

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

DECEMBER 15, 2009

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, December 15, 2009 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 8:30 a.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Pauline Ikawa, Daniel Jones, David Dunn, James Therrien, and Executive Director Beth Edes.

I. On motion by Commissioner Dunn, seconded by Commissioner Jones, the Commission unanimously approved the Minutes of the Commission meeting held on November 17, 2009.

II. APPOINTMENTS

8:35 a.m. Equivalency Appointment

PAUL J. ALFANO

After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones decided to approve Mr. Alfano's real estate experience as sufficient experience pursuant to RSA 331-A:10 (c) and (g).

8:40 a.m. BRUNO E. FERRARI-SCACCO appeared before the Commission to discuss additional information submitted regarding a previous legal incident requested by the Commission at its meeting. After review and discussion, the Commission, on motion by Commissioner Jones, seconded Commissioner Dunn, decided to allow Mr. Ferrari-Scacco to apply for an original salesperson's license in inactive status, and required him to submit an updated criminal record report and appear before the Commission prior to requesting an active license.

8:50 a.m. KRISTOPHER VIVIERS appeared before the Commission to discuss additional information submitted regarding a previous legal incident requested by the Commission at its meeting. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Dunn, decided to allow Mr. Viviers to apply for an original salesperson's license.

III. DISCUSSION

LISA DAVIDSON submitted a request for clarification on the following questions regarding brokerage relationship disclosures:

Request for clarification on the following information supplied by student:

One of Ms. Davidson's students stated that they took a class with another instructor and was told that they can elect to practice traditional dual agency or designated agency with each individual client they deal with and they do not have to pick one or the other for the entire office. Also, that if

a broker has two offices one could practice designated agency and the other could practice traditional dual agency.

Commission Response:

After review and discussion, the Commission stated that the firm or individual principal broker can only practice traditional dual agency or designated agency, but not both.

Question:

Is an office able to have two appointing agents, one who just appoints buyers and one who just appoints sellers therefore never putting the appointing agent into a dual agency?

Commission Response:

After review and discussion, the Commission determined that an office can have two appointing agents, pursuant to RSA 331-A:25-e, X.

Questions 1-3 below relating to Rea 701.01(a) - (c):

Rea 701.01 Brokerage Relationship Disclosure Form

- (a) A license shall provide a written brokerage relationship disclosure to the consumer at the time of first business meeting.
- (b) A licensee showing a property listed with another agency shall disclose their brokerage relationship verbally or in writing to the other party's agent prior to showing the property and in writing on the offer.
- (c) Licensees shall use the brokerage relationship disclosure form adopted by the New Hampshire Real Estate Commission.

Scenario:

I am a buyer's agent and I call you up to schedule a showing and verbally tell you that I represent the buyer. After I show them the property, the buyers decide to make an offer so I put on my offer that I represent the buyer as a buyer's agent.

1. Does this mean that I never have to give the Brokerage Relationship Disclosure Form as a buyer's agent?
2. If I do put it in writing prior to showing the property, does it have to be on the Brokerage Relationship Disclosure Form or can it be on anything? Section (a) clearly states that the brokerage relationship disclosure form is in writing, but (b) does not.
3. If my buyer does not make an offer on the property, does that mean I never have to give any disclosure?

Commission Response to Questions 1-3:

After review and discussion, the Commission stated that when dealing with a consumer you must provide a written Brokerage Relationship Disclosure Form at the first business meeting and when dealing with a party's agent you must disclose their brokerage relationship verbally or in writing and in writing on the offer, pursuant to Rea 701.01(b).

JOSHUA WITTINGER submitted a request for reinstatement of his lapsed salesperson's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Dunn approved the reinstatement of Mr. Wittinger's lapsed salesperson's license, based on good cause shown, pursuant to RSA 331-A:18, II.

MARGARET L. MCKINNON submitted a request for reinstatement of her lapsed broker's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Ikawa approved the reinstatement of Ms. Mckinnon's lapsed broker's license, based on good cause shown, pursuant to RSA 331-A:18, II.

IV. HEARING 9:30 AM

FILE NO. 2008-017 KEITH & RUTHELLEN KELLOGG & NEW HAMPSHIRE REAL ESTATE COMMISSION VS MARK G. LANGEVIN

On motion by Commissioner Therrien, seconded by Commissioner Jones, the Commission decided to reschedule the hearing to January 19, 2010, due to the failure of the Respondent to appear because of car trouble and no means of transportation. The Commission requested that the Respondent provide documentation as proof his car trouble at the hearing scheduled for January 19, 2010.

VI. OTHER BUSINESS

1. The Commission unanimously approved the following date for the January meeting:
January 19, 2010 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2008-023

Evaluator: Commissioner Jones

Determination: Should be heard, hearing to be scheduled.

(b) FILE NO. 2009-002

Evaluator: Commissioner Therrien

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission decided to offer the Respondent a Settlement Agreement requiring the completion of a 3 hour continuing education course on Property Disclosures.

(c) FILE NO. 2009-012

Evaluator: Commissioner LeRoy

Determination: Upon re-evaluation, the Commission decided to change its original decision of no violation, no hearing necessary to should be heard, hearing to be scheduled.

The above determinations were unanimously approved by the Commission.

3. ORDERS

The following Orders were approved by the Commission and are attached to the Minutes of this meeting:

FILE NO. 2009-010 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JAMES M. BOWEN

FILE NO. 2008-033 KENNETH L. SHAW, III VS JAMES M. BOWEN

VII. **ADJOURNMENT**

On a motion by Commissioner Therrien, seconded by Commissioner Ikawa, Chairman Nancy LeRoy adjourned the meeting at 11:05 a.m.

Respectfully submitted,

Pauline A. Ikawa

Pauline A. Ikawa
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2009-010

NEW HAMPSHIRE REAL ESTATE COMMISSION
V
JAMES M. BOWEN

This matter comes before the Real Estate Commission on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of NH RSA 331-A:26, II, by James M. Bowen. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. James M. Bowen (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 9/3/04 and as a real estate broker on 9/16/06, and was so licensed as an inactive principal broker at the time of the alleged violations.
2. Respondent failed to appear at the New Hampshire Real Estate Commission hearing scheduled for November 17, 2009 at 10:30 a.m. (Hearing Notice with certified mail unclaimed, and regular mail not returned).
3. In accordance with Rea 205.11, the presiding officer declared Respondent to be in default and proceeded to hear the testimony and receive the evidence offered by the party bearing the burden of proof in the case (the New Hampshire Real Estate Commission through its Investigator Ann Flanagan).
4. Respondent James Bowen has failed to comply with a disciplinary Order issued for File No. 2008-003, requiring Respondent show proof of full attendance at a

New Hampshire Real Estate Commission accredited 3-hour continuing education course about Escrow (this continuing education course to be completed by a live classroom delivery method only and not to be counted towards Respondent's continuing education requirements) due by June 1, 2009.

5. Certified receipt for Order on File No. 2008-003 sent to Respondent was signed for by Avvye Bowen on December 10, 2008.
6. The Commission Investigator sent information about an available Escrow course being offered and left phone message reminders to Respondent, but Respondent did not reply or attend the available Escrow course.
7. Certified receipt of this Complaint File No. 2009-010 sent to Respondent was signed for by Avvye Bowen on June 26, 2009; however, Respondent has not replied to Complaint File No. 2009-010.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent failed to appear at the scheduled hearing before the New Hampshire Real Estate Commission, and as a result was not present to offer any testimony to contradict the above allegations. Furthermore, Respondent has not replied to this complaint or provided any written submissions.


Respondent has failed to comply with a disciplinary Order issued for File No. 2008-003. Therefore, the Commission rules that Respondent did violate RSA 331-A:26,

II.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent's real estate license be immediately and permanently revoked, and Respondent is required to immediately surrender his wall license, pocket identification card, and the licenses of all firms, associate brokers, and salespersons under Respondent's broker license. Respondent is also required to pay a disciplinary fine in the amount of two-thousand dollars (\$2,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within six (6) months of the effective date of this Order.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The Respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner Pauline Ikawa evaluated this case and did not take part in the hearing or decision.



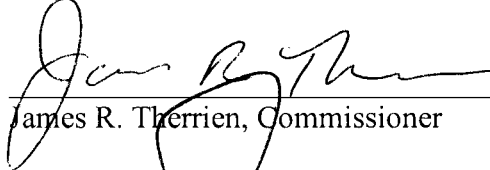
David C. Dunn, Presiding Officer

12/15/09
DATE



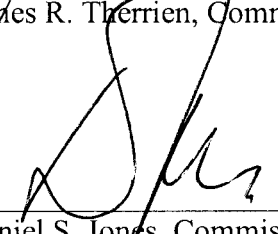
Nancy G. LeRoy, Commissioner

12/15/09
DATE



James R. Therrien, Commissioner

12/15/2009
DATE



Daniel S. Jones, Commissioner

12/15/09
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2008-033

KENNETH L. SHAW
V
JAMES M. BOWEN

This matter comes before the Real Estate Commission on the complaint of Kenneth L. Shaw, alleging violations of NH RSA 331-A:26, II, V, VII, and Rea 401.01, by James M. Bowen. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. James M. Bowen (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 9/3/04 and as a real estate broker on 9/16/06, and was so licensed and the principal broker of Bowen Realty at the time of the alleged violations.
2. Respondent failed to appear at the New Hampshire Real Estate Commission hearing scheduled for November 17, 2009 at 10:45 a.m. (Hearing Notice with certified mail unclaimed, and regular mail not returned).
3. In accordance with Rea 205.11, the presiding officer declared Respondent to be in default and proceeded to hear the testimony and receive the evidence offered by the party bearing the burden of proof in the case (Kenneth L. Shaw).
4. Kenneth L. Shaw (hereinafter referred to as Complainant) accused Respondent of forging Complainant's signature on an addendum to the P&S.
5. Complainant testified that he assumed that Respondent forged his signature but that he has not had a handwriting expert confirm this.

6. Complainant indicated that Respondent had him sign a partially filled in P&S with blanks to be filled in later because Respondent told Complainant he was in a hurry for an appointment.
7. Complainant testified that Respondent still has not returned his \$2,500 escrow deposit.
8. At the time of this hearing, Respondent's real estate license was under revocation pursuant to Order File No. 2009-010.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent failed to appear at the scheduled hearing before the New Hampshire Real Estate Commission, and as a result was not present to offer any testimony to contradict the above allegations. Furthermore, Respondent has not replied to this complaint or provided any written submissions.

Respondent had Complainant sign a partially filled in P&S with blanks to be filled in later. Therefore, the Commission rules that Respondent did violate RSA 331-A:26, II, V.

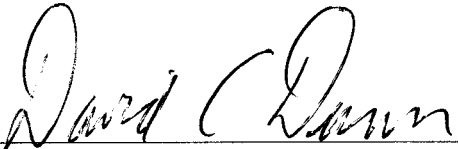
Respondent has closed his real estate office without accounting for the pending escrow deposit. Therefore, the Commission rules that Respondent did violate RSA 331-A:26, VII.

There was no evidence to indicate that Respondent failed to renew his real estate license. Therefore, the Commission rules that Respondent did not violate Rea 401.01.


In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent pay a disciplinary fine in the amount of two-thousand dollars (\$2,000) for each violation, totaling six-thousand dollars (\$6,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within six (6) months of the effective date of this Order

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The Respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

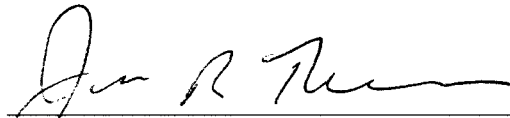
Commissioner Pauline Ikawa evaluated this case and did not take part in the hearing or decision.



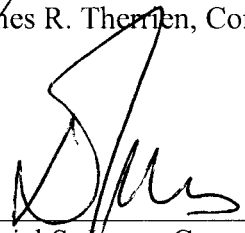
David C. Dunn, Presiding Officer 12/15/09
DATE



Nancy G. LeRoy, Commissioner 12/15/09
DATE


James R. Therrien, Commissioner

02/15/2009
DATE


Daniel S. Jones, Commissioner

12/15/09
DATE