

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

**APRIL 19, 2007**

A meeting of the New Hampshire Real Estate Commission was held on Thursday, April 19, 2007 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 8:35 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Nancy LeRoy, Barbara Heath, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. On motion by Commissioner Slattery, seconded by Commissioner Heath, the Commission approved the Minutes of the Commission meeting held on March 22, 2007.

### II. APPOINTMENTS

Equivalency Appointments - None

8:35 a.m. RICHARD M. CRAGIN, JR. appeared before the Commission to discuss a previous legal incident prior to the renewal of his salesperson's license. Mr. Cragin's principal broker, Catherine Tucker appeared on his behalf and stated to the Commission that she is aware of his previous legal incident and will take responsibility for his actions as a real estate salesperson. Mr. Cragin presented to the Commission a letter from his probation officer and copies of letters from programs of rehabilitation completed. After review and discussion, the Commission, on motion by Commissioner Heath, seconded by Commissioner LeRoy, decided to allow Mr. Cragin to renew his salesperson's license based on the documentation received from Mr. Cragin; his principal broker's assurance that she will oversee his activities as a real estate salesperson; and that if Mr. Cragin should apply to work for another principal broker in the future, he shall notify that broker of his previous legal incident. Mr. Cragin volunteered that should he consume any alcohol he would notify the Commission and would appear before the Commission to discuss the matter of his salesperson's license.

8:55 a.m. DENNIS GAGNON 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 LeRoy, seconded by Commissioner Heath, decided to allow Mr. Gagnon to apply for his original salesperson's license, on the condition that he complete a new application for a salesperson's license and complete question #8 with a "yes" answer.

9:05 a.m. CHARLES GRAY 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 Slattery, seconded by Commissioner LeRoy, decided to allow Mr. Gray to apply for his salesperson's license, based on his extraordinary circumstances due to a medical condition and his inability to practice his trade, and on the condition that Mr. Gray,

upon release from probation, submit to the Commission a copy of his release to ensure that he has complied with his probationary requirements.

9:25 a.m. HEIDI AUCOIN appeared before the Commission to discuss her real estate transaction experience and request that her experience be considered as equivalent experience to qualify for a broker license. After review and discussion, it was determined that Ms. Aucoin would have sufficient transactions to meet the transaction requirement under RSA 331-A:10 prior to applying for a license and did not need to request the Commission to approve her current transactions as equivalent experience, pursuant to RSA 331-A:10(g).

9:30 a.m. JOHN HUTCHINS requested to appear before the Commission to discuss his real estate transaction experience and requested that his experience be considered as equivalent experience to qualify for a broker license. Mr. Hutchins did not appear before the Commission, but Ms. Aucoin explained that Mr. Hutchins' situation was the same as hers and that he would have sufficient transactional experience prior to applying for an original broker's license, and therefore would not require Commission approval of his current transactions as equivalent experience, pursuant to RSA 331-A:10(g).

III. **APPOINTMENT OF COMMISSION CHAIRMAN** Commissioner Stephen acknowledged with regret, the resignation of Commissioner Slattery, effective May 1, 2007, as a real estate Commissioner and Commission Chairman. The Commission, on motion by Commissioner Stephen, seconded by Commissioner Heath, appointed Commissioner LeRoy as the Commission Chairman. Commissioner LeRoy sat as Chairman for the remainder of the meeting.

IV. **ADJOURNMENT OF PUBLIC MEETING FOR CONSULTATION WITH LEGAL COUNSEL PURSUANT TO RSA 91-A:2(c)**  
Motion by Commissioner Slattery, seconded by Commissioner Stephen, to adjourn the meeting. Commissioner LeRoy adjourned the meeting at 9:40 a.m.

V. **COMMISSION MEETING RECONVENED**  
Motion by Commissioner Slattery, seconded by Commissioner Stephen, to adjourn consultation with legal counsel and reconvene the Commission meeting. Commissioner LeRoy reconvened the meeting at 10:25 a.m.

VI. **PETITION FOR DECLARATORY RULING**  
Assistant Attorney General David M. Hiltz of the NH Department of Justice submitted to the Commission a Petition for Declaratory Ruling as to the applicability of RSA 331-A to [www.ZeroBrokerFees.com](http://www.ZeroBrokerFees.com). Attorney Hiltz appeared before the Commission to make a presentation on his request for a declaratory ruling. He explained that SkyNet Corporation, the corporation which controls the ZeroBrokerFees website, states in its suit against the New Hampshire Real Estate Commissioners and Attorney General, that SkyNet, as controller of ZeroBrokerFees.com is subject to the Real Estate Practice Act and that their 1<sup>st</sup> Amendment Rights are being violated. Attorney

