Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at The Coeur d’Alene Resort at 115 S. 2nd Street, Coeur d’Alene, Idaho on Monday, October 5, at 1:30 p.m. Pacific Time.

Commission Members Present:  
Mike Gamblin, Chair, Boise  
Michael James Johnston, Vice-Chair, Idaho Falls  
Kim Cooper, Member, Coeur d’Alene  
Jill Stone, Member, Twin Falls  
Martin Espil, Public Member, Boise (via Zoom)

Members Absent:  

Comprising a quorum of the Commission

Staff Present:  
MiChell Bird, Executive Director  
Melissa Ferguson, Education & Licensing Director (via Zoom)  
Craig Boyack, Chief Investigator (via Zoom)  
Jessica Valerio, Administrative Assistant 2

Others Present:  
David Wynkoop, Commission’s Legal Counsel (via Zoom)  
Marion Wadsworth, Idaho REALTORS® President  
David Hensley, Idaho REALTORS®

See attached list

Introductions:  
a. Commissioners  
b. Staff

Meeting was called to order at 1:37 p.m. PT by Commission Chair Mike Gamblin

Approval of Meeting Agenda: Motion was made by Commissioner Jill Stone to approve the October 5, 2020 meeting agenda. Motion carried.

Approval of Meeting Minutes: Motion was made by Commissioner Michael J. Johnston to approve the July 22 and August 11, 2020 Commission meeting minutes. Motion carried.

Staff Reports:  
The following reports were presented for members’ review; copies of which are on file at
the Commission office:

- Financial Reports for July and August 2020
- License Base Analysis
- Examination Statistics
- Complaint Summary Reports for July and August 2020
- Enforcement Telephone Activity Logs for July and August 2020
- Audit Reports for July and August 2020
- Waiver by State Reports for August and September 2020 and August 1, 2019 through June 30, 2020
- Education & Licensing Telephone Logs for July and August 2020
- New Brokers & Companies Reports for July and August 2020

Idaho REALTORS®: IR® President Marion Wadsworth reported on total membership numbers. President Wadsworth and CEO David Hensley gave brief updates on current initiatives for the Association and changes made to accommodate current conditions due to COVID-19.

Executive Director’s Report:
Idaho Division of Occupational and Professional Licenses (IDOPL) Update – Director MiChell Bird gave a brief update on the status of IDOPL changes.

2021 Legislation Update – Director Bird gave an overview of the two legislative ideas that have been submitted for Governor approval. Discussion ensued.

Update on Remote Brokerage Audits – Chief Investigator Craig Boyack gave an update on the status of the remote brokerage audit program. Discussion ensued.

Adoption of Pending Fee Rule – Director Bird reported that this agenda item would be tabled for a future meeting as the comment period for the rules has not yet elapsed.

Education & Licensing Director’s Report:
ARELLO® Education Award Recognition – Director Melissa Ferguson reported that IREC won two awards ARELLO® Education Awards in the miscellaneous category for the remote delivery process and platform and for the 2020 Navigating Limited Dual Agency Core video. The work of the Commissioners, Education Council, and IREC Education Staff on these projects was recognized.

E&O Update – Director Ferguson reported that 69 companies and 583 individuals have not provided proof of E&O insurance, 37 individuals and companies have reported that they purchased their E&O insurance late. Letters will be going out to the individuals and companies who have not yet provided proof, requesting proof be provided before their
licenses are inactivated for failure to respond.

**Discussion on Commission Core 2021 Topics** - Director Ferguson asked for ideas and subjects for Commission Core 2021. Discussion ensued.

**Hybrid Live and Remote Course Delivery** – Director Ferguson provided an update to the Commissioners on the hybrid live and remote delivery course pilot, remote exam proctoring process, and electronic evaluation process. Discussion ensued.

**Enforcement**

**Stipulations:**

**Staff vs. Kelsie Diane Wetherell, Case No. 20-0081:** The party’s Stipulation in this matter was presented for ex parte hearing. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Michael J. Johnston to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

**Staff vs. Tracy James Pierce, Case No. 20-0129:** The party’s Stipulation in this matter was presented for ex parte hearing. Craig Boyack was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

**Staff vs. William Melvin Nixon, Case No. 20-0128:** The party’s Stipulation in this matter was presented for ex parte hearing. Craig Boyack was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

**Staff vs. Donna M. Savage, Case No. 019-0167:** The party’s Stipulation in this matter was presented for ex parte hearing. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Michael J. Johnston to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

**Staff vs. Steve A. Savage, Case No. 019-0166:** The party’s Stipulation in this matter was
presented for ex parte hearing. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Michael J. Johnston to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Disciplinary Proceedings:
Staff vs. Norma Patricia Ascencio, Case No. 019-0517: A motion was made by Commissioner Michael J. Johnston to accept stipulation as presented. Motion carried. A motion was made by Commissioner Kim Cooper to suspend license for 18 months, cost and attorney fees, and delegate to Commission Chair Mike Gamblin to sign final order and include formal reprimand. Motion carried.

