

## Minutes of Meeting

### VIRGINIA REAL ESTATE BOARD INFORMAL FACT-FINDING CONFERENCES NOVEMBER 18, 2003 (2:00 P.M.)

The Virginia Real Estate Board convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

R. Schaefer Oglesby, Board Member, Presided. No other Board members were present

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case  
Lic=Licensing Application

C=Complainant/Claimant  
A=Applicant  
R=Respondent/Regulant  
PB=Principal Broker  
SA=Sales Agent  
Invest=Investigator  
W=Witness  
Atty = Attorney

#### 2:00 PM

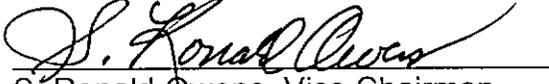
James M. McClain, Sr.  
File Number 2002-00679 (Disc)

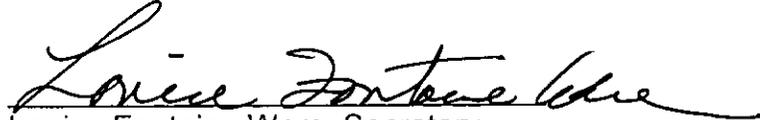
#### PARTICIPANTS

James McClain – R  
Michael Biddinger – R's Atty  
Noah McKinney – C  
Stephen A. Bamberger, C's Atty

The meeting adjourned at 3:05 p.m.

Virginia Real Estate Board

  
S. Ronald Owens, Vice Chairman

  
Louise Fontaine Ware, Secretary

COPY TESTE:

\_\_\_\_\_  
Custodian of Records

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

RE: JAMES M. MCCLAIN, SR.  
LICENSE NUMBER: 0225 003191

FILE NUMBER: 2002-00679

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on November 18, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to James Mickle McClain, Sr. on June 26, 2003. The following individuals participated at the conference: James Mickle McClain, Sr., Respondent; Michael J. Biddinger, Esquire, Attorney for Respondent; Noah McKinney, Complainant; Stephen A. Bamberger, Esquire, Attorney for Complainant; Douglas W. Schroder, Staff Member; and R. Schaefer Oglesby, Presiding Board Member.

### Summation of Facts

1. On or about April 10, 2001, Noah McKinney (McKinney), as purchaser, executed a Housing and Urban Development (HUD) sales contract (1<sup>st</sup> Contract) for the purchase of 8704 Lancaster Gate Road, Fredericksburg, Virginia through Re/Max Realty Associates, by James Mickle McClain Sr. (McClain), as Buyer's Broker.
2. On or about April 16, 2001, HUD returned the sales contract stating that it needed to be rewritten.
3. On or about April 16, 2001, McClain submitted the second sales contract back to HUD on behalf of McKinney for the same property. This second contract did not include the same information for items 1, 2, and 4, as contained in the first sales contract. McKinney stated that he did not sign the second contract, although the contract bears a signature of McKinney.
4. In a Report of Examination dated February 5, 2002, from Lawrence M. Farmer (Farmer), Examiner of Questioned Documents, he stated it was his positive opinion that the questioned signature of McKinney in the second contract shown as Exh. C-3, was written by someone other than McKinney. However, Farmer does not say that the signature was written by McClain or with McClain's knowledge.
5. During the IFF, McClain specifically denied that he signed McKinney's name, knew of anyone signing McKinney's name, or approved of anyone signing McKinney's name, other than, Noah McKinney.
6. McClain told McKinney that he had never done a HUD contract with escrow and asked that McKinney sign a second contract in case the first was not accepted. This was done so that McKinney would not have to come back to the office at a moment's notice to sign a second contract. McKinney and his wife were aware of the reasons behind the second contract and McKinney signed and initialed it as he did in the first contract. McClain told McKinney that if the first contract (with item #4 completed) was satisfactory, he would destroy the second (with item #4 left blank) contract. If the first contract was not accepted, he would make whatever changes to item #4 on the second contract and submit to HUD.

### Conclusion and Recommendation

Count 1: 18 VAC 135-20-260(8) (Effective January 1, 1999) (McClain's actions, as a buyer's broker, in submitting a contract to HUD on behalf of his client, which was not signed by his client)

I recommend that Count 1 be closed with a finding of no violation. Based on McClain's candor and demeanor during the IFF, I find his testimony on this issue to be very credible. There also appears to be no compelling financial motive for McClain to forge McKinney's signature. If, in fact, the signature was forged, it enabled McKinney to purchase the house as he stated he wanted. McKinney also stated that he ratified the contract with the signature prior to closing.

Count 2: § 54.1-2132(A)(4) of the Code of Virginia, as amended (McClain's actions, as a buyer's broker, in submitting a contract to HUD on behalf of his client, which contained terms not authorized by McKinney)

I recommend that Count 2 be closed with a finding of no violation. Based on my experience with HUD (First Preston), because of the extremely short time allowed by HUD to correct contract problems by the purchaser, this has become a customary way for brokers to deal with these transactions. The contract had an

escape clause in it which McKinney could have used it if he had wanted to void the contract, but chose to ratify it and close on the property with no financial loss or problems.

By: \_\_\_\_\_

R. Schaefer Oglesby  
Presiding IFF Board Member  
Real Estate Board

Date: \_\_\_\_\_

**FINAL ORDER RECOMMENDATION**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 003191 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT

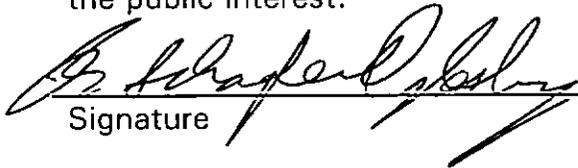
TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: R. Schaefer Oglesby
2. Title: Member
3. Agency: Real Estate Board
4. Transaction: Informal Fact-Finding Conference on November 18, 2003
5. Nature of Personal Interest Affected by Transaction: \_\_\_\_\_

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

  
Signature

11-18-03  
Date