Hilts explained that there are 3 elements to the petition. The first is whether ZeroBrokerFees.com "is acting for another" under the definition of broker under RSA 331-A:2, III, which states that "a broker is any person acting for another". The second element under the definition of broker is whether ZeroBrokerFees is acting for another "on commission or for other compensation", and the third element deals with the specific actions that RSA 331-A:2, III specifies, which SkyNet Corporation admits in its suit, that they engage in three of the listed activities through ZeroBrokerFees.com. They admit that they list, offer, attempt or agree to list real estate for sale, lease or exchange (RSA 331-A:2, III (d)); assist or direct in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate (RSA 331-A:2, III, (h)); and engage in the business of charging an advance fee in connection with any contract for listing in a publication or database (RSA 331-A:2, III, (j)).

The Petition for Declaratory Ruling requested rulings on the following questions regarding the activities of Skynet Corporation through its website, ZeroBrokerFees.com:

1. Based upon ZeroBrokerFees.com's description of itself and its business practices in the Complaint, and upon review of its website at [www.ZeroBrokerFees.com](http://www.ZeroBrokerFees.com), is it or any other business with the same or substantially similar characteristics subject to licensing and/or other regulatory requirements set forth in the New Hampshire Real Estate Practice Act, codified in RSA Chapter 331-A?

Based upon the facts that were presented by Skynet Corporation of the activities conducted through ZeroBrokerFees.com (ZBF) in the complaint of ZeroBrokerFees.com v. Arthur Slattery, et al, the Commission ruled that ZeroBrokerFees.com would not require a real estate broker license in New Hampshire based on the facts presented in the Petition to the Commission that ZBF receives only an upfront fixed fee for advertisement only, and does not receive any commission or any other form of compensation. This decision is based on the fact that Skynet Corporation states that they do not hold themselves out as brokers or agents for sellers or buyers with respect to the real estate the company advertises; that neither ZBF nor its employees charge or receive a commission when properties are successfully sold; that ZBF is an online classified advertising and information service; and the company charges a flat fee to property owners who wish to advertise their property on ZBF.

2. Is ZeroBrokerFees.com (ZBF) or any other business with the same or substantially similar characteristics a "newspaper or other publication of general circulation" as those terms are used in the definition of "Advance Fees" in RSA 331-A:2, I?

The Commission ruled, based on the statements and decisions made on question #1 above and based on a past ruling made on a request for a Commission interpretation at the August 22, 2006 Commission meeting, and that the internet falls under the definition of "other publication of general circulation" and would exempt ZBF from licensure under RSA 331-A.

3. Does ZeroBrokerFees.com or any other business with the same or substantially similar characteristics "act for another" for the purposes of RSA 331-A:2, III?

Based on the facts stated in the Petition that are referenced in the Commission's decision on question #1 and the following facts stated in the Petition: "Neither ZBF nor any of its officers or employees purport to exercise judgment on behalf of any particular individual whose circumstances the company is directly acquainted", and "Sellers and buyers retain their own legal counsel, work and negotiate their own sale themselves", the Commission found no evidence in the petition that ZBF provides, advice, direction or counsel to the sellers or buyers on this advertising and information service, and therefore would not fall under the element of the definition of broker, "act for another".

4. Do any of the practices described above or that are apparent in a review of the Complaint or ZBF's website indicate that ZBF acts on the promise of receiving, and then receives, a commission or other compensation, other than their advertising fee?

Based on the facts stipulated in the decision in the ruling to question #1 and that ZBF states that they only receive an up-front fixed advertisement fee and do not receive any commissions or other compensation, the Commission rules that the activities of ZBF do not fall under the definition of brokerage activity under RSA 331-A.

COMMISSIONER IKAWA ARRIVED AT THE MEETING AT 11:05 AM

VII. **COMMISSION MINUTES**

On motion by Commission Slattery, seconded by Commissioner Ikawa, the Commission approved the Minutes of the Commission meeting held on March 30, 2007.

COMMISSIONER SLATTERY WAS NOT PRESENT FOR THE REMAINDER OF THE COMMISSION MEETING.

VIII. **HEARING 11:20 AM**

FILE NO. 2003-05-04 RICK GILBERT, JOHN MCQUADE & NEW HAMPSHIRE REAL ESTATE COMMISSION VS SCOTT GODZYK

The following persons were present at the hearing:

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

Stenographer: Marcia B. Vadala

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

Evaluator: Commissioner Slattery evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Appearances:

Complainants: Richard Gilbert	724 East Industrial Park Drive Manchester, NH 03109
&	
John McQuade	271 Merritt Nyberg Lane Manchester, NH 03104
&	
Ann Flanagan, Investigator of the NH Real Estate Commission	

Attorney for Richard Gilbert & John McQuade: Gary L. Casinghino, Esq.	Casinghino Law Office, P.L.L.C. The White Bridge Building 180 Bridge Street Manchester, NH 03104-4908
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Witnesses: None

Respondent: Scott Godzyk	Godzyk Group Real Estate P.O. Box 4783 Manchester, NH 03108
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Attorney: Pro Se

Witnesses: Gail Godzyk

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

IX. **HEARING 1:20 PM**  
FILE NO. 2006-017 CARLOS AND KATHERINE MOREIRA VS DALE S. ROBINSON

The following persons were present at the hearing:

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

Stenographer: Marcia B. Vadala

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

Evaluator: Commissioner Slattery evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Appearances:

Complainants: Carlos Moreira

P.O. Box 4078  
Concord, NH 03302

Attorney: Carley McWhirk, Esq.

Hebert & Uchida  
2 Pillsbury Street, Suite 502  
Concord, NH 03301-3502

Witnesses: None

Respondent: Dale S. Robinson

373 4<sup>th</sup> Range Road  
Pembroke, NH 03275

Attorney: R. James Steiner, Esq.

D'Amante Couser Steiner Pellerin, P.A.  
Nine Triangle Park Drive  
P.O. Box 2650  
Concord, NH 03302-2650

Witnesses: None

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

X. **APPOINTMENTS CONTINUED**

3:45 p.m. BRIAN KUNKEL 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 Ikawa, decided to allow Mr. Kunkel to apply for his original salesperson's license.

3:50 p.m. CARL MERCIER appeared before the Commission to discuss a previous legal incident prior to applying for an original broker's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Heath, decided to allow Mr. Mercier to apply for his original broker's license.

3:55 p.m. WILLIAM M. RANNEY, JR. 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 decided to table its decision and requested Mr. Ranney to obtain a letter from his probation officer that states that he is no longer on probation; police reports; and a status of restitution and submit the documents to the Commission. Mr. Ranney shall request a re-appearance before the Commission once he submits the required documentation.

4:10 p.m. CATHERINE LAMBIE 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 Ikawa, seconded by Commissioner Stephen, decided to allow Ms. Lambie to apply for her original salesperson's license.

4:15 p.m. DAVID LOSOCANO, SR. appeared before the Commission to discuss his previous legal incidents prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded Commissioner Ikawa, tabled its decision for 6 months and requested a letter from a broker and letters from counselors from Mr. Losocano. Mr. Losocano to submit the requested documentation to the Commission and request a re-appearance before the Commission any time after the 6 month period passes and after all documentation requested is submitted.

COMMISSIONER STEPHEN WAS NOT PRESENT FOR THE REMAINDER OF THE MEETING.

4:35 p.m. KALIM DESIR appeared before the Commission to request approval as an accredited real estate instructor to teach pre-licensing education, pursuant to Rea 302.01. After review and discussion, the Commission decided to table its decision, pending review of course teaching information by Commissioner LeRoy and Fran West, the Education Program Assistant.

5:00 p.m. MALCOLM FULFORD 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 Heath, seconded by Commissioner Ikawa, decided to allow Mr. Fulford to apply for his original salesperson's license.

5:05 NON-PUBLIC SESSION PURSUANT TO RSA 91-A:3, II(c)

Motion by Commissioner Ikawa, seconded by Commissioner Heath to adjourn the public meeting and go into a non-public session, pursuant to RSA 91-A:3, II(c). Commissioner LeRoy adjourned the meeting and opened the non-public session at 5:10 p.m.

5:25 NON-PUBLIC SESSION ADJOURNED AND PUBLIC MEETING RECONVENED

Motion by Commissioner Heath, seconded by Commissioner Ikawa, to adjourn the non-public session and reconvene the public meeting. Commissioner LeRoy adjourned the non-public session and reconvened the public meeting.

XI. **DISCUSSION**

AGENCY & NON-AGENCY DISCLOSURE FORM – the Commission, after review and discussion of the Agency & Non-Agency Disclosure Form submitted by the Commission appointed Agency Committee approved the form with minor changes as the Commission adopted form. Real estate licensees to be so notified.

XII. **OTHER BUSINESS**

1. The Commission did not approve a date for the next regularly scheduled meeting.
2. CASE EVALUATIONS - NONE

XIII. **ADJOURNMENT**

Motion by Commissioner Heath, seconded by Commissioner Ikawa, to adjourn the meeting. Commissioner LeRoy adjourned the meeting at 6:10 p.m.

Respectfully submitted,



Robert S. Stephen  
Acting Clerk