

**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
CONNECTICUT REAL ESTATE COMMISSION**

Minutes of Meeting

December 5, 2012

The Connecticut Real Estate Commission convened on Wednesday, December 5, 2012 at 9:00 a.m. in Room-126 of the State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

Commissioners Present: Marilyn L. Keating, Acting Chairperson (Salesperson – 4th District)
Joseph B. Castonguay (Broker – 2nd District)
Lana K. Ogrodnik (Broker – 5th District)
James B. Hoffman (Salesperson – 4th District)
Theodore F. Ells, Esq. (Public Member- 3rd District)
Morag L. Vance (Public Member – 4th District)
Joseph H. Kronen (Public Member – 1st District)

Commissioners Absent: None

Commission Vacancy: Salesperson (1)

Attorney General's Office: Alan N. Ponanski, Assistant Attorney General

DCP Staff Present: Michele Erling Vicky Bullock
Kelly Harvey Richard Maloney
Robin Washbond William Zenga

Public Present: Larry Hannafin Jennifer Farrell
Judith Johannsen Thomas Morgan
Jeffrey J. Mirman, Esq. Elissa Gigliotti
Eugene Marconi, Esq. Daniel Kildea
Dan Walton Gregory Arcaro, Esq.
Sally Hannafin

The next meeting of this Commission is scheduled for Wednesday, February 6, 2013 at 9:15 am in Rm-126

MINUTES OF PREVIOUS MEETINGS

It was moved by Commissioner Vance, Commissioner Castonguay 2nd, and the motion carried to approve the minutes of the October 3, 2012 CT Real Estate Commission meeting as amended. Commissioner Kronen abstained.

DECLARATORY RULING PROCEEDING

Petition for Declaratory Ruling from Toll Brothers, Inc.

Pursuant to Connecticut General Statutes, Section 4-176, Toll Brothers Inc. has asked the Real Estate Commission to issue a Declaratory Ruling as to the applicability of Connecticut General Statutes, Section 20-311 and Section 20-325 and Section 20-328-8a of the Regulations of Connecticut State Agencies on a proposed Recommended Homebuyer program at Toll Brothers communities in Connecticut.

A public hearing continued on this matter today, and after some testimony Commissioner Keating called for a recess of the hearing until the February 2013 meeting to allow more time for all parties to provide additional information.

Commissioner Kronen recused himself from this matter due to his absence from the October 3, 2013 meeting.

The following was read into the record by Commissioner Keating:

The Commission will now conclude today's proceedings and carefully consider all the information and testimony received. Pursuant to Connecticut General Statutes, Section 4-176e the Commission reserves the right issue a declaratory ruling by a specified date, or decide not to issue a declaratory ruling and initiate regulation-making proceedings, under Section 4-168, on the subject, or decide not to issue a declaratory ruling, stating the reasons for its action. Pursuant to Section 4-176e the Commission will seek to have a decision at its next scheduled meeting but reserves the right to set another date for its decision.

GUARANTY FUND APPLICATION

Paul Antogiovanni vs. America's Home & Communities LLC – Request for Reconsideration

Mr. Antogiovanni is requesting reconsideration of his 'Application for Reimbursement from the Real Estate Guaranty Fund' which was denied by the Real Estate Commission at their October 3, 2012 meeting.

It was moved by Commissioner Vance, Commissioner Castonguay 2nd, and the motion carried to reconsider Mr. Antogiovanni's 'Application for Reimbursement from the Real Estate Guaranty Fund'. Commissioner Ogrodnik opposed.

The following was read into the record by Attorney Vicky Bullock:

It is the view of the Department that based upon the judgment awarded to Mr. Antogiovanni and the Memorandum of Decision by the Court, the statutory entitlement to payment from the Real Estate Guaranty Fund has been met.

Section 20-324a says, in relevant part, that any person aggrieved by any action of a licensed real estate broker or salesperson that is by reason of fraud or misrepresentation may recover from the Guaranty Fund an amount up to \$25,000.

Section 20-324e says, in relevant part, that when a person recovers a judgment in Superior Court against a real estate broker or salesperson for “money or property unlawfully obtained ... by reason of any fraud or misrepresentation”, then such person may recover from the Guaranty Fund up to \$25,000.

In this case the judgment on its face finds that Mr. Antogiovanni was aggrieved by the real estate licensees’ fraud. That point is also clearly spelled out in the Memorandum of Decision where the Court holds that “the Court finds that the plaintiff [Paul Antogiovanni] has met his burden of proof as to the claim of fraud as to the defendants [Edward L.] Parker and [American Home & Communities Real Estate LLC].” Memorandum of Decision at page 10. The Memorandum of Decision then goes on to explain that Mr. Antogiovanni clearly suffered “actual loss and damage” and that such loss or damage resulted in having property that should have been his unlawfully obtained by another due to fraud. Memorandum of Decision at page 21.

Although the Court finds that the precise amount of damages could not be ascertained, Mr. Antogiovanni was awarded a judgment of nominal damages and recovery of his attorney’s fees which were necessitated by reason of the damage sustained by the fraud. Memorandum of Decision at page 21. Therefore, such attorney’s fees incorporated into the judgment constitute a part of the judgment contemplated in Section 20-324e. Although the judgment does not make Mr. Antogiovanni completely whole, the amount awarded constitutes an amount entirely attributable to his loss.

Mr. Antogiovanni’s judgment, therefore, results from court findings that he was damaged by the loss of property unlawfully obtained by reason of a real estate licensee’s fraud. And the judgment clearly is to compensate Mr. Antogiovanni for damages that he would not have suffered except by reason of the loss of property due to the fraud. Section 20-324e, provides that the Commission should order payment from the Real Estate Guaranty Fund of “the amount unpaid upon the judgment” up to the statutory maximum of \$25,000.

Under the circumstances, and based upon the actual findings of the Court in the Memorandum of Decision, it is the Department’s view that Mr. Antogiovanni’s claim is compensable from the Real Estate Guaranty Fund in the unpaid amount of judgment up to the statutory cap.

After hearing the opinion of the Department of Consumer Protection and after review of all information, other opinions and evidence presented for its consideration, it was moved by Commissioner Ells, Commissioner Hoffman 2nd, and the motion carried that said Guaranty Fund application of Paul Antogiovanni be approved for payment to him in the amount of \$25,000 because it conforms to Section 20-324e of the General Statutes of Connecticut. Commissioners Kronen, Vance and Ogradnik abstained.

Commissioner Keating called for a brief recess at 10:26 a.m. and the meeting reconvened at 10:40 a.m.

FORMAL HEARING

2012-759 – Elissa Gigliotti

It was moved by Commissioner Vance, Commissioner Castonguay 2nd, and the motion carried to approve the Settlement Agreement as proposed by DCP Counsel. Commissioner Ells opposed.

CHRO

It was moved by Commissioner Vance, Commissioner Ogradnik 2nd, and the motion carried to add Thomas Morgan to the agenda.

Thomas Morgan, RES.795582 – Seeking Real Estate Salesperson license

It was moved by Commissioner Castonguay, Commissioner Ells 2nd, and the motion carried to deny Mr. Morgan's application and that he may reappear before the Commission upon completion of his probation for reconsideration of his Salesperson application.

CONSENT AGREEMENTS

2012-728

It was moved by Commissioner Vance, Commissioner Castonguay 2nd, and the motion carried to accept the consent agreement as submitted by DCP.

2011-397

It was moved by Commissioner Vance, Commissioner Ells 2nd, and the motion carried to accept the consent agreement as submitted by DCP.

NEW BUSINESS

2013 Meeting Dates of the CT Real Estate Commission

February 6, April 3, June 5, August 7, October 2, December 4

It was moved by Commissioner Ogradnik, Commissioner Vance 2nd, and the motion carried to approve the 2013 Commission meeting dates.

ADJOURNMENT

It was moved by Commissioner Vance, Commissioner Ogradnik 2nd, and the motion carried to adjourn the meeting at 11:40 a.m.

Respectfully Submitted,

Robin Washbond
Commission Secretary

Note: The administrative functions of the Boards, Commissions and Councils are carried out by the Department of Consumer Protection, Occupational and Professional Licensing Division. For information contact Richard M. Hurlburt, Director at (860) 713-6135 or Fax: (860) 713-7230.

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