Probable Cause Memos:
Probable Cause Memo #20-0049: A motion was made by Commission Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commission Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #20-0196, 20-0197, 20198: A motion was made by Commission Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commission Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.
Probable Cause Memo #20-0221 and 20-0222: A motion was made by Commission Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commission Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #20-0126: A motion was made by Commission Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commission Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #18-0335: A motion was made by Commission Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commission Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Executive Session: In accordance with provisions of Idaho Code (74-206(1)(b), a motion was made by Commissioner Michael J. Johnston to adjourn to executive session.
Roll was called, Michael J. Johnston, Mike Gamblin, Jill Stone, Kim Cooper, and Martin Espil voted in favor. Motion carried. No action was taken during the executive session.

Regular Session: There being no further purpose for an executive session, a motion was made by Commissioner Michael J. Johnston to adjourn the executive session and return to open meeting. Motion carried.

Special Consideration #20-013: Request seeking a waiver of the high school graduation requirement pursuant to Idaho Code 54-2012(1)(c); following discussion and review of the documents submitted, a motion was made by Commissioner Jill Stone to deny the request for special consideration. Motion failed. A motion was made by Commissioner Mike Gamblin to approve the request for exemption. Motion carried. Commissioner Michael J. Johnston wished to have his nay vote noted in the minutes.

Special Consideration #20-014: Request seeking a waiver of the high school graduation requirement pursuant to Idaho Code 54-2012(1)(c); following discussion and review of the documents submitted, a motion was made by Commissioner Kim Cooper to approve the request for special consideration. Motion carried.

Exemption Review #20-015: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(g)(ii), a motion was made by Commissioner Kim Cooper to approve the request for exemption. Motion failed.

Exemption Review #20-016: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(g)(ii), a motion was made by Commissioner Kim Cooper to approve the request for exemption. Motion carried.

Exemption Review #20-017: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(g)(ii), a motion was made by Commissioner Kim Cooper to approve the request for exemption. Motion carried.

Exemption Review #20-005: Request seeking an exemption from revocation pursuant to Idaho Code 54-2012(1)(e); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii).
There being no further business, Chair Michael Gamblin adjourned the meeting at 6:06 p.m. PT.

Respectfully submitted,

[Signature]

MiChell Bird
Executive Director

Attachments:
- Financial Reports for July and August 2020
- License Base Analysis
- Examination Statistics
- Complaint Summary Reports for July and August 2020
- Enforcement Telephone Activity Logs for July and August 2020
- Audit Reports for July and August 2020
- Waiver by State Reports for August and September 2020 and August 1, 2019 through June 30, 2020
- Education & Licensing Telephone Logs for July and August 2020
- New Brokers & Companies Reports for July and August 2020
- Final Orders

Minutes of the Idaho Real Estate Commission meeting on October 5, 2020 are hereby approved.

[Signature]

Mike Gamblin, Chair

[Signature]

Michael J. Johnston, Vice Chair

[Signature]

Kim Cooper, Member

[Signature]

Jill Stone, Member

[Signature]

Martin Espil, Member

IREC Minutes 7 October 5, 2020
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

Petitioner,

vs.

KELSIE DIANE WETHERELL,

Respondent.

FINAL ORDER

On October 5, 2020, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2053(4): No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature.

   a. Wetherell acted in misleading manner when she canceled the MLS listing for Lot 2 then falsely indicated that Lot 3 was under contract for $185,000.00 when, in fact, Lots 2 and 3 were under contract for combined price of $185,000.00.

B. § 54-2086(1): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligation: (b) To perform these acts with honestly, good faith, reasonable skill and care.
a. Wetherell failed to disclose the first right refusal for Lot 4.

C. § 54-2060 (12): Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

a. Wetherell failed to advertise and disclose the first right of refusal until after the Luthers entered into a contract to purchase Lot 4.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**

   A. The Commission’s Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **Fines and Fees**

   A. Respondent shall pay a **Five Hundred Dollar ($500.00) civil fine by November 4, 2020.**

   B. Respondent shall pay **costs and attorney’s fees in the amount of Six Hundred Dollars ($600.00) by November 4, 2020,** and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to
accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

3. Continuing Education

A. Respondent shall successfully complete the following Idaho real estate educational course by April 3, 2020:

- Risky Business 1
- Risky Business 2

B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the
Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

5. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

6. 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 14th day of October 2020.

FOR THE COMMISSIONERS:

[Signature]

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Kelsie Diane Wetherell
7801 N. Fairborne Lane
Coeur d’Alene, ID 83815

_____ U.S. Mail
_____ Email:
_____ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

_____ U.S. Mail
_____ Email:
X Email: eric@naylorhales.com
_____ Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

       Petitioner,

vs.

TRACY JAMES PIERCE,

       Respondent.

FINAL ORDER

On October 5, 2020, the Commission considered the parties' Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2060 (12): Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

a. Pierce failed to adequately dispute Johnson's unlawful decision to cancel her contract with Neupert and failed to take reasonable steps to uphold Neupert's contractual rights.

B. § 54-2087 (2): To exercise reasonable skill and care.

a. Pierce failed to question or otherwise dispute Nixon when he inaccurately asserted that Johnson had the right to terminate the
contract with Neupert if Johnson did not agree with Neupert’s requested repairs.

C. § 54-2087 (4): To promote the best interests of the client in good faith, honesty and fair dealing.

a. Pierce failed to uphold Neupert’s contractual rights when he consented to Johnson’s contract termination without legal justification.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**
   
   A. The Commission’s Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **Fines and Fees**
   
   A. Respondent shall pay a **Five Hundred Dollar ($500.00) civil fine by November 4, 2020.**

   B. Respondent shall pay **costs and attorney’s fees in the amount of Six Hundred Dollars ($600.00) by November 4, 2020,** and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to
accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

3. Continuing Education

A. Respondent shall successfully complete the following Idaho real estate educational course by April 3, 2020:

- Risky Business 1
- Risky Business 2

B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the
Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

5. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

6. 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 _14_ day of October 2020.

FOR THE COMMISSIONERS:

[Signature]

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Tracy James Pierce
6604 W. Fairfield Ave
Boise, ID 83709

___ U.S. Mail
___ Email:
___ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

___ U.S. Mail
___ Email: eric@naylorhales.com
___ Facsimile Transmission

MiChell M. Bird
Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

Petitioner,

vs.

WILLIAM MELVIN NIXON,

Respondent.

FINAL ORDER

On October 5, 2020, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2060 (12): Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

a. A seller can only close with one (1) purchaser.

B. § 54-2086(1): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligation: (b) To perform these acts with honestly, good faith, reasonable skill and care.
a. Nixon failed to apply the terms of the entire inspection section of Neupert and Johnson’s purchase and sale agreement when he advised Johnson that she could cancel the parties’ contract based on Neupert’s request for repairs.

C. § 54-2087 (2): To exercise reasonable skill and care.

a. Nixon inaccurately told Johnson and Pierce that Johnson had the right to terminate the contract with Neupert if Johnson did not agree with Neupert’s request repairs.

D. § 54-2087 (4): To promote the best interests of the client in good faith, honesty and fair dealing.

a. Nixon encouraged his Johnson client to terminate her contract with Neupert in violation of the parties’ contract after receiving Neupert’s RE-10 Inspection Contingency Notices.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**

   A. The Commission’s Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **Fines and Fees**

   A. Respondent shall pay a Three Thousand Dollar ($3,000.00) civil fine by November 4, 2020.
B. Respondent shall pay costs and attorney’s fees in the amount of Six Hundred Dollars ($600.00) by November 4, 2020, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

3. Continuing Education

A. Respondent shall successfully complete the following Idaho real estate educational course by April 3, 2020:
   - Real Estate Law
   - Risky Business 1
   - Risky Business 2
B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

4. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

5. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.
6. 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 14th day of October 2020.

FOR THE COMMISSIONERS:

[Signature]

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

William Melvin Nixon  
3823 N. Tamarack Drive  
Boise, ID 83703

X U.S. Mail

Email:

Facsimile Transmission

Eric F. Nelson  
Naylor & Hales, PC  
950 W. Bannock St. Ste 610  
Boise, ID 83702

_____ U.S. Mail

X Email: eric@naylorhales.com

Facsimile Transmission

MiChell M. Bird, Executive Director  
Idaho Real Estate Commission
On October 5, 2020, the Commission considered the parties' Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2053 (4): No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

   a. Donna Savage engaged in misleading advertising by offering a contract cancellation provision that he failed to honor.

B. § 54-2060 (11): The Commission may discipline licensees for engaging in dishonest or dishonorable dealings.

   a. Donna Savage engaged in misleading advertising by offering a contract cancellation provision that he failed to honor.
Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**

   A. The Commission’s Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **License Suspension**

   A. Donna Savage’s real estate license shall be suspended for one (1) year, however, 240 days of suspension shall be withheld provided that she complies with all terms set forth in the Commission’s Order accepting this Stipulation and does not violate any additional provisions of the Idaho Real Estate License Law. Donna Savage’s license suspension shall commence 120 days following the service of the Commission’s Order.

3. **Fines and Fees**

   A. Respondent shall pay a *One Thousand Dollar ($1,000.00) civil fine by December 4, 2020.*

   B. Respondent shall pay *costs and attorney’s fees in the amount of Six Hundred Dollars ($600.00) by December 4, 2020,* and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to
accept a late payment shall not constitute a waiver of Staff’s right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

4. Continuing Education

A. Respondent shall successfully complete the following Idaho real estate educational course by April 3, 2020:

- Post License Pricing, Marketing, and Advertising

B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.” Respondent shall not submit such Commission-ordered educational course for continuing education credit.

FINAL ORDER – DONNA SAVAGE
5. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

6. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

7. 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 14 day of October 2020.

FOR THE COMMISSIONERS:

[Signature]

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Donna M. Savage
7749 W. Opohonga Ln #2
Boise, ID 83704

- X U.S. Mail
- Email:
- Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

- U.S. Mail
- X Email:
- eric@naylorhales.com
- Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION,

Petitioner,

vs.

STEVE A. SAVAGE,

Respondent.

FINAL ORDER

On October 5, 2020, the Commission considered the parties’ Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2053 (4): No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole there is a distinct probability that such information will deceive the persons whom it is intended to influence.

   a. Steve Savage engaged in misleading advertising by offering a contract cancellation provision that he failed to honor.

B. § 54-2060 (11): The Commission may discipline licensees for engaging in dishonest or dishonorable dealings.

   a. Steve Savage engaged in misleading advertising by offering a contract cancellation provision that he failed to honor.
Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**

   A. The Commission’s Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **License Suspension**

   A. Steve Savage’s real estate license shall be suspended for one (1) year, however, 240 days of suspension shall be withheld provided that she complies with all terms set forth in the Commission’s Order accepting this Stipulation and does not violate any additional provisions of the Idaho Real Estate License Law. Steve Savage’s license suspension shall commence upon service of the Commission’s Order.

3. **Fines and Fees**

   A. Respondent shall pay a **One Thousand Dollar ($1,000.00) civil fine by November 4, 2020.**

   B. Respondent shall pay **costs and attorney’s fees in the amount of Six Hundred Dollars ($600.00) by November 4, 2020,** and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

   C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff’s right, upon any
subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney’s fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

4. **Continuing Education**

A. Respondent shall successfully complete the following Idaho real estate educational course by April 3, 2020:

- Post License Pricing, Marketing, and Advertising

B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent’s real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), “*No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.*” Respondent shall not submit such Commission-ordered educational course for continuing education credit.
5. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent’s license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

6. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

7. 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 14th day of October 2020.

FOR THE COMMISSIONERS:

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Steve A. Savage
7749 W. Opohonga Ln #2
Boise, ID 83704

X U.S. Mail

Email:

Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

X U.S. Mail

X Email:

eric@naylorhales.com

Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL ESTATE COMMISSION, Petitioner,

vs.

NORMA PATRICIA ASCENSIO, Respondent.

Case No. 19-0517

FINAL ORDER

This matter came before the Commissioners of the Idaho Real Estate Commission (Commission) at its October 5, 2020 meeting. The Commission considered and approved the Stipulation and Notice of Disciplinary Proceeding ("Stipulation") dated July 8, 2020 and signed by Ms. Ascensio and the attorney for Staff of the Idaho Real Estate Commission ("Staff"). Pursuant to the Stipulation, the parties stipulated that Ms. Ascensio pled guilty to and was convicted of a misdemeanor charge of petit theft, and that Ms. Ascensio failed to notify Staff of her conviction within twenty (20) days. The parties further agreed that the Commission could determine disciplinary sanctions based upon written briefs presented by the parties. The parties waived all rights of appeal except only with respect to the discipline imposed by the Commission in this matter.

FINAL ORDER - 1
After careful consideration of the Respondent’s Brief filed July 15, 2020, and the State’s Brief On Disciplinary Sanctions filed July 31, 2020, the Commission finds as follows:

1. Ms. Ascencio is an Idaho licensed real estate salesperson holding license number SP46767 and is subject to the jurisdiction and discipline of the Commission.

2. The Commission may take disciplinary action against Ms. Ascencio pursuant to Idaho Code Section 54-2061(1)(a) based upon her conviction of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates her lack of trustworthiness to engage in the real estate business.

3. The Commission may take disciplinary action against Ms. Ascencio pursuant to Idaho Code Section 54-2061(3) based on her failure to report her conviction to Staff within twenty (20) days.

4. Ms. Ascencio’s actions warrant significant discipline to protect the public and deter her and other licensees from engaging in similar conduct.

5. There are several mitigating factors as suggested by Ms. Ascencio’s attorney in the Respondent’s Brief, resulting in the request that sanctions, be less than permanent license revocation.

6. These mitigating factors include Ms. Ascencio’s fear of deportation, her successful compliance with all court orders and her lack of other criminal conduct or violations of Idaho real estate law.
FINAL ORDER

It is hereby ordered as follows:

A. This Final Order shall constitute a formal reprimand of Ms. Ascensio;

B. Ms. Ascensio’s Idaho real estate salesperson’s license shall be suspended for one and one-half years, commencing from the date of this Final Order;

C. Staff is the prevailing party. Ms. Ascensio shall pay costs and attorney fees pursuant to Idaho Code Sections 54-2059 and 12-117(5). The amount of attorney fees that Ms. Ascensio must pay shall be determined as follows:

1. Within fourteen (14) days from the date of this Final Order, Staff and the Commission’s prosecuting attorney must file affidavits, setting forth the fees and costs, including attorney fees, incurred to investigate and prosecute this matter.

2. If Respondent objects to the fees and/or costs, including attorney fees, claimed by staff, then Respondent may, within fourteen (14) days from the service date of the Petition for Costs and Fees, file a written objection to those fees and/or costs, including attorney fees, and, if Respondent desires, a written request for a hearing on the objection. If Respondent files a timely objection to the Staff’s claimed fees and/or costs, including attorney fees, then the Commission will consider Respondent’s objection in determining the amount of fees and/or costs, including 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.

3. If Respondent fails to file a timely objection to the fees and/or costs, including attorney fees, claimed by Staff, then the Respondent will have waived
Respondent’s ability to object, and Respondent must pay the total fee and cost amount, including attorney fees, set forth in the affidavits within six (6) months from the service date of this Final Order.

4. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.

DATED this __14__ day of October, 2020.

Commission Chair Mike Gamblin
Notice of Procedural Rights

1. This is a Final Order of the Commission. Any aggrieved party may file a Motion for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Commission will dispose of the Motion for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by operation of law. See Idaho Code § 67-5246(4).

2. Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this Final Order or Orders previously issued in this case may appeal this Final Order and all previously issued Orders in this case to District Court by filing a Petition 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, or operates its principal place of business in Idaho, or
   d. The real property or personal property that was the subject of the agency action is located.

3. An Appeal must be filed within twenty-eight (28) days:
   a. of the service date of this Final Order,
   b. of an order denying Petition for Reconsideration, or
   c. the failure within twenty-one (21) days to grant or deny a Petition for Reconsideration, whichever is later.

See Idaho Code § 67-5273. The filing of an appeal to District Court does not itself stay the effectiveness or enforcement of the Order under Appeal.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 15th, 2020, I served a true and correct copy of the foregoing FINAL ORDER upon the following, by the method indicated below:

Thomas Dvorak  
Jack W. Relf  
GIVENS PURSLEY LLP  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Attorneys for Respondent

____ via U.S. Mail  
XX via Email: ted@givenspursley.com  
jackreif@givenspursley.com

Eric Nelson  
Joan E. Callahan  
NAYLOR & HALES, P.C.  
950 W. Bannock Street, Ste. 610  
Boise, Idaho 83702  
Attorneys for Staff of the Idaho Real Estate Commission

____ via U.S. Mail  
XX via Email: eric@naylorhales.com  
joan@naylorhales.com

MiChell Bird