

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

APRIL 15, 2008

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, April 15, 2008 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 8:31 a.m. by Chairman Nancy LeRoy
Present: Commissioners Nancy LeRoy, Barbara Heath, Pauline Ikawa, Daniel Jones, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. APPOINTMENTS

8:31 a.m. - Equivalency Appointments

The following Commissioners were present and voting for the following equivalency appointment: Nancy LeRoy, Barbara Heath Pauline Ikawa and Daniel Jones.

PATRICIA MARTEL

On motion by Commissioner Jones, seconded by Commissioner Heath, the Commission approved Ms. Martel's real estate experience submitted as sufficient experience pursuant to RSA 331-A:10, II (c).

COMMISSIONER STEPHEN WAS PRESENT AND VOTING AT THE MEETING AT 8:55 AM

8:55 a.m. ROBERT LEMIRE appeared before the Commission to discuss a previous legal incident prior to applying for a broker's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Jones decided to allow Mr. Lemire to apply for an original broker's license.

9:10 a.m. PHILIP R. LEMIRE appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Heath decided to allow Mr. Lemire to apply for a salesperson's license contingent upon receipt of a letter from a certified counselor within 90 days of the date of meeting.

9:30 a.m. DAVID W. LOSACANO, SR. appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. Mr. Losacano appeared before the Commission at its April 2007 meeting. At this meeting the Commission tabled its decision for 6 months and requested Mr. Losacano to supply letters from a counselor and the broker he will be associating with. After review of the counselor letter supplied to the Commission and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Stephen decided to allow Mr. Losacano to apply for his salesperson's license, contingent upon receipt of a letter from Mr. Losacano's broker notifying the Commission that he/she is aware of Mr. Losacano's previous legal incidents.

9:50 a.m. LISA BERRY appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Jones decided to allow Ms Berry to apply for her salesperson's license.

II. On motion by Commissioner Jones, seconded by Commissioner Heath, the Commission approved the Minutes of the Commission meeting held on March 18, 2008.

III. **DISCUSSION**

DENNIS ALFREY submitted a request for Commission clarification as to whether two salespersons working as a team at Pro Edge Realty can market their real estate services under the name "NSH Realty Team" or "New Style Homes Realty Team". The salespersons' business cards would also have both of their names and contact information as well as the broker's information. After review and discussion, the Commission decided that the salespersons could use the team name as long as the salespersons' names and telephone numbers are on the business card as well as firm name and the firm's telephone number and this team name is not registered as a trade name or firm at the .NH Secretary of State.

ANN FLANAGAN, the Commission's Investigator submitted a request for Commission clarification on the following:

For accounting purposes two active NH licensed real estate brokers form an LLC each owning 50% of the LLC. The LLC is registered with the NH Secretary of State's office and is in good standing. One broker has another designated broker. The other is an independent broker. The individual broker fund the daily operations of the LLC.

1. What, if anything does the NHREC require of the LLC?; and
2. Can commission checks be paid to the LLC?

After review and discussion, the Commission tabled its decision and requested Ms. Flanagan to obtain additional information from the person who submitted the request.

THOMAS SVOLEANTOPOULOS of LeaderGate Realty Group, Inc. submitted to the Commission all of his advertising materials that he is currently using for review as requested by the Commission at the March 18, 2008 hearing on File No. 2006-031 NH Real Estate Commission vs. Thomas Alexander Svoleantopoulos & Brian Moses, to ensure that Ms. Svoleantopoulos advertisement material includes his proper name, along with his telephone number. After review and discussion, the Commission decided that the advertisement material submitted was in compliance with RSA 331-A. Mr. Svoleantopoulos to be so notified.

IV. **HEARING 10:40 AM**

FILE NO. 2005-009 HARLINDA WEBB AND NEW HAMPSHIRE REAL ESTATE
COMMISSION VS WILMA WILLSON

The Commission continued the hearing based on the unavailability of a witness. The Commission scheduled the hearing for June 17, 2008. The parties to receive a hearing notice for the June 17, 2008 meeting.

V. **HEARING 11:00 AM**

FILE NO. 2005-013 NEW HAMPSHIRE REAL ESTATE COMMISSION VS WILMA WILLSON

The following persons were present at the hearing:

Commission: Commissioners Nancy LeRoy, Robert Stephen, Pauline Ikawa, Barbara Heath and Daniel Jones

Stenographer: Lynne A. Beck

Nolin, McKenna & Duffy Reporting Associates
P.O. Box 1658
Dover, NH 03821-1658

Evaluator: Former Commissioner Slattery evaluated the above matter and did not take part in the discussion or decision.

Complainant: NH Real Estate Commission through its Investigator Ann Flanagan

Attorney: Pro Se

Witnesses: None

Respondents: Wilma R. Willson

Hi-Tech Building Services, Inc.
3 Crosby Lane
Londonderry, NH 03053

Attorney: Pro Se

Witnesses: None

Decision: Pending – subject to review of transcripts and exhibits.

VI. **HEARING 12:00 PM**

FILE NO. 2007-017 JOSEPH & ROBIN FLOCKERZI VS BARBARA MARSH

The following persons were present at the hearing:

Commission: Commissioners Nancy LeRoy, Robert Stephen, Pauline Ikawa, and Barbara Heath

Stenographer: Lynne a. Beck

Nolin, McKenna & Duffy Reporting Associates
P.O. Box 1658
Dover, NH 03821-1658

Evaluator: Commissioner Jones evaluated the above matter and did not take part in the discussion or decision.

Complainants: Joseph & Robin Flockerzi 19 Roberts Road
Rochester, NH 03867

Attorney: Pro Se

Witnesses: Lynn Sweet

Respondent: Barbara Marsh

Marsh & Associates Realtors, LLC
24 Wakefield Street
Rochester, NH 03867

Attorney: Pro Se

Witnesses: None

Decision: Pending – subject to review of transcripts and exhibits.

VII. **DISCUSSION CONTINUED**

FRAN MACDONALD of Partners Realty Group submitted a request for Commission clarification as to whether it is unethical for to provide the seller an unrealistic value, such as looking back 12 months in solds to obtain the listing; and whether projected depreciation pricing is an appraisal function, not a real estate licensee function. After review and discussion, the Commission felt it is not unethical as long as the licensee is relying on accurate professional data from qualified professional sources. Ms. Flanagan to notify Ms. MacDonald of the Commission decision.

VIII. **PUBLIC MEETING ADJOURNED 1:50 PM**

The Commission adjourned the public meeting at 1:50 p.m. to consult with its legal counsel. The non-public meeting was adjourned and the public meeting was reconvened at 2:10 p.m.

IX. **DISCUSSION CONTINUED**

ANDY WERRY of NNEREN submitted the following request for Commission clarification at the August 21, 2007 Commission meeting: If a listing broker provides specific details about seller concessions (which typically have been agreed to by the parties as part of the negotiations process leading to the final terms of the sales agreement) in the listing record of the NNEREN MLS database without written authorization from the buyer and seller, could this be in conflict with licensee confidentiality requirements as per RSA 331-A:25-a, I; 331-A:25-b, I(c); 331-A:25-c, I(c); 331-A:25-d, I(e) and any other applicable commission rule? The Commission tabled its decision at the August meeting and directed the Executive Director to forward the request to the Attorney General's office for an opinion. After review by the Attorney General's office, the Commission was informed that this request requires a legal opinion and to notify Mr. Werry to consult legal counsel for a legal opinion. Mr. Werry to be so notified.

X. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the May meeting:

May 20, 2008 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2006-029

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

(b) FILE NO. 2007-012

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

(c) FILE NO. 2007-019

Evaluator: Commissioner Jones

Determination: No violation, no hearing necessary.

(d) FILE NO. 2008-001

Evaluator: Commissioner Jones

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a settlement agreement.

(e) FILE NO. 2008-002

Evaluator: Commissioner Heath

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a settlement agreement.

The above determinations were unanimously approved by the Commission.

3. ORDERS

The following Order was issued by the Commission and is attached to the Minutes of this meeting:

FILE NO. 2005-009 NEW HAMPSHIRE REAL ESTATE COMMISSION VS
ROBERT VAN LAARHOVEN AND MARGHERITA VERANI

4. ITEMS FROM THE DESK OF THE EXECUTIVE DIRECTOR

RULEMAKING – The Executive Director presented the Commission with the following proposed administrative rule change, and requested permission to enter the proposed rule change into the formal administrative rulemaking process.

Amend Rea 303.05(b) to read as follows:

(b) A minimum passing grade of 70% for both the uniform and state portions of the examination shall be obtained within a one year period from the date of the original examination in order to qualify for licensing as a real estate salesperson or broker. Candidates who fail to attain a passing grade on both portions of the examination within a one year period from the date of the original examination or after 8 examinations shall be required to complete an accredited pre-licensing course in addition to any pre-licensing course previously submitted to take the original examination and re-take the examination in its entirety.

XI. ADJOURNMENT

On motion by Commissioner Jones, seconded by Commissioner Ikawa, to adjourn the meeting. Chairman Nancy LeRoy adjourned the meeting at 2:19 p.m.

Respectfully submitted,



Barbara J. Heath
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

V.

ROBERT VAN LAARHOVEN & MARGHERITA VERANI

ORDER

FILE NO. 2005-009

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violation of NH RSA 331-A:26, XXVII, by Robert Van Laarhoven & Margherita Verani. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Robert Van Laarhoven (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 8/9/99, and a real estate broker on 1/4/01, and was so licensed and a managing broker for Prudential Verani Realty at the time of the alleged violation.
2. Margherita Verani (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 10/22/73, and a real estate broker on 1/4/77, and was so licensed and the principal broker for Prudential Verani Realty at the time of the alleged violation.
3. The original complaint was made by Harlinda Webb against Wilma Willson regarding the purchase of property located at Lot 4-25, Rockwood Terrace, Auburn, New Hampshire.
4. The NH Real Estate Commission directed its Investigator to file a parallel complaint against Wilma Willson; and initiate a complaint against Robert Van Laarhoven (managing broker), and Margherita Verani (principal broker) for

- failing to supervise Wilma Willson with respect to instructing Respondent Wilma Willson that a property could not be marketed/sold with a pending deposit.
5. Respondent Wilma Willson was the buyer-agent with Complainant as client for a property that Respondent Wilma Willson previously had listed for the seller but expired and was listed with another agency.
 6. Respondent Wilma Willson had much familiarity with the property because she had previously been the listing agent for a year.
 7. Complainant accuses Respondent Wilma Willson of misrepresenting the status of the situation with the town of Auburn, Conservation Commission, survey company, and the neighbor.
 8. Respondent Wilma Willson admits in her reply that she failed to provide copies to Complainant of the executed buyer-agency agreement and faxes of counteroffers from the seller's agent.
 9. Respondent Wilma Willson's procrastination and lack of communication seemed to result in the seller making a counteroffer to reduce the price of the property to Complainant by \$17,500. However, Respondent Wilma Willson never presented this faxed counteroffer from the seller's agent to Complainant, it expired, and the property was sold to someone else.
 10. Complainant feels that Respondent Wilma Willson's conduct in this transaction was untrustworthy and incompetent.
 11. The Commission Investigator spoke to the managing and principal brokers and asked why Respondent Wilma Willson was terminated. They indicated that it was nothing that constituted a violation, but they were tired of chasing her for

paperwork and complaints from her clients and customers about not returning calls, etc.

12. In her reply to the complaint, Respondent Wilma Willson blames her managing broker and principle broker, and the listing agent (Ofelia Polack).
13. Maggie Verani indicated that no way does her organization teach its agents that a property cannot be marketed/sold pending deposit releases or during a deposit dispute.
14. Maggie Verani was asked by the Commission Investigator if she could submit any examples of previous transactions with pending deposits.
15. Even if it were true that Verani Realty handled pending deposits as alleged by Respondent Wilma Willson, the deposit issue would have been *after-the-fact* to Respondent Wilma Willson's failure to present "in a timely manner" the counteroffer from the seller to her client.
16. The following are quotes from Respondent's Wilma Willson reply contained in a letter sent to her managing broker, Bob Van Laarhoven on January 16, 2005 when she was terminated from Prudential Verani regarding transactions in process:
 - "I feel that this past 6 weeks I have been remiss in not keeping up w/ this deal."
 - ".....but for some reason I cannot explain why I have gotten behind the 8 ball on this – just not able to get on top of it."
 - "I may be right but I am feeling more + more that I may be wrong!"
 - "Sometimes though I am not good at solving a problem I create. This is one of those times I'm afraid."
 - "I showed you the FAX from Ofelia Pollack where she says she is going to sell the property to someone else. I asked you then if this could happen if we didn't sign a release. You told me No. I felt the same way. We both felt someone could make a case for Mr. Chase having sold Rockwood to 2 buyers – the things of which lawsuits are made."
 - "I have been embarrassed about it and have found it hard to explain this predicament to the Webb's – primarily because I like them & wanted/want the

property for them for their dream home. It was not my intent to handle this badly but, in hind sight I feel I did.”

17. The following are quotes from Respondent’s Wilma Willson’s reply contained in her narrative response to the complaint:

“As for the breakdown in contact with Harley toward the end, she is correct. I guess I was just burned out on this thing.”

“..... I was remiss in not keeping Harley apprised in a timely manner. It had been a year of ups and downs, and I was just running out of steam, I guess. I have no defense for this omission on my part.”

“To my knowledge, I provided Harley with everything she asked, except the FAX from Ofelia.”

“..... the seller’s agent forced me to do double-duty, and frankly, take more time than I had then. I did not realize all of this when I was in the throes of trying to satisfy my client, Harley and the aged seller Herb Chase. Hindsight is 20/20.”

“This was an aberration. In hindsight, I am/was guilty of not communicating with Harley in a timely manner.”

“As for her not getting the property, I was operating, as I stated above, on the theory that without a release, there can be no sale to another buyer. That is and has been Prudential Verani’s position during the seven years I was with them.”

“To this day, there is still a \$2,500 deposit on a property in Auburn that has not had the money released to my prospective buyer because the seller disappeared and Maggie Verani has taken the position that without a signed release by both buyer and seller, there can be no return or sale. Because I felt bad for the buyer, I gave them back their deposit figuring that someday I will be reimbursed from Verani. But that goes to the heart of why I REALLY believed that no sale could take place without my buyer and the seller BOTH signing a release. Apparently, both Maggie and I were wrong. Bob, my manager was, too.”

“I did not fax the offer to Harley. I only discussed it with her on the phone but she wanted no part of it as I recall.”

18. Peg Walther, managing broker at the Londonderry branch office, testified about the extensive training provided for agents at Prudential Verani Realty, and that none of this training was inconsistent with the regulations requiring presenting offers even when there was a deposit pending for a property.
19. Deb Gallant, training coordinator, testified that training at Prudential Verani Realty regarding presenting offers was consistent with the law.

20. Robert Van Laarhoven testified that Wilma Willson was experienced and she was a good agent when she had an assistant, but without an assistant she seemed to become overwhelmed and neglected to follow through with obligations as an agent.
21. Robert Van Laarhoven testified that he did not know there were problems with this transaction until Harlinda Webb notified him about the problems with Wilma Willson after the property had been sold to someone else.
22. Robert Van Laarhoven testified that he never told Wilma Willson there was an office policy that agents did not have to present offers when there was a deposit on a property.
23. Margherita Verani testified that their office policy was consistent with the law requiring all offers be submitted until the property closes, and that they never told agents that offers did not have to be presented for properties with pending deposits.
24. Margherita Verani testified that their organization prides itself on customer service, and though Wilma Willson was not terminated for specifically violating any laws, after unsuccessful attempts at changing her work habits she was terminated for her lack of attentiveness to customer service details they expect from their agents.
25. Respondents' attorney John Bisson indicated in his closing statement that if Prudential Verani Realty was wrongly training its agents about the requirements of presenting offers, and considering the sheer volume of transactions and absence of evidence to substantiate the allegations, proving a negative in this case

substantiates Respondents' claim that in no way do they train their agent to not present offers when a deposit is pending.

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

The Commission concurs with Respondents that there is no evidence to indicate that Respondents trained their agents in a manner inconsistent with regulations regarding presenting offers on properties with pending deposits, nor did the Commission find any evidence that Respondents failed to supervise Wilma Willson in this transaction. Therefore, the Commission rules that Respondents did not violate NH RSA 331-A:26, XXVII.

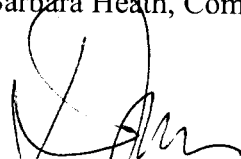
Former Commissioner Arthur Slattery evaluated this case and did not participate in the hearing or decision.



Nancy LeRoy, Chairperson 4/15/08
DATE



Barbara Heath, Commissioner 4/15/08
DATE



Daniel Jones, Commissioner 4/15/08
DATE