

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT  
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING  
REAL ESTATE COMMISSION

**MEETING MINUTES**

June 18-19, 2009

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 June 18-19, 2009, at the Atwood Building, Ste. 1270, Anchorage, AK.

**Thursday, June 18, 2009**

**Agenda Item 1a**

**Call To Order**

Chairman Bradford Cole called the meeting to order at 9:00 a.m. at which time quorum was established.

**Roll Call**

Members present constituting a quorum, were:

Brad Cole, Broker, 3<sup>rd</sup> Judicial District, Chairman  
David B. Somers, Broker at Large, Vice Chairman  
Gene DuVal, Associate Broker, 4<sup>th</sup> Judicial District  
Nancy Davis, Broker, 1<sup>st</sup> Judicial  
Chris Swires, Associate Broker/Broker at Large  
F. Lee Sherman, Public Member  
Barbara Dickson, Public Member

Staff Present:

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner

Guests Present:

Peggy Ann McConnochie, Broker of Alaska Coastal Homes  
Nancy Harris, Project Assistant  
Chris Kennedy, Administrative Law Judge (ALJ) Office of  
Administrative Hearings (OAH)  
Margo Mandel, Investigator  
Michele Wall-Rood, Investigator  
Henry Bartos, Broker of Century 21 Gold Rush (Fairbanks)  
Jerry Royse, Broker of Royse & Assoc.  
Robert Auth, Assistant Attorney General, Department of Law  
Lori Schooley, Broker of Gold Standard Real Estate Referral  
Jason Gazewood, Attorney, for Mr. Bartos

**Agenda Item 5**

**Public Comment**

Mr. Cole asked the guests to introduce themselves to the Commission.

**Agenda Item 1b**

**Approval of Agenda**

The Commission members reviewed and discussed the revised agenda as presented. Mr. DuVal requested to add the Regulation Tracker to tab 7d in the agenda.

**On a motion duly made by Sherman, seconded by Swires, it was**

**RESOLVED to approve the agenda as presented.**

**All in favor. Motion passes.**

**Agenda Item 2**

**Henry S. Bartos**

Case #3000-04-012

Judge Kennedy reviewed with the Commission the accusations of Henry S. Bartos case number 3000-04-012 (attached).

**Count I (Schooley as a licensed assistant):** The proposed decision finds no violation. Mr. Bartos's proposal for action makes no comment on this outcome. The division accepts some of the determinations made in connection with Count I, but advocates a different interpretation of AS 08.88.291(a) and 12 AAC 64.110(e)(6). Under the division's interpretation, before one broker could assist another as a courtesy – without compensation – the registration form of the office of the broker receiving the assistance would need to be amended to list the assisting broker as a broker "employed" by that office. The interpretation the division proposes is not precluded by the plain language of any legal provision, nor by any controlling decision of which I m aware, and thus is probably within the range of interpretations the commission may consider. There appear to be significant policy issues that the commission may wish to evaluate.

**Count II (Childress as property manager):** The proposed decision finds no violation by Mr. Bartos, although it states that the conduct at issue represented a violation by another licensee. Mr. Bartos's proposal for action makes no comment. The division accepts some of the determinations made in connection with Count II but advocates a different interpretation of 12 AAC 64.075(a), as well as the same change in interpretation of AS 08.88.291(a) and AAC 64.110(e)(6) that it advocates with Count I. The division argues that the ALJ's interpretation of these provisions would "allow brokers to poach licensees from other companies for 'temporary' assignments." Div. Proposal for Action at 6. In making this argument, the division may have overlooked that the ALJ found the conduct to be legal. Proposed Decision at 16.

**Count III (Website issues; Sprucewood Court disclosure):** Neither party has commented on the proposed decision's determination that no violation was proven in connection with the Coldwell Banker website.

As to the Sprucewood Court transaction, the proposed decision finds a violation of two statutes, former AS 08.88.369 (agency disclosure) and AS 08.88.391 (conflict disclosure). The division endorses this result. Mr. Bartos argues that “no evidence” supports violation of former AS 08.88.396, but does not comment on the evidence cited in the proposed decision. With respect to AS 08.88.391, Mr. Bartos argues that the disclosure was adequate under the statute as it was interpreted by ALJ, and additionally argues for a different interpretation of the statute. His proposed alternative reading of the statute is discussed on page 22-23 of the proposed decision; it was rejected there on the basis of prior Real Estate Commission decisions. The commission is not precluded, however, from reevaluating the proper interpretation of this statute, provided it explains any revision in its views.

**Count IV (Rex Lane disclosures):** as in Count III, former AS 08.88, former AS 08.880396 (agency disclosure) and AS 08.88.391 (conflict disclosure) are at issue. The proposed decision finds no violation. Mr. Baros’s proposal for action makes no comment on this outcome. The division argues for a different outcome, in part because it contends that “Century 21 and Coldwell Banker were...two companies” and that they “falsely represented themselves” to be one company. Proposal at 7. This is a different approach to the issue than the division has taken in the previous stages of this case. If it is inclined to change the outcome of Count VI on the basis of this contention, the commission should first permit Mr. Bartos’s counsel to make a counterargument, as he has not had an opportunity to do so up to this point.

**Count V (supervision in Packard transaction):** The proposed decision concludes that Mr. Bartos failed to give adequate supervision in the Packard transaction under the standard setting the version of 12 AAC 64.125 in effect at the time. The division endorses this result. In so doing, it makes a misstatement, however. Citing the proposed decision, it says that, “[t]here is no evidence that Packard received the sellers’ disclosure statement before the transaction closed.” In fact, the proposed decision was careful not to say that there is “no evidence” of this occurrence; it said that there is “no direct evidence.” There is in fact some evidence from which one could infer that Mr. Packard received the disclosure, but I did not find the evidence sufficiently persuasive to make that inference. This is a significant distinction. See *Raad v. Alaska State Comm’n for Human Rights*, 86 P. 3d 899, 909-10 (Alaska 2004) (case reversed and remanded where hearing officer said there was “no evidence” of pretext, when in fact there was “some evidence” that “permits an inference” of pretext).

**Count VI (forgery of Packard document):** The proposed decision found that a forgery occurred but that the division did not prove Mr. Bartos to be the forger. In writing the decision, I elected not to explore the alternative scenario under which the document

may have come to be forged.

Mr. Bartos makes no comment on Count VI. The division encourages the commission to reject the ALJ's factual findings and to substitute its own, and seems to suggest that the commission may do this on the strength of the division's argument by simply making an appropriate entry on page 42 of the proposed decision. In the circumstances of this case (where the factual finding at issue turns on a large volume of evidence, not all of it covered in the division's proposal), it would be unwise for the commission to take this step without first reviewing all of the relevant testimony and exhibits itself. It would take about a day to a day and a half of commission time to do this. I would need some advance notice of the commission's intention to take this step, as I would need to have the hearing recording enhanced and then work with the parties to ensure that we cued all of the relevant testimony, which is interspersed with testimony on unrelated matters scattered across a four-day proceeding.

The Commission members move to executive session at 9:15 a.m.  
**On a motion duly made by DuVal, seconded by Swires, it was**

**RESOLVED to move to executive session to discuss Henry S. Bartos Case #3000-04-012.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 10:17a.m.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to reconvened from executive session.**

**All in favor. Motion passed.**

The Commission recessed for break at 10:18 a.m.  
The Commission reconvened from break at 10:25 a.m.

The Commission members move to executive session at 10:26 a.m.

**On a motion duly made by DuVal, seconded by Swires, it was**

**RESOLVED to move to executive session.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 12:17 p.m.

**On a motion duly made by DuVal, seconded by Davis, it was**

**RESOLVED to reconvened from executive session.**

**All in favor. Motion passed.**

The Commission recessed for lunch at 12:18 p.m.  
The Commission reconvened from lunch at 1:30 p.m.

The Commission members reconvened from executive session at 3:45 p.m.

**On a motion duly made by Sherman, seconded by Davis, it was**

**RESOLVED to reconvened from executive session.**

**All in favor. Motion passed.**

**Agenda Item 4**

**Approval of Meeting Minutes**

December 11-12, 2008

Commission members reviewed and discussed the meeting minutes for December 11-12, 2008.

**On a motion duly made by Davis, seconded by Somers, it was**

**RESOLVED to table the December 11-12, 2008 meeting minutes as presented.**

Mr. DuVal had some changes on the December 11-12, 2008 meeting minutes.

Commission members tabled the December 11-12, 2008 meeting minutes for corrections and asked for the minutes to be e-mailed for a vote.

March 12-13, 2009

**On a motion duly made by Davis, seconded by Somers,  
it was**

**RESOLVED to table the March 12-13, 2009  
meeting minutes as presented.**

Commission members tabled the March 12-13, 2009 meeting minutes for corrections and asked for the minutes to be e-mailed for a vote.

June 3, 2009 Teleconference

**On a motion duly made by Somers, seconded by Swires,  
it was**

**RESOLVED to table the June 3, 2009 meeting  
minutes as presented.**

Commission members tabled the June 3, 2009 meeting minutes for corrections and asked for the minutes to be e-mailed for a vote.

**Agenda Item 7**

**Executive Report**

Ms. Walsh reviewed and discussed with the Commission members the executive report which included the Surety Fund Tracker, Surety Fund Balance Report and the Revenue & Expenditure Report. The Commission requested for Ms. Walsh to break down the Revenue & Expenditure Report and compare 2009 with 2007.

**On a motion duly made by DuVal, seconded by Swires,  
it was**

**RESOLVED to accept the Executive Report as  
presented.**

**All in favor. Motion passed.**

**Agenda Item 10**

**Licensing Examiner Report**  
**Statistical Report**

Ms. Smith presented the statistical report to the Commission for the period of March 11, 2009 to May 26, 2009 for their review.

There were 27 new licensees, 2330 active licensees, and 2566 total number of licensees with a January 31, 2010 expiration date. There are 487 active brokers, 399 active associate brokers, and 1439 active salespeople.

**On a motion duly made by Davis, seconded by Swires, it  
was**

**RESOLVED to accept the Licensing Examiner's Report as presented.**

**All in favor. Motion passes.**

The Commission recessed for break at 4:20p.m.

**On a motion duly made by DuVal, seconded by Davis, it was**

**RESOLVED to recess for a break.**

**All in favor. Motion passes.**

The Commission reconvened from break at 4:33 p.m.

The Commission members move to executive session at 4:45 p.m.

**On a motion duly made by Davis, seconded by Sherman, it was**

**RESOLVED to move to executive session.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 5:00 p.m.

**On a motion duly made by Davis, seconded by Swires, it was**

**RESOLVED to reconvened from executive session.**

**All in favor. Motion passed.**

Ms. Davis read the proposed modification decision for the case involving Henry Bartos #3000-04-012.

“Adoption as Modified”

See attached Decision and Order.

**On a motion duly made by Sherman, seconded by Swires, it was**

**RESOLVED to adopt Case #OAH 08-0054-REC as modified.**

**All in favor. Motion passed.**

The Commission recessed at 5:10 p.m. until June 19, 2009  
at 9:00 a.m.

**On a motion duly made by Somers, seconded by Davis,  
it was**

**RESOLVED to recess until June 19, 2009 at 9:00  
a.m.**

**All in favor. Motion passed.**

**Thursday, June 19, 2009**

**Agenda Item 3**

**Call To Order**

Chairman Bradford Cole called the meeting to order at 9:00 a.m. at  
which time quorum was established.

**Roll Call**

Members present constituting a quorum, were:

Brad Cole, Broker, 3<sup>rd</sup> Judicial District, Chairman  
David B. Somers, Broker at Large, Vice Chairman  
Gene DuVal, Associate Broker, 4<sup>th</sup> Judicial District  
Nancy Davis, Broker, 1<sup>st</sup> Judicial  
Chris Swires, Associate Broker/Broker at Large  
F. Lee Sherman, Public Member  
Barbara Dickson, Public Member

Staff Present:

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner

Guests Present:

Peggy Ann McConnochie, Broker of Alaska Coastal Homes  
Nancy Harris, Project Assistant  
Margo Mandel, Investigator  
Michele Wall-Rood, Investigator

**Agenda Item 6**

**Investigative Report**

Ms. Wall-Rood reviewed and discussed the investigative report  
with the Commission. Between February 19, 2009 and May 20,  
2009 the Investigation Unit opened 25 cases and closed 13 cases.  
Currently there are 55 open cases.

**On a motion duly made by Davis, seconded by DuVal, it  
was**



**RESOLVED to approve the investigative report.**

**All in favor. Motion passes.**

**Agenda Item 11**

**Education Report**

Ms. Harris presented the Education Report to the Commission.

**On a motion duly made by Davis, seconded by DuVal, it was**

**RESOLVED to accept the education report as presented.**

**All in favor. Motion passes.**

**Agenda Item 8**

**Surety Fund Claim**

**S-29-004 Thomson v. Ribelin**

The Commission members reviewed Surety Fund Claim S-29-004 Thomson v. Ribelin.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to adopt the proposed decision Surety Fund Claim S-29-004 Thomson v. Ribelin.**

**All in favor. Motion passes.**

**Agenda Item 9**

**Property Management of Real Property**

Mr. DuVal discussed with the Commission members 12 AAC 64.570 Property Management of Real Property. The intent was that the owner or the manager of the property must keep the records and not to duplicate them. Commission members requested that the regulation project 12 AAC 64.570 Property Management of Real Property would be send back to Jun Maiquis, Regulation Specialist to be rewritten However, Ms. Walsh stated that it would require a new regulation project to "re-write"..

**12 AAC 64.570 Property Management of Real Property**

(a) A licensee who has sole ownership of rental property either may manage the property through the licensee's employing broker or may employ another broker or property manager to perform those management duties. Notwithstanding 12 AAC 64.550, the licensee or *owners* broker performing those duties for the licensee is not required to keep records *or files* of rental agreements or rental transactions, if the *files or* records are kept by another property manager or broker. *the licensee being employed.*

(f) If the property is owned by a partnership, corporation, limited company, or other such legal entity in which a

licensee has an interest, the licensee must disclose the *a* licensee's ownership position *and ownership entity* to the broker. If one or more licensees have a controlling interest or participate in the day-to-day operation or management of the subject property, the licensees are subject to this section except for (b)(2)(B) of this section. In lieu of compliance with (b)(2)(B) of this section, the final records and copies of rental agreements for the property must be made available to the licensee's broker for oversight and review.

**On a motion duly made by DuVal, seconded by Davis, it was**

**RESOLVED to make changes to 12 AAC 64.570 Property Management of Real Property to the existing regulation.**

**All in favor. Motion passes.**

Regulation Tracker

Commission members discussed and reviewed the regulation tracker.

The Commission recessed for break at 10:10 a.m.

The Commission reconvened from break at 10:22 a.m.

Jun Maiquis, Regulation Specialist presented the Commission with a regulation project for their consideration before noticing it for public comment.

Mr. DuVal asked the Commission to revisit 12 AAC 64.570.

**On a motion duly made by DuVal, seconded by Swires, it was**

**RESOLVED to revisit 12 AAC 64.570**

**All in favor. Motion passes.**

Mr. DuVal changed the language on 12 AAC 64.570(f) by adding the word *combined* in the second sentence.

**On a motion duly made by Somers, seconded by Davis, it was**

**RESOLVED to reconsider language for 12 AAC 64.570 to be read:**

12 AAC 64.570 (f) (second sentence) If one or more licensees *combined* have a controlling interest or participate in the day-to-day operation or

**On a motion duly made by Davis, seconded by Swires, it was**

**RESOLVED to move to executive session to discuss investigations.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 11:15 a.m.

Meeting adjourned at 11:16 a.m.

**On a motion duly made by Somers, seconded by Davis, it was**

**RESOLVED to adjourn the meeting.**

**All in favor. Motion passed.**

Next meeting is September 17-18, 2009, Garden Side Room at the Wedgewood Resort in Fairbanks, AK.

Prepared and submitted by Beata Smith,  
Division Staff.

Approved:

  
\_\_\_\_\_

Brad Cole, Chairperson  
Real Estate Commission

Date: 10/9/09

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### OFFICE OF ADMINISTRATIVE HEARINGS

SARAH PALIN, GOVERNOR

550 W. 7TH AVE., SUITE 1600  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-8170  
FAX: (907) 269-8172

April 20, 2009

#### BY HAND DELIVERY

Real Estate Commission  
c/o Sharon Walsh, Executive Administrator  
550 W. 7<sup>th</sup> Ave., Suite 1500  
Anchorage, AK 99501

Re: Decision for Final Action; *In the Matter of Henry S. Bartos*; OAH No. 08-0054-REC

Dear Commission Members:

I am the administrative law judge (ALJ) assigned to the above-referenced real estate licensing matter. Enclosed is the original decision document I have prepared for your consideration. Each party has filed a proposal for action, and each of these is likewise enclosed. The decision is ready for final action by the commission.

Under AS 44.64.060(f), the commission must take action on the proposed decision during or before its next regularly scheduled meeting occurring at least 45 days after the proposed decision was distributed. In this case, that means you must act on the proposed decision no later than the conclusion of your June 18-19, 2009 regularly scheduled meeting. If you do not take action by that date, the proposed decision will become the final decision by operation of law. Note, however, that your "action" before this deadline does not have to finally dispose of the case; you can, under AS 44.64.060(e)(2), return the case for further proceedings. In that event, the case would come back to you for final decision at a later time.

I understand that Sharon Walsh has set aside a full day for your evaluation of this case. It is a complex case, and the interplay between the proposals for action and the decision is not entirely self-explanatory. The brief count-by-count overview below may assist you in planning your work. The commission should bear in mind that the proposals for action were submitted simultaneously; neither party has had an opportunity to respond to the other party's proposal.

**Count I (Schooley as licensed assistant):** The proposed decision finds no violation. Mr. Bartos's proposal for action makes no comment on this outcome. The division accepts some of the determinations made in connection with Count I, but advocates a different interpretation of AS 08.88.291(a) and 12 AAC 64.110(e)(6). Under the division's interpretation, before one broker could assist another as a courtesy—without compensation—the registration form of the office of the broker receiving the assistance would need to be amended to list the assisting broker as a broker "employed" by that office. The interpretation the division proposes is not precluded

by the plain language of any legal provision, nor by any controlling decision of which I am aware, and thus is probably within the range of interpretations the commission may consider. There appear to be significant policy issues that the commission may wish to evaluate.

**Count II (Childress as property manager):** The proposed decision finds no violation by Mr. Bartos, although it states that the conduct at issue represented a violation by another licensee. Mr. Bartos's proposal for action makes no comment. The division accepts some of the determinations made in connection with Count II but advocates a different interpretation of 12 AAC 64.075(a), as well as the same change in interpretation of AS 08.88.291(a) and 12 AAC 64.110(e)(6) that it advocated in connection with Count I. The division argues that the ALJ's interpretation of these provisions would "allow brokers to poach licensees from other companies for 'temporary' assignments." Div. Proposal for Action at 6. In making this argument, the division may have overlooked that the ALJ found the conduct to be illegal. Proposed Decision at 16.

**Count III (Website issues; Sprucewood Court disclosures):** Neither party has commented on the proposed decision's determination that no violation was proven in connection with the Coldwell Banker website.

As to the Sprucewood Court transaction, the proposed decision finds a violation of two statutes, former AS 08.88.396 (agency disclosure) and AS 08.88.391 (conflict disclosure). The division endorses this result. Mr. Bartos argues that "no evidence" supports the violation of former AS 08.88.396, but does not comment on the evidence cited in the proposed decision. With respect to AS 08.88.391, Mr. Bartos argues that the disclosure was adequate under the statute as it was interpreted by the ALJ, and additionally argues for a different interpretation of the statute. His proposed alternative reading of the statute is discussed at pages 22-23 of the proposed decision; it was rejected there on the basis of prior Real Estate Commission decisions. The commission is not precluded, however, from reevaluating the proper interpretation of this statute, provided it explains any revision in its views.

**Count IV (Rex Lane disclosures):** As in Count III, former AS 08.88.396 (agency disclosure) and AS 08.88.391 (conflict disclosure) are at issue. The proposed decision finds no violation. Mr. Bartos's proposal for action makes no comment on this outcome. The division argues for a different outcome, in part because it contends that "Century 21 and Coldwell Banker were . . . two companies" and that they "falsely represented themselves" to be one company. Proposal at 7. This is a different approach to the issue than the division has taken in the previous stages of this case. If it is inclined to change the outcome of Count IV on the basis of this contention, the commission should first permit Mr. Bartos's counsel to make a counterargument, as he has not had an opportunity to do so up to this point.

**Count V (supervision in Packard transaction):** The proposed decision concludes that Mr. Bartos failed to give adequate supervision in the Packard transaction under the standard set in the version of 12 AAC 64.125 in effect at the time. The division endorses this result. In so doing, it makes a misstatement, however. Citing the proposed decision, it says that "[t]here is no evidence that Packard received the sellers' disclosure statement before the transaction closed." In fact, the proposed decision was careful not to say that there is "no evidence" of this occurrence; it said that there is "no direct evidence." There is in fact some evidence from which

one could infer that Mr. Packard received the disclosure, but I did not find the evidence sufficiently persuasive to make that inference. This is a significant distinction. *See Raad v. Alaska State Comm'n for Human Rights*, 86 P.3d 899, 909-10 (Alaska 2004) (case reversed and remanded where hearing officer said there was "no evidence" of pretext, when in fact there was "some evidence" that "permits an inference" of pretext).

Mr. Bartos argues for a different outcome on Count V on the basis that he met the standard of care set by the regulation. In reviewing this argument, the commission should recall that it altered the regulation in 2005, an alteration that may have changed the standard of care by allowing brokers to "provide for" supervision rather than requiring them to "supervise," and by making other adjustments. It is the pre-2005 version of 12 AAC 64.125 that applies to the Packard transaction.

**Count VI (forgery of Packard document):** The proposed decision found that a forgery occurred but that the division did not prove Mr. Bartos to be the forger. In writing the decision, I elected not to explore the alternative scenarios under which the document may have come to be forged.

Mr. Bartos makes no comment on Count VI. The division encourages the commission to reject the ALJ's factual findings and to substitute its own, and seems to suggest that the commission may do this on the strength of the division's argument by simply making an appropriate entry on page 42 of the proposed decision. In the circumstances of this case (where the factual finding at issue turns on a large volume of evidence, not all of it covered in the division's proposal), it would be unwise for the commission to take this step without first reviewing all of the relevant testimony and exhibits itself. It would take about a day to a day and a half of commission time to do this. I would need some advance notice of the commission's intention to take this step, as I would need to have the hearing recording enhanced and then work with the parties to ensure that we cued all of the relevant testimony, which is interspersed with testimony on unrelated matters scattered across a four-day proceeding.

Alternatively, using its power to craft a special remand proceeding under AS 44.64.060(e)(2), the commission could hear evidence on Count VI in a new proceeding in which live testimony would be given in front of the commission. I would be happy to arrange such a proceeding. With efficient management, I believe the testimony could be presented in a single day.

**Sanctions:** The division argues for a heavier sanction, regardless of whether additional violations are found. Much of its argument relies on a 2004 decision, *In re Mehner*. *Mehner* is a long decision that can be interpreted in more than one way. The division's argument concerning *Mehner* is one on which the commission may wish to give Mr. Bartos an opportunity to submit counterargument.

One correction regarding *Mehner* will be made here. At pages 13-14 of its proposal, the division suggests that consistency with the *Mehner* decision *requires* imposition of a \$4200 fine, representing the entire commission of both offices. This is inaccurate. The *Mehner* decision stated, at page 58, that "perhaps" it would be better if fining authority were tied to the amount of commission received, but it recognized that the legislature has not made this tie. Nonetheless,

the commission is certainly free to consider the enhanced fine the division proposes, or to consider an alternative such as assessing the full amount of Mr. Bartos's own commission on the transaction (\$2100; *see* REC 1100).


The division states that it "would be improper" for the commission to consider *In re Enoch*, a memorandum of agreement (MOA) discussed in the proposed decision. As recently as November 7, 2008, the same division took the position that another board (the Alaska State Medical Board) *should* consider its prior MOAs, and submitted copies of them for consideration. Certainly, MOAs must be weighed with caution, but neither the division nor this commission's sister boards have generally thought it "improper" to bear them in mind as an indication of how similar violations have been handled. What is particularly significant about *Enoch* is the commission's unusual acknowledgement, placed in the official reprimand language, that a conflict/dual agency disclosure violation can be "technical in nature." This contrasts with the division's contention, and its reading of the earlier *Mehner* case, to the effect that such violations are *inherently* worthy of sanctions among the most severe the commission is empowered to levy.

\* \* \*

I can be available to the commission during its consideration of the case, including during any executive session the commission may convene to deliberate on the case. Ordinarily, Ms. Walsh arranges a time for the administrative law judge to attend the meeting or to be available by phone.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Christopher Kennedy  
Deputy Chief Administrative Law Judge

Enclosures/as stated

cc: Robert C. Auth, AAG (w/o enclosures)  
Jason A. Gazewood, counsel for Mr. Bartos (w/o enclosures)

## Adoption as Modified

The Real Estate Commission:

in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation as set out below;

in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set out below; and

in accordance with AS 44.64.060, otherwise adopts the forgoing Decision and Order.

Modifications:

1. Although the Commission recognizes that the word “employed” has several definitions, the Commission interprets the word “employed” in AS 08.88.291(a) and 12 AAC 64.110(e)(6) to mean “to commission or entrust with the performance of certain acts or functions or with the management of one’s affairs” (see Black’s Law Dictionary, 5<sup>th</sup> ed.), as the meaning most in keeping with the purpose of that statute and that regulation.
2. In light of item 1, the Commission finds that, with respect to Count I, Mr. Bartos violated AS 08.88.291(a) and 12 AAC 64.110(e)(6) in connection with factual findings (2) and (4) on pages 6-7 of the Decision and Order.
3. In light of item 1, the Commission finds that, with respect to Count II, Mr. Bartos violated AS 08.88.291(a) and 12 AAC 64.110(e)(6) in his use of Noelle Childress to conduct Century 21’s property management business.
4. For the misconduct under Count I, the Commission imposes a fine of \$1000 and requires 6 hours of education as specified in item 10 below.
5. For the misconduct under Count II, the Commission notes the long duration and the deliberate nature of the improper arrangement, imposes a fine of \$2500, and requires 6 hours of education as specified in item 10 below.
6. For the misconduct under Count III, the Commission imposes a fine of \$1000 (as recommended by the administrative law judge) and requires 6 hours of education as specified in item 10 below. The sanction is imposed solely for failure to disclose dual agency. No sanction is imposed for failure to disclose conflict of interest.
7. For the misconduct under Count V, the Commission notes the serious consequences of the failure to supervise, imposes a fine of \$5000 and requires 12 hours of education as specified in item 10 below.
8. In light of the number, seriousness, and pattern of violations, the Commission imposes (a) a suspension of 60 days to commence on the effective date of this decision as provided in AS 44.62.520, and (b) license probation of one year to commence upon completion of the suspension.
9. All fines are payable in the manner set forth in part V-A of the Decision and Order.



10. The education required in items 4-7 above (a) shall be in addition to the continuing education/competency requirements under Alaska law for Mr. Bartos's license; (b) shall be completed within 12 months of the effective date of this Decision and Order; (c) shall be attended and satisfactorily completed; (d) shall be approved by the Commission's agent prior to the Respondent registering for the course or courses. It shall include no less than six hours of education dealing with ethics for real estate professionals. After completion of the course or courses, the certificates of satisfactory completion are to be provided to the Commission's agent. All costs are the responsibility of Respondent.

11. The following reprimand shall be placed in Respondent's license file in the form of this Decision and Order:

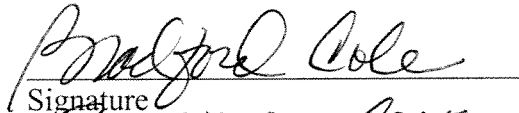
**The Real Estate Commission hereby reprimands you, Henry S. Bartos, for failing to comply with AS 08.88.291(a) and 12 AAC 64.110(e)(6), for failing to disclose dual agency as required by law, and for failing to provide adequate supervision of a licensee as required by law.**

*Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.*

DATED this 18<sup>th</sup> day of June, 2009.

ALASKA REAL ESTATE COMMISSION

By:



Signature

BRADFORD COLE

Name

Chairman - Alaska Real Estate Commission

Title