

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

AUGUST 18, 2009

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, August 18, 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, Executive Director Beth Edes, and Investigator Ann Flanagan.

- I. Chairman LeRoy announced the passing of Former Commissioner Barbara Heath and emphasized the dedication that Former Commissioner Heath demonstrated while serving her terms on the Commission and how much she will be missed.
- II. On motion by Commissioner Dunn, seconded by Commissioner Ikawa, the Commission unanimously approved the Minutes of the Commission meeting held on July 21, 2009.

III. APPOINTMENTS

9:10 a.m. WILLIAM FRISBIE appeared before the Commission to request reinstatement of his lapsed license pursuant to RSA 331-A:18, II. After review and discussion, the Commission decided to allow Mr. Frisbie's broker license to be reinstated, contingent upon receipt of the broker renewal fee and the late renewal fee by August 21, 2009.

9:17 a.m. BRENDA LYON appeared before the Commission to discuss a disciplinary action issued to her by the Maine Real Estate Commission for disclosing on her Maine broker renewal that she completed the required continuing education hours, and when requested to submit continuing education affidavits as proof of compliance she failed to produce the affidavits. Ms. Lyon disclosed her Maine disciplinary action on her renewal for her NH broker license and stated that she found proof of 15 hours of the continuing education completed for her Maine renewal. After review and discussion, the Commission found that Ms. Lyon did not have proof of 15 hours of Maine accredited continuing education. The Commission requested Ms. Lyon to submit evidence of the completed continuing education she stated she completed for her Maine renewal prior to the next scheduled Commission meeting on September 15, 2009.

11:30 a.m. NH REPRESENTATIVES DAVID KIDDER AND SUZANNE GOTTLING appeared before the Commission on behalf of one of their constituents to discuss possible legislation that would permit brokers to pay agents commissions or other compensation through an unlicensed firm. The Commission explained to the representatives that the purpose of RSA 331-A is to regulate those who are receiving commissions or other compensation for brokerage activity. If legislation is passed to permit brokers to pay agents commissions or other compensation through an unlicensed firm, the legislation would be contrary to the purpose of the statute.

IV. **DISCUSSION**

PAUL GRIFFIN of the NH Association of Realtors submitted the newly revised Realtor listing agreement forms for review by the Commission. After review and discussion, the Commission, on motion by Commissioner Therrien, seconded by Commissioner Dunn, decided that the listing agreement forms were in compliance with RSA 331-A and administrative rules Rea 100-700.

ANN FLANAGAN, the Commission's Investigator submitted a request for Commission clarification as to whether a real estate agency has to get a new listing with signatures when the office changes part or the entire firm name, or if the agency is sold to another real estate agency. After review and discussion, the Commission directed the Executive Director to forward the inquiry to the Attorney General's office.

ANTONELLA BLISS of Coldwell Banker Wright Realty submitted a request for clarification regarding Designated Agency. Ms. Bliss stated that her principal broker appointed her as the appointing agent. She is an active agent within the office, listing and selling real estate. She understands that the law requires the principal broker to designate another broker to appoint her as the designated agent of the buyer or seller she wishes to do business with. She has been informed that as a result of the fact that she is a competing appointing agent that buyer clients of other agents within her office would not be able to purchase her listings and similarly, would not be able to sell any of the in house listings to her buyer clients under designated agency. After review and discussion, the Commission decided to table and further review this inquiry.

APPOINTMENT CENTERS – The Commission continued discussion on the issue of whether appointment centers are considered branch offices which was tabled at the January 30, 2009 Commission meeting. Upon further investigation, responses received from several other states that considered appointment centers, and the fact that appointment centers have the appearance and function as real estate offices, the Commission decided to uphold its original decision made at the November 18, 2008 Commission meeting, that under RSA 331-A appointment centers are required to be licensed as branch offices and require a licensed managing broker at each office. Margherita Verani to be so notified.

ACCREDITATION OF PRIMARY AND SECONDARY COURSE PROVIDERS – Fran West, the Commission's Education Program Assistant requested a clarification as to whether the primary course providers are required to be accredited as well as the secondary course providers, specifically when the course delivery is an on-line course. The courses are designed and delivered by the primary course provider and the payment for the course is first filtered through the primary course provider and a percentage is paid to the secondary provider. After review and discussion, the Commission decided that both primary and secondary course providers are required to be accredited in order to effectively regulate the providers responsible for course delivery and course payments.

V. **HEARING 10:45 AM**

FILE NO. 2006-004 NEW HAMPSHIRE REAL ESTATE COMMISSION VS SHANNON M. MCCARTHY

The following persons were present at the hearing:

Commission: Commissioners Pauline Ikawa, David Dunn, James Therrien and Daniel Jones

Stenographer: Lynn A. Beck

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

Evaluator: Commissioner LeRoy evaluated the above matter and did not take part in any of the discussions of this matter.

Complainant: The Commission's Investigator Ann Flanagan on behalf of the Commission

Attorney: Pro Se

Witnesses: Joseph Kelly Levasseur
Greg Barrett

Respondent: Shannon McCarthy

Attorney: Pro Se

Witnesses: None

VI. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the September meeting:
September 15, 2009 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2008-036

Evaluator: Commissioner LeRoy

Determination: Upon re-evaluation, the Commission upheld its original determination of no violation, no hearing necessary.

The above determination was unanimously approved by the Commission.

3. SETTLEMENT AGREEMENTS

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

FILE NO. 2009-006 NEW HAMPSHIRE ESTATE COMMISSION VS BRYAN L. O'NEIL

FILE NO. 2007-007 RANDAL HNIZDOR VS LINDA ROSENTHALL, MARILYN KIDDER,
STEVEN SIDMORE AND JOHN LINEHAN (Settlement Agreement with Steven Sidmore
only)

VII. ADJOURNMENT

On motion by Commissioner Jones, seconded by Commissioner Therrien, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 12:15 p.m.

Respectfully submitted,



Pauline A. Ikawa
Clerk

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2009-006 New Hampshire Real Estate Commission v Bryan L. O'Neil
Allegations: RSA 331-A:26, XXXI; Rea 404.04

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission ("Commission") and Bryan L. O'Neil ("the Licensee" or "the Respondent"), a real estate broker currently licensed by the Commission until April 8, 2011, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent Bryan O'Neil is the principal broker of Accent Realty. Respondent had numerous unauthorized listings on Craigslist without the knowledge and written consent of the owner or owner's authorized agent or on terms other than those authorized by the owner or owner's authorized agent (RSA 331-A:26, XXXI), and with no listing contