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Arkansas Real Estate Commission

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Luke Heffley

612 South Summit Street  
Little Rock, AR 72201  
501.683.8010

October 03, 2023

Steve Beam  
7201 S. 28th Street  
Fort Smith, AR 72908

SUBJECT: AREC 23-092

Beam v. Daniel Mann, CA - AI  
Fort Chaffee Redevelopment Authority

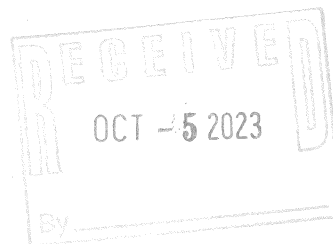
Dear Steve Beam:

Enclosed are copies of the Answers to your complaint. As previously advised, I have been assigned to your case and will be contacting you. If any new developments arise, please contact me at (501) 683-8017. Please make note of your case number referenced above in the event you need to contact our office. Once the investigation has been completed, you will be notified as to the disposition in this matter.

Sincerely,

Heather Henries  
Supervisor  
heather.henries@arkansas.gov

cc: J. Dalton Person- Respondent's Attorney  
Daniel Mann- Respondent



49079  
ARKANSAS REAL ESTATE COMMISSION  
INVESTIGATIONS DEPARTMENT  
612 SOUTH SUMMIT STREET  
LITTLE ROCK, ARKANSAS 72201-4740  
(501) 683-8010

**ANSWER FORM**  
(For Use in Filing Answers to Complaints  
which have been filed with the  
Arkansas Real Estate Commission)

SEP 29 2003  
AREC CASE # 23-092

INSTRUCTIONS:

- Please type or print legibly.
- Respond completely and directly to statements made by Complainant(s).
- Include the names, phone numbers, and addresses of persons who were present and/or who can confirm statements made in the Answer.
- Include copies of all relevant written documents.
- If additional pages are needed, copy this form or attach additional pages.
- Please be sure to sign this Answer Form on the reverse side and have your signature witnessed by a notary public. [Reg. 9.2(b)]
- Return the written Answer within twenty (20) days of receipt of the Complaint. [Reg. 9.2(b)]

**NOTE:** If you are unable to comply with any of these instructions because of a disability, contact the Investigations Department about provisions of the Americans with Disabilities Act.

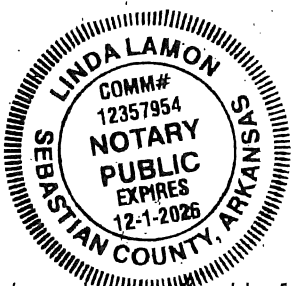
Daniel Mann, Executive Director & CEO  
Name of Broker(s) and/or Salesperson(s) Filing Answer  
7020 Taylor Avenue  
Address  
Fort Smith AR 72916 (479) 482-4554  
City State Zip Telephone #

STATE of Arkansas  
COUNTY of Sebastian

I/We Daniel Mann [Name of Broker(s) and/or Salesperson(s) Filing Answer], being first duly sworn, state(s) that \_\_\_\_\_

See letter from legal counsel, Dalton Person, attached hereto & incorporated in full by reference. I certify all statements therein are true to the best of my knowledge.

Lined area for text entry.



*David D. Mann*

Signature of Broker(s) and/or Salesperson(s) Filing Answer

Signature of Broker(s) and/or Salesperson(s) Filing Answer

Sworn to and subscribed before me this 27th day of September, 2023

(Seal)

*Linda Lamon*  
Notary Public

My commission expires: 12-1-2026

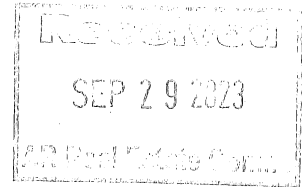
List below the persons that can confirm all or part of your foregoing statements:

Janet Cabrey, Finance Director 7020 Taylor Ave, Fort Smith (479) 452-4554  
Name Address Telephone #

Dean Gibson, Chairman 7020 Taylor Avenue, Fort Smith (479) 452-4554  
Name Address Telephone #

Dalton Gibson, Attorney 401 N 7th St, Fort Smith (479) 972-7203  
Name Address Telephone #

**JONES, JACKSON, MOLL**  
**McGINNIS & STOCKS, PLC**  
ATTORNEYS AT LAW  
401 North 7th Street  
Post Office Box 2023  
Fort Smith, Arkansas 72902-2023



ROBERT L. JONES, JR. (1922-2004)  
RANDOLPH C. JACKSON  
MARK A. MOLL  
J. RANDALL McGINNIS  
KATHRYN A. STOCKS\*  
MICHAEL T. NEWMAN\*\*  
J. DALTON PERSON

September 27, 2023

TELEPHONE (479) 782-7203  
FACSIMILE (479) 782-9460

Sender's email:  
dperson@jjmlaw.com

\*Also licensed in Oklahoma  
\*\* Also licensed in Oklahoma and Missouri

Heather Henries  
Arkansas Real Estate Commission  
612 South Summit Street  
Little Rock, AR 72201  
Email: [Heather.Henries@arkansas.gov](mailto:Heather.Henries@arkansas.gov)

**SENT VIA EMAIL  
AND US MAIL**

Re: Beam v. Daniel Mann, Fort Chaffee Redevelopment Authority  
AREC Case # 23-092

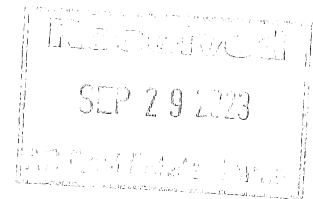
Dear Supervisor Henries:

I represent the Fort Chaffee Redevelopment Authority ("FCRA") and its Chief Executive Officer / Executive Director Daniel Mann. I am in receipt of the Complaint filed by Mr. Steve Beam against Mr. Mann and the FCRA alleging that Mr. Mann has violated Arkansas real estate licensing law. The FCRA received your letter on September 11, 2023. The purpose of this response is to better inform you in the potential investigation into Mr. Beam's Complaint of the FCRA's history, operations, and legal positions. For your reference, I am also enclosing documents that support the FCRA's response herein. Finally, the requested Answer Form has been completed by Mr. Mann and notarized, which incorporates this letter in full. Should additional information be required as part of your review, please let me know.

**Formation of the FCRA and its Legal Powers**

Following the 1997 closure of Fort Chaffee military installation by the federal government, and pursuant to Ark. Code Ann. § 22-7-301, the State of Arkansas accepted legislative jurisdiction over more than seven thousand acres of the former Fort Chaffee military base property. Thereafter, the FCRA was created as a public trust by Sebastian County, Arkansas and endorsed by the State of Arkansas. Ark. Code Ann. § 12-63-103. The FCRA was "tasked with oversight of the closure and redevelopment of Fort Chaffee Military Base surplus properties for the public interest and to serve a public purpose." *JKC Cellars, LLC v. Fort Chaffee Redevelopment Auth.*, 2023 Ark. App. 346, 3-4, 670 S.W.3d 819, 822 (2023). As stated in Arkansas law:

The Fort Chaffee Redevelopment Authority Public Trust is recognized by the state as the entity to:



(1) Prepare a comprehensive study of all issues related to the closure and redevelopment of Fort Chaffee Military Base surplus properties and to ensure proper planning and optimal use of the property embodied therein;

(2) Manage, own, and operate such portions of the base as the United States Department of Defense deems unnecessary to its overall military mission so as to yield the maximum benefit to the residents of affected counties and communities in the state after conversion of those portions; and

(3) Act for other purposes as enabled and set forth in the Fort Chaffee Redevelopment Authority Indenture of Trust that are in the public interest and serve a public purpose and can best be accomplished by the creation of a public trust vested with the powers and duties specified in the Fort Chaffee Redevelopment Authority Indenture of Trust.

