shall, within fourteen (14) days from the date of the Final Order, serve upon Respondent its Memorandum of Costs and Attorney's Fees incurred to investigate and prosecute the violations found in this matter.

- Payment of the civil fine and costs and attorney's fees shall be due and payable no

later than 30 days after service of the Commission's Order unless otherwise ordered by the Commission.

- The broker license of Alex Castañeda shall be revoked
- The salesperson license of Alex Castañeda shall be suspended for three years, beginning when the Commission's Final Order is entered and served.
- Alex Castañeda shall take Commission Core 2016 and Commission Core 2017, as a disciplinary sanction prior to reinstatement of his suspended salesperson license.

All in favor. Motion carried.

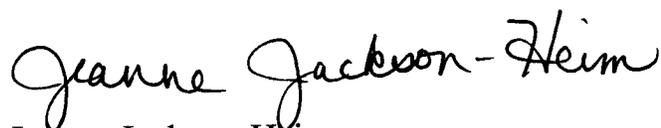
Executive Session: In accordance with the provisions of Idaho Code 74-206(1)(b), a motion was made by Michael J. Johnston to adjourn to executive session. Roll was called; Michael J. Johnston, Mike Gamblin, Marvis Brice, and Kathy Weber voted in favor. Motion carried. Members convened in executive session and consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member, or individual agent.

Regular Session: There being no further purpose for an executive session, the Commission re-convened in open meeting.

Commissioner Michael J. Johnston moved to approve the notice of contemplated disciplinary action letter provided by Pam Howland and send immediately to Tammy Collier. All in favor. Motion carried.

There being no further business, Commissioner Michael J. Johnston moved to adjourn the meeting at 2:50 p.m. MT. Motion carried.

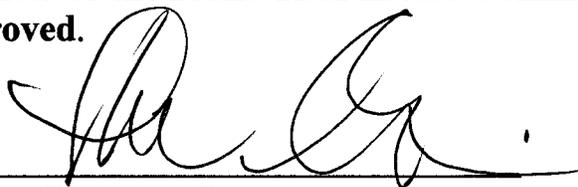
Respectfully submitted,



Jeanne Jackson-Heim
Executive Director

JJH: jv

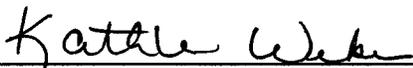
Minutes of the Idaho Real Estate Commission meeting on August 10, 2016 are hereby approved.



Mike Gamblin, Chair



Mike J. Johnston, Vice Chair



Kathy Weber, Member



Marvis Brice, Member

JEAN R. URANGA
General Counsel
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Idaho State Bar No. 1763

ORIGINAL

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE))	Case Nos. 15-0433
ESTATE COMMISSION,)	
)	
Petitioner,)	
)	FINAL ORDER
-vs-)	
)	
ALEJANDRO L. "ALEX" CASTANEDA,)	
)	
Respondent.)	
_____)	

THIS MATTER came before the Idaho Real Estate Commission on July 21, 2016, for hearing on the parties' Stipulation and Notice of Disciplinary Hearing and on August 10, 2016, for determination of sanctions. The Petitioner, Staff of the Idaho Real Estate Commission ("Staff"), was represented by Kirtlan Naylor, of Naylor & Hales, P.C. The Respondent, Alejandro Castaneda was personally present and represented by Wyatt Johnson, of Angstman Johnson.

The parties presented their written Stipulation, wherein Mr. Castaneda admitted that his conduct was ground for disciplinary action and, pursuant to the terms of the Stipulation, presented evidence and argument bearing on the issue of any discipline to be imposed by the Commission.

Having considered the parties' Stipulation and the evidence and argument presented at the hearing, and all other matters of record in this case, the Commission enters its Final Order.

IT IS HEREBY ORDERED:

1. The Idaho Real Estate Licensure Law ("Act") is codified at title 54, chapter 20, Idaho Code. Idaho Code Section 54-2007 empowers the Idaho Real Estate Commission ("Commission") to administer the Act. Respondent's license as a real estate broker and Respondent's license as a real estate salesperson was issued pursuant to the Act. Pursuant to its authority and duty to protect the public the Commission may discipline the license of a licensee for violations of the Act. See, Idaho Code Sections 54-2058, 54-2059 and 52-2062. The Commission hereby **approves** the parties' Stipulation. Based upon the facts and violations admitted therein, **the Commission finds and concludes that Mr. Castaneda's conduct is grounds for disciplinary action** pursuant to:

- a. Idaho Code Section 54-2051(4)(b), (c), (d) and (g):
Failing to ensure his sales contract for Sanchez included the name of the responsible broker, the form of the consideration received as earnest money, or the representation confirmation statement.
- b. Idaho Code Section 52-2060(11): Conduct which constitutes dishonest or dishonorable dealings.
- c. Idaho Code Section 54-2060(12): Gross negligence or reckless conduct in a regulated real estate transaction.
- d. Idaho Code Section 54-2087(2): Failing to exercise reasonable skill and care.
- e. Idaho Code Section 54-2087(4): Failing to promote the best interests of the client in good faith, honesty and fair dealing.

2. Based upon the Stipulation, argument, and all matters of record, and pursuant to its authority under Idaho Code Sections 54-2058 and 54-2059, the Commission **imposes the following discipline:**

- a. Respondent's real estate broker license is revoked effective upon service of this Final Order.
- b. Respondent's real estate salesperson license is suspended for three (3) years effective upon

service of this Final Order.

- c. Respondent shall pay a Civil Fine in the amount of Five Thousand Dollars (\$5,000.00). This fine shall be due and payable within thirty (30) days from the service date of the Commission's Final Order on Costs and Attorneys Fees.
 - d. During the suspension period, Respondent shall take and successfully pass the Commission Core 2016 and 2017 as a disciplinary sanction.
 - e. The Commission further orders that Respondent pay costs and attorney's fees incurred by the Staff in this matter, as provided in paragraph 3 herein.
3. Respondent shall pay the costs and attorney fees incurred by the Staff to investigate and prosecute this matter. The amount of the fees and costs that Respondent must pay shall be determined as follows:
- a. Within fourteen (14) days from the date of this Final Order, the Staff of the Commission shall serve upon Respondent its Memorandum of Costs and Attorney's Fees incurred to investigate and prosecute the violations found in this matter.
 - b. If Respondent objects to the costs and/or attorney fees claimed, then Respondent shall, within fourteen (14) days after the service date of Staff's Memorandum, submit to the Commission and serve upon the Staff any objection to the costs and attorney fees claimed to have been incurred by the Staff. Staff shall then have fourteen (14) days to file its response to any objections.
 - c. If Respondent files a timely objection to the Staff's claimed costs and/or attorney fees, then the Commission will consider Respondent's objection in determining the amount of costs and attorney fees that Respondent must pay and enter an order identifying the amount to be paid and the date by which payment shall be made.
 - d. If Respondent fails to file a timely objection to the costs and/or attorney fees claimed by the Staff, then the Respondent will have waived

Respondent's ability to object and the Commission will enter its Final Order on Costs and Attorney Fees.

- e. Respondent must pay the total costs and attorney fees amount ordered by the Commission within thirty (30) days from the service date of the Commission's Final Order on Costs and Attorney Fees.

4. All payments ordered herein shall be made by cash, check, money order or credit card, and may be mailed or hand delivered to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Suite 180, Boise, Idaho 83706.

NOTICE OF STATUTORY RIGHTS

5. This is a Final Order of the Agency. Pursuant to the Stipulation, paragraph 18, Respondent's rights to seek reconsideration or judicial review in this proceeding are waived as to Respondent's violations of the Act. Accordingly, rights to request reconsideration or seek judicial review of this Final Order shall only apply to the discipline imposed herein and shall be as set forth in paragraphs 6 through 10 herein.

6. Any aggrieved party may file a Petition for Reconsideration of discipline imposed by this Final Order within fourteen (14) days from the date of service of this Final Order. The Commission will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or else the Petition will be deemed denied by the operation of law. See, Idaho Code Section 67-5246(4).

7. Judicial Review - Place of filing. Pursuant to Idaho Code Section 67-5272, any party aggrieved by this Final Order may seek judicial review of discipline imposed by this Final Order by filing a Petition for Review in the district court of the county in which:

- a. A hearing was held;
- b. The final agency action was taken;
- c. The party seeking review of the Order resides in Idaho or operates its principal place of business in Idaho.

8. Judicial Review - Time for filing. Pursuant to Idaho Code Section 67-5273, a Petition for Judicial Review must be filed:

- a. Within twenty-eight (28) days from the date of service of this Final Order; or, if a Petition for Reconsideration is filed,
- b. Within twenty-eight (28) days of the date of the Commission's decision on that Petition, or of the Commission's failure within twenty-one (21) days to issue a decision on the Petition, whichever is later.

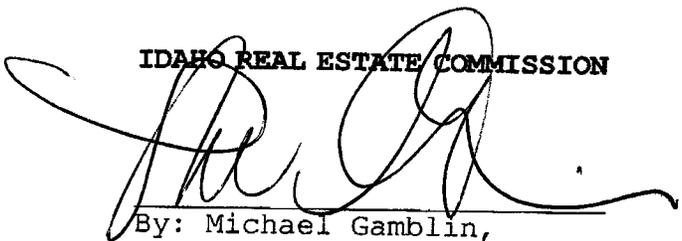
9. A Cross-Petition for Judicial Review may be filed within fourteen (14) days after a party is served with a copy of the notice of the Petition for Judicial Review.

10. The filing of a Petition for Review in the District Court does not itself stay the effectiveness or enforcement of the Order being appealed. See, Idaho Code Section 67-5274.

11. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

ISSUED This 15 day of August, 2016.

IDAHO REAL ESTATE COMMISSION



By: Michael Gamblin,
Commissioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 16 day of August, 2016, I served true and correct copies of the foregoing FINAL ORDER and Guideline #7, Guidelines for "Suspended" Licensees, by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

Alejandro Castaneda
3481 N. 3000 East
Twin Falls, Idaho 83301

By regular and certified mail

7006 0100 0003 2439 4238

Kirtlan Naylor
Naylor & Hales
950 W. Bannock Street, Suite 610
Boise, Idaho 83702

Wyatt Johnson
Angstman Johnson
Attorneys at Law
3649 N. Lakeharbor Lane
Boise, Idaho 83703

Jeanne Jackson-Heim

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission