



GUAM REAL ESTATE COMMISSION MEETING

Thursday, October 28, 2021 at 2:00pm

ZOOM Virtual Conference (Meeting ID: 884 9070 8660; Passcode: 907591)

& FACEBOOK Live Streaming (facebook.com/drt.isbre)

Commission Members Present:

Christopher Murphy, Chairman

Frank Pangelinan, Vice-Chairman

Attorney Ryan Marsil Johnson, Member

Richard Gutierrez, Member

Ramon Puangco, Member

Clare Delgado, Member

Alice Sebastian-Cruz, Secretary

Also Present:

Francine Salas, Policy Analyst/Representative from the Office of Senator Sabina Perez

Michele Marie R. Rabago – Regulatory Examiner

Christina T. Dela Cruz – Regulatory Examiner

Elizabeth Cariaga Watermeier – Real Estate Complainant

Lenore Cariaga – Family Member of Real Estate Complainant

- 1. Call Meeting to Order** – Chairman called the meeting to order on Thursday, October 28, 2021 at 2:01pm in accordance to 5 GCA Chapter 8 Section 8107 [and Public Law 36-34].
- 2. Approval of Minutes of Previous Meeting (August 10, 2021)** – A motion was made by Member Johnson to approve the minutes of the previous meeting held on August 10, 2021 and seconded by the Secretary. Motion was unanimously approved by the Commission.
- 3. New Business – Real Estate Complaint: E.C. Watermeier vs. C.S. Campbell** – Chairman asked the Secretary to provide a brief timeline of events regarding the real estate complaint E.C. Watermeier vs. C.S. Campbell. Secretary mentioned Watermeier filed a complaint with the Department of Revenue and Taxation (DRT) Insurance, Securities, Banking, and Real Estate (ISBRE) office on July 20, 2021 against property manager Campbell of the estates of the Cariaga family regarding no expense receipts provided for the year 2020 and 2021 and nonpayment of rental income. Secretary mentioned on August 16, 2021 a letter was issued by DRT ISBRE to Campbell regarding Watermeier's expense receipts inquiries and nonpayment of rental income. Secretary mentioned on August 25, 2021 Campbell via Coral Sea Property Management counter-responded to the DRT ISBRE issued letter stating he would provide expense receipts for years 2020 and 2021 and deposited an estimated rental income amount owed of \$45,000. Secretary mentioned DRT ISBRE emailed Campbell on September 2, 2021 to respond to the untimely deposit of estimated rental income of \$45,000 in August 2021, to provide a breakdown of the deposit, and to provide miscellaneous expense receipts. Secretary mentioned a formal letter summarizing September 2, 2021 email was subsequently issued and hand-delivered on September 8, 2021. Secretary mentioned Campbell responded on September 17, 2021 stating he was unaware rental income was not accounted for Cariaga family estate until he received the initial letter from DRT ISBRE on August 16, 2021 in which Lynn Cena [the office manager and accountant of Coral Sea Property Management] was instructed

to deposit the estimated rental income of \$45,000 to the Cariaga account. Secretary mentioned the communication between DRT ISBRE and Campbell ended as no breakdown of the estimated \$45,000 was provided and no expense receipts were provided for years 2020 and 2021. Secretary mentioned the Chairman received a follow-up email from Watermeier.

Chairman mentioned he received an email the night before indicating Watermeier would like to settle the issue by having Campbell/Coral Sea Property Management pay approximately \$7,700 which Watermeier considers missing rental payments. Chairman mentioned that Watermeier is not willing to pursue any more issues with respect to the complaint of mismanagement of property accounts against Campbell/Coral Sea Property Management. Chairman opened the floor and allowed Watermeier and family to speak openly about their complaint against Campbell/Coral Sea Property Management. Watermeier mentioned, based on her facts and arguments she provided on her complaint, she is placing the responsibility on the Commission to determine whether Campbell was behaving unethically in managing the Cariaga family's estate and whether Campbell and agency should continue to be licensed to conduct real estate business activity.

Member Johnson asked Watermeier to explain how much money had been returned by Campbell. Watermeier responded there was \$50,000 but that does not include the missing security deposit and unexplained excessive expenses, over \$20,000 miscellaneous expenses, and various deposits that are blank. Watermeier further mentioned they are not discussing what transpired in years 2014 to 2018, only discussing what transpired in years 2019 to 2021. Member Johnson responded that the Commission does not get involved in criminal prosecution and that the Cariaga family will need to file a criminal complaint with the Attorney General's Office or the Guam Police Department. Member Johnson is concerned that the Commission will need to know how much money and what type of money is missing in order to proceed with the complaint. Watermeier mentioned that the \$45,000 and the \$7,700 amount is based on Campbell and the agency's accounting and that many deposits from renters were missing for years. Watermeier felt they were running a homeless shelter as a lot of renter payments were not being deposited into their account and questions why Campbell never pursued getting the payments from renters or evicting them and why Campbell did not fill in the vacancies. Watermeier mentioned the estimated \$45,000 deposit was made by Campbell after he received a call from GPD when the family was trying to file a police report with GPD.

Member Johnson wanted to confirm whether it is Watermeier's intention to proceed with the accusation of alleged wrongdoing against Campbell to which Watermeier confirmed yes if that is what is necessary and required. Member Johnson mentioned there are two separate issues, one being a civil dispute between Watermeier and Campbell/Coral Sea Property Management to settle and come to a compromise and the other is a regulatory issue dealing with a person's real estate license. Member Johnson mentioned the civil issue is not a question for the Commission; however, the Commission can deal with the regulatory issue of licensing if Watermeier is interested in pursuing the accusations of alleged wrongdoing. Member Johnson further mentioned there is enough information provided to have the Real Estate Commissioner investigate and issue a request/notice of hearing on this matter. The Commission Members were in agreeance and the Chairman requested the Secretary, with the guidance of Member Johnson, to draft a letter to Coral Sea Property Management requesting their position on the complaint filed by Watermeier. Member Johnson mentioned Campbell/Coral Sea Property Management must be given *due process* to respond and have a position on the matter and from there the Commission can determine whether to conduct a formal hearing to further determine whether to suspend, discipline, or revoke the license. Member Johnson mentioned the Commission must adhere to the fair hearing practices set forth in the Administrative Adjudication Act according to 21 GCA Section 102301 which is the Prescribed Procedure: Powers of Commissioner for denying, suspending, or revoking licenses. Lenore Cariaga requested to include in the letter to Coral Sea Property Management the accounting of the miscellaneous unknown expenses to which Watermeier added for the years 2020 and 2021, as 2019 miscellaneous unknown expenses were already provided. Member Johnson added that the letter should not include the \$7,700 settlement as that is not the concern of the Commission, but a separate concern between Watermeier and Campbell/Coral Sea Property Management. The Chairman thanked Watermeier and Lenore Cariaga for providing their input in the meeting and would keep in contact should further information be needed for complaint.



4. Old Business

a. Update on Seller's Disclosure – The Chairman mentioned he gets continuous calls from realtors who are anxious to utilize the proposed Seller's Disclosure form with their clients, but he explained there is no law in place implementing the use of this form; however, this does not prevent realtors from using a disclosure form. The Chairman mentioned he spoke to the Senators Office and the Seller's Disclosure form is still under their legal review as they are taking into account issues that arose during the draft, so they can come up with a form that makes sense to everyone in the real estate industry. The Chairman recommends he and Member Johnson set up a meeting with the Senators Office to get back on track with creating the form as realtors are eager to utilize the form. Member Johnson was in agreeance and the Chairman mentioned he will coordinate with the Secretary to have the meeting arranged.

b. Proposed Amendments on 21 GCA Chapter 104 – The Chairman mentioned the Commission had a recent working session and came up with ideas and information that would continue to raise the standards and professionalism in the real estate industry. The Chairman mentioned some of the key highlights and focus of proposed amendments are pre-licensing and continuing education requirements and testing. The Vice-Chairman added the Commission would like to protect the public by ensuring that real estate brokers have the experience, to require real estate broker applicants to provide proof of experience, as the current law only requires two (2) year experience as a licensed real estate salesperson. The Vice-Chairman mentioned salesperson and broker applicants/licenseses should not be on the sex offender list and family violence list. The Chairman mentioned a police clearance is required; however, the Vice-Chairman mentioned about including a court clearance as a requirement. Member Johnson mentioned he will look into the legality of matter.

The Chairman brought up violation issues the Commission is looking into that was brought up by GAR [Guam Association of Realtors] which are the payments of unlicensed individuals who are acting as consultants without a license and whereby some salespersons, who are dealing directly with clients/escrow companies, are charging consulting fees that bypasses their brokers. The Chairman summarized that the purpose of these proposed amendments is to make sure that real estate applicants/licenseses are educated, experienced, capable, and uphold the licensing rules. Member Johnson brought up the issue of a real estate salesperson being defined as a licensed independent contractor under the statute; however, the IRS does a fact-based analysis which takes into account the independence a person has in their operation. Member Johnson mentioned that if you tell someone when they work, tell them to wear a uniform for your real estate company, if they are using business cards in your company's name, if you have to direct the type of activity they do, sort of how a broker is supposed to instruct and direct a salesperson, that makes the person an employee of the real estate company and not an independent contractor. Vice-Chairman mentioned that brokers are issuing 1099 forms as defined by the law as independent contractors; however, they are actually employees and should be issued W2 forms. Member Johnson and Vice-Chairman agree this is a complex situation that needs to be further researched. Chairman asked if Member Johnson could look into the legality of the matter and suggested we should inform GAR to possibly change the way brokers account for the income they make by issuing W2 forms instead of 1099 forms to salespersons. Chairman suggested the Commission meet for another working session soon to discuss further the proposed amendments with Member Johnson's guidance of the law, as he was unable to attend the last recent working session due to quarantine.

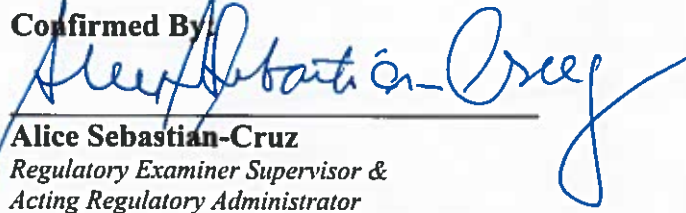
5. Meeting Adjournment – Chairman adjourned the Commission meeting at 2:45pm.

Prepared and Submitted By:



Michele Marie R. Rabago
Regulatory Examiner

Confirmed By:



Alice Sebastian-Cruz
Regulatory Examiner Supervisor &
Acting Regulatory Administrator