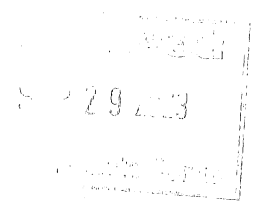
Ark. Code Ann. § 12-63-103. The Arkansas Supreme Court has since affirmed that the FCRA is the “regularly constituted authority” for accomplishing the public trust’s purposes, as set forth at Ark. Code Ann. § 12-63-103. *See City of Barling v. Fort Chaffee Redevelopment Auth.*, 347 Ark. 105, 115, 60 S.W.3d 443, 450-451 (2001). Furthermore, the Arkansas Supreme Court found that the FCRA “is the entity endowed with the authority to manage, own, and operate (this) land to its maximum benefit. The Trust is empowered to accomplish these objectives by adopting rules, regulations, and restrictive covenants, including land use regulations and restrictions.” *City of Barling*, 60 S.W.3d at 448.

As a public trust, the FCRA’s beneficiaries are the cities of Barling, Fort Smith, and Greenwood, as well as Sebastian County. It is composed of a board of nine trustees, each of whom are appointed to five-year terms by the Sebastian County Quorum Court. The Sebastian County Judge, City of Fort Smith Mayor, and City of Barling Mayor serve as ex-officio trustees. Under Arkansas law, the FCRA’s Indenture of Trust is a binding contract between the State of Arkansas, the aforementioned beneficiaries, and the trustees of the FCRA. Ark. Code Ann. § 28-72-202(d).

In 2020, the Arkansas Attorney General determined that a court would likely find that the FCRA is a political subdivision of the State of Arkansas. *See Arkansas Attorney General Opinion No. 2020-016* (“Arkansas courts have not explicitly addressed whether public trusts, such as the FCRA, are political subdivisions (or extensions thereof) under section 21-9-301. However, based on the aforementioned criteria, I believe that a court would likely find the FCRA to be an entity covered by that statute.”). Additionally, the Arkansas Attorney General found that because the FCRA’s beneficiaries are political subdivisions, it “is also possible that a court would find the FCRA to be an ‘authorit[y]’ or a ‘governing bod[y]’ of a political subdivision.” *Id.*

### **History of Real Estate Sales by the FCRA**

From its formation until 2009, the FCRA went about its mission of overseeing “the closure and redevelopment of Fort Chaffee Military Base surplus properties” without a real estate broker. At the March 6, 2008 meeting of the FCRA Board of Trustees, it was recommended for the first time that the FCRA engage a real estate broker to represent the FCRA in the sale of its properties. In December of 2008, the Board of Trustees selected both R.H. Ghan Commercial Properties as well as Nunnelee & Wright Commercial Properties as the FCRA’s brokers. A written agreement



for a three-year term with these two firms was approved by the Board of Trustees and executed on April 16, 2009. In May of 2012, R.H. Ghan Commercial Properties became the sole broker for the FCRA pursuant to an Exclusive Right to Sell agreement. Three years later, in 2015, this agreement was assigned and included the name change of the listing broker as Ghan & Cooper Commercial Properties for an additional three-year term. Additional extensions of the exclusive listing agreement were completed in May 2018, May 2021 and May 2022, with the final extension being for six months before terminating effective November 16, 2022.

Beginning on November 16, 2022, the FCRA reverted to its prior practice from its inception until 2009 and proceeded with overseeing the closure and redevelopment of the FCRA real properties without an exclusive real estate agent.

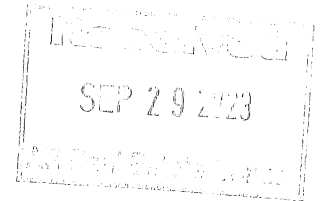
In anticipation of the expiration of the final listing agreement, the FCRA Board of Trustees passed a resolution on June 16, 2022 that clarified the express powers of its Executive Director and Chief Executive Officer to further the FCRA's statutory duties by negotiating real estate transactions on the FCRA's behalf, subject to certain controls. Under FCRA Resolution No. 06-01-22, the Executive Director is, among other things, required to report on a monthly basis to the FCRA's Real Estate Review Committee all written offers that he recommends for rejection. Then, the Real Estate Review Committee shall either (1) vote to reject each of the offers recommended for rejection by the Executive Director, or (2) refer the offer to the entire Board of Trustees for further discussion and consideration. Alternatively, if the Executive Director recommends an offer for acceptance, the full FCRA Board of Trustees must vote to approve of the sale of the property on terms and conditions the Board deems appropriate.

