



State of Nebraska

NEBRASKA EQUAL OPPORTUNITY COMMISSION

NEBRASKA EQUAL OPPORTUNITY COMMISSION MEETING OF FEBRUARY 22, 2021

Commissioner Borchers called the meeting to order via WebEx Virtual Meeting Space at 10:34 a.m. on February 22, 2021. It was established, after a roll call, there was a quorum.

I. ROLL CALL

Commissioners Present

Eric Drumheller

Patrick Borchers, Chairperson

Royce Jeffries

Amber Schuppan

Arla Jo Meyer

John Arnold, Vice Chairperson

Kristin Yates

Staff Present

Marna Munn, Executive Director

Ben Watson, Unit Director

Cherryll Batty, Staff Assistant

I. **Review of Recommended Order from Public Hearing**

Jura v. Commodore, LLC et al / NEB – 1-18/19-7-3452-H

Director Munn announced the emergency meeting was called and would be conducted in accordance with statute, Neb. Rev. Stat. §84-1411 (5).

The announcement of the Emergency Meeting was placed on the Commission website on Monday, February 22, 2021 at approximately 8:15 a.m. The Emergency Meeting conducted electronically as permitted by statute.

The nature of the emergency was to review the Recommended Order within the statutory timeframe of 30 days. The Recommended Order, along with the transcripts, was received in the Commission Office on January 25, 2021, making February 23, 2021 the final day to review the Recommended Order or the Recommended Order would become a final order. Commissioner Schuppan asked why the meeting was taking place so far into the 30-day period. Director Munn indicated it took until now because it is 30 calendar days (not business days), the agency has been prepping to move its main office this week, the diffuse nature of the

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GOVERNMENT

workforce during Covid times, and the need for Director Munn and Unit Director Watson to investigate the concerns they identified relating to the Recommended Order.

Director Munn then presented to following information to the Commissioners. In the Recommended Order the Public Hearing Officer ruled on the issues of terms and conditions, reasonable accommodation and **refusal to rent**. Director Munn noted however, the initial Charge from the Commission found reasonable cause on the harms of terms and conditions, reasonable accommodation and **refusal to deal**.

Director Munn reiterated that the Commission followed its standard procedures for Public Hearings in Housing. The Commission issued a document to the Parties called a Charge which included the issues upon with the Commission found reasonable cause to move forward to Public Hearing. The Charge is the document the statutes make clear is the guiding document for the Public Hearing.

It appears in this case instead, the Public Hearing Officer and the Attorneys for both Parties (both of whom became involved after the Charge was issued at the Public Hearing stage), relied on a document called Housing Discrimination Complaint. That document is an investigative document from the federal system where we work with dual file cases under our federal workshare agreement with HUD. Perhaps what complicated the matter was that the term "Complaint" is often used in legal proceedings. Then to compound the problem, the document makes reference to Refusal to Rent. This seems the most likely explanation for why the Recommended Order, and apparently the Public Hearing, dealt with a Refusal to Rent cause of action rather than the Refusal to Deal cause of action the Commission investigated and rendered a cause decision.

Director Munn explained that in future, though the Commission followed statute and regulation processes, she and Unit Director Watson identified a couple of actions it would take to make sure this misunderstanding would not happen again. Director Munn then pointed out the remaining item for discussion was what to do on this particular case. She framed the general issue to be that Refusal to Deal is a recognized cause of action with different *prima facie* elements than Refusal to Rent.

Director Munn explained that there were a range of options open to the Commission. Under statute and per properly promulgated regulations, the Commission has the power to review the Recommended Order and affirm or modify it in whole or in part. Director Munn indicated the Commission was in a position to consider a seemingly unique situation. It could adopt the Recommended Order on the issue tried at the Public Hearing, which was not investigated or the basis for a finding of cause by the Commission. Or the Commission could modify the Recommended Order and render a decision on the issue the Commission did investigate and find cause, but which was

not argued or considered at the Public Hearing. Or the Commission could craft a different course of action.

The Commissioners discussed the issue and possibilities and asked Director Munn to clarify certain points of procedure and practice. The Commission discussed how the underpinning set of facts for this case were limited and in the record, so this situation was more one of law and with a limited need to change the factual record. Commissioners questioned whether it would be a harmless error, and Director Munn advised that even if it ultimately was, there may be procedural and process considerations. It was determined that the Commission followed the same procedures it always does and provided proper notice of the Charge to the Parties. The Commissioners discussed attorney fees, including recent decisions in Nebraska Fair Housing court cases and the standard for determining whether attorney's fees would be awarded, as well as other procedural issues. The Commissioners debated the options, zeroing the discussion on the most appropriate way to remand the issue back to the Public Hearing Officer, with the goal of mitigating time and expense for the parties involved. The Commission determined whether or not strictly legally necessary, the best course of action to maintain consistency with the Commission's determination regarding the refusal to deal issue was to remand the case back to the Hearing Office to allow the Parties to address that cause of action.

Commissioner Borchers moved to remand [the case] to the Hearing Officer for reconsideration under the Refusal to Deal cause of action as stated in the Charge the Commission adopted on January 17, 2020.

Commissioner Jeffries seconded the motion.

ROLL CALL: Ayes: Drumheller, Griess, Jeffries, Borchers, Yates, Arnold,
 Schuppan
 Nays:
 Abstained:
 Motion Carried

XV. ADJOURNMENT

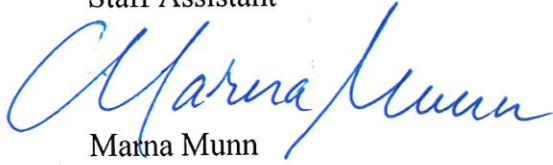
Commissioner Borchers declared the February 22, 2021 Commission meeting ended at

Respectfully submitted,



Cherryll Batty
Staff Assistant

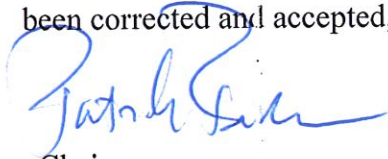
2/23/2021
Date



Marna Munn
Executive Director

2/23/2021
Date

The Minutes of the Nebraska Equal Opportunity Commission meeting of February 22, 2021 have been corrected and accepted, and henceforth approved on this date.



Chairperson

3/19/21
Date