Most recently, at the Board of Trustees' meeting on September 21, 2023, the FCRA passed an open listing policy setting forth the available commissions to brokers who produce a buyer for the FCRA's real property. The policy excludes individuals employed by the FCRA. It sets forth a commission schedule and, importantly, is only available to real estate brokers licensed in the State of Arkansas.

#### **Internal Procedures of the FCRA with Daniel Mann**

Ark. Code Ann. § 12-63-103 states in part that the FCRA is the entity recognized by the State of Arkansas to: "Act for other purposes as enabled and set forth in the Fort Chaffee Redevelopment Authority Indenture of Trust..." The FCRA's Indenture of Trust provides at Section 4.1(k) that the FCRA has the power to "sell any item of Property, at public or private sale ... and to convey all or any part of any item of Property for such price and upon such terms and conditions as the [FCRA] may deem advisable..." Further down, at Section 7.7(d), the Indenture of Trust states that the FCRA shall appoint an executive director, and that the Trustees shall fix the executive director's compensation.

In accordance with its Indenture of Trust, the FCRA first hired Daniel Mann as its executive director in August 2019 and fixed his compensation. The parties agreed as part of Mr. Mann's First Amended Contract executed in December of 2021, in Section Two entitled "Salary" to additionally compensate Mr. Mann for his management of the sale of FCRA property under Section 4.1(k) of the Indenture of Trust as follows:



As additional compensation for timely performance of CEO's duties, FCRA agrees to pay CEO merit compensation in the amount of two-percent (2%) of the sale price of all real property transactions in which the FCRA is the seller of property.... Payable to CEO in the regular pay period immediately following the closing date of the aforementioned real property transactions, subject to existing payment policies of the FCRA.

This merit compensation was also included in Mr. Mann's Second Amended Contract, which became effective in December of 2022. Under the employment agreement between the FCRA and Mr. Mann, Mr. Mann receives merit compensation in the form of 2% of property sales via payment in the FCRA's regular pay period following the closing date. This payment is processed through the FCRA and subject to its existing payment policies. This means the merit compensation is paid as wages and subject to employment taxes. Again, the merit compensation is paid directly from the FCRA to Mr. Mann as part of the FCRA's normal pay practices and does not transfer as part of any closing of property. This internal pay procedure between the FCRA and Mr. Mann is entirely independent of any real property transaction closing.

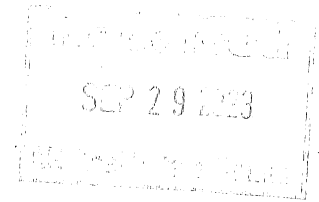
In support of this, enclosed to this response are copies of every Settlement Statement involving property sold by the FCRA since Mr. Mann's merit compensation went into effect in December 2021. As you will easily note, not a single transaction involves a commission paid to Mr. Mann. Instead, every transaction notes only those commissions due to licensed real estate brokers for their involvement in the sale of the property.

The Complaint by Mr. Beam incorrectly states that he has been involved in multiple transactions with the FCRA in which the FCRA's Executive Director/CEO was receiving a commission. He also improperly states that the "land is and has always been listed with Ghan and Cooper Commercial Properties". As noted above, the FCRA operated independent of a real estate broker from its inception to April of 2009 and again since November of 2022. Enclosed for your review are the documents from the sole purchase of property by Mr. Beam since Mr. Mann's merit compensation was passed by the Board of Trustees. The Letter of Intent clearly states, "Both the Buyer and Seller acknowledge that Ghan & Cooper Commercial Properties represents both the Buyer and Seller in this transaction." A similar Agency Disclosure is found in Section 22 of the Real Estate Contract for the transaction. Finally, the Settlement Statement reflects only a commission paid to Ghan & Cooper Commercial Properties as part of the transaction.

The merit compensation paid from the FCRA to Mr. Mann is independent of the closing of any transaction, is paid directly from the FCRA to Mr. Mann as part of the FCRA's normal pay practices and subject to employment taxes, and is in accordance with the FCRA's Indenture of Trust for which the State of Arkansas has deemed appropriate.

#### **Compliance with Arkansas Real Estate Law**

Mr. Beam's Complaint alleges violations by Mr. Mann and the FCRA of "Arkansas Real Estate Law". Specifically, Mr. Beam cites Ark. Code Ann. § 17-42-301, which states the general requirement for a person who represents himself as a real estate broker to first obtain a license to do so. However, Mr. Beam fails to acknowledge Ark. Code Ann. § 17-42-104, which sets forth the exemptions to the chapter he claims has been violated.



The FCRA and Mr. Mann submit that three exemptions identified in Ark. Code Ann. § 17-42-104 are applicable to its current practices.

**1. The FCRA is a political subdivision of the State of Arkansas.**

First, and most importantly, subpart (a)(7) excludes an officer or employee of state government or any political subdivision in the performance or conduct of his or her official duties. As noted on page two hereof, the Arkansas Attorney General has correctly determined that a court would likely find that the FCRA is a political subdivision of the State of Arkansas or authority thereof. See Arkansas Attorney General Opinion No. 2020-016 (“Arkansas courts have not explicitly addressed whether public trusts, such as the FCRA, are political subdivisions (or extensions thereof) under section 21-9-301. However, based on the aforementioned criteria, I believe that a court would likely find the FCRA to be an entity covered by that statute.”). Created as a public trust by Arkansas law, the FCRA is the State’s “regularly constituted authority” for accomplishing the public trust’s purposes set forth at Ark. Code Ann. § 12-63-103. See *City of Barling*, 347 Ark. at 115, 60 S.W.3d at 450-451. Created by Arkansas statute with statutory powers, as well as municipal and county beneficiaries, the FCRA is undoubtedly a political subdivision of the State of Arkansas.

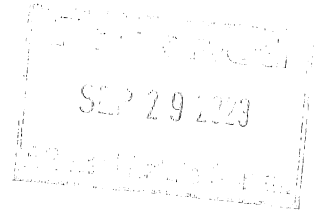
The next question is whether the sale of property falls within the performance or conduct of the FCRA executive director’s official duties. The answer is unequivocally yes. The FCRA is authorized by Arkansas law to act pursuant to its Indenture of Trust, which specifically provides that the FCRA has the power to “sell any item of Property, at public or private sale ... and to convey all or any part of any item of Property for such price and upon such terms and conditions as the [FCRA] may deem advisable...” Also, the FCRA’s Bylaws list at Section 7.07 that: “The Executive Director shall be the chief executive officer of the Public Trust; shall have general and active management of the business and affairs of the Public Trust; and shall see that all orders and resolutions of the Board are carried into effect.” This means that the executive director has general and active management over the sale of the FCRA’s property (as provided in the Indenture of Trust). As a result, the FCRA’s executive director is performing his official duties in overseeing and managing the sale of the FCRA’s property.

Because the FCRA is a political subdivision and the official duties of its executive director include the management of the sale of its properties, Mr. Mann and the FCRA’s action complained of by Mr. Beam are exempt from Ark. Code Ann. § 17-42-301.

**2. The FCRA’s executive director has authority to make management decisions affecting the overall policy of the FCRA’s real estate activities for property owned by the FCRA.**

Subpart (a)(1)(B) exempts officers of an entity that owns property where the officer has authority to make management decisions regarding the property, as more specifically set forth therein. As described above, the FCRA’s Bylaws empower its executive director with oversight of the general and active management of the business and affairs of the FCRA. The executive director also ensures that all resolutions are carried into effect, which would include the FCRA’s resolution regarding the handling of real estate offers. The executive director’s merit pay relates only to





properties sold by the FCRA in which the officer makes management decisions regarding solely the FCRA's interest in the property. This exemption permits Mr. Mann to receive merit compensation for actions taken by him pursuant to his official duties on behalf of the FCRA solely for property owned by the FCRA. Accordingly, this exemption applies to the conduct complained of by Mr. Beam.

- 3. Mr. Mann is employed by the FCRA primarily at a salaried rate and his actions in managing the sale of the FCRA's property are not done for or in expectation of pay resulting solely from a successful transaction.**

The final exemption that applies to the FCRA is Ark. Code Ann. § 17-42-104(a)(10). Mr. Mann is employed primarily by the FCRA as a salaried employee. His current salary under the Second Amended Contract is \$190,225.00. Since the merit pay practice was instituted in December of 2021, Mr. Mann received merit pay of \$75,898 in 2022 and \$63,462 year to date in 2023. These amounts are approximately one-third of his annual salary.

Mr. Mann's duties as executive director are defined in the FCRA's Bylaws (described herein). His actions as executive director are not done in expectation of payment resulting solely from a successful transaction. His salary is paid to him regardless of property sales, and his duties as assigned by the Board of Trustees far exceed simply selling real property. The primary business activity of the FCRA is not ownership or acquisition of real property, but instead as provided in Ark. Code Ann. § 12-63-103. Finally, Mr. Mann is employed full-time by the FCRA and does not perform services for any other entity. Thus, this third exemption also applies to the actions of Mr. Mann and the FCRA that are at issue herein.

### **Inapplicability of the Real Estate Settlement Procedures Act**

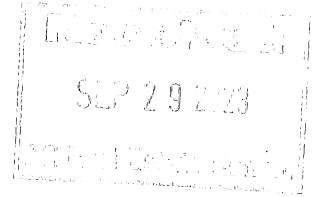
Finally, Mr. Beam complains that Mr. Mann and the FCRA have violated the Real Estate Settlement Procedures Act ("RESPA"). Mr. Mann and the FCRA are not involved in residential real estate lending. Nor do they act as closing agents or even prepare settlement statements. RESPA is wholly inapplicable and this allegation should be summarily disregarded.

### **CONCLUSION**

Since the year 2000, the FCRA is responsible for over \$2.5 billion in projected direct capital investments turning the former Fort Chaffee Army base into Chaffee Crossing. The FCRA has directly reinvested more than \$14,000,000.00 in local infrastructure improvements during that same period of time. In addition, the FCRA, primarily as a result of its property sales, is responsible for more than 3,600 local jobs in the Fort Smith region.

The FCRA was granted numerous powers under Arkansas law when it was originally conceived and recognized by the State of Arkansas. It continues to act pursuant to the statutory

September 27, 2023  
Page 7



powers afforded it. It is properly overseen by a Board of Trustees that have always acted in accordance with Arkansas law. The complaint of Mr. Beam should be dismissed.

Sincerely,

J. Dalton Person

Enclosures:

- 14 ALTA Seller's Settlement Statements
- FCRA Indenture of Trust
- FCRA Bylaws
- Meeting Minutes of the FCRA Board of Trustees for March 6, 2008, April 21, 2008, December 18, 2008, December 16, 2021, and December 15, 2022
- Prior Exclusive Right-To-Sell Agreements for the FCRA
- Arkansas Attorney General Opinion No. 2020-016
- FCRA Resolution No. 06-01-22
- FCRA Open Listing Policy Adopted September 21, 2023
- Steve Beam Purchase Documents
- Mann First Amended Employment Agreement
- Mann Second Amended Employment Agreement
- Spreadsheet of Real Estate Sales, Commissions, and Merit Pay from 2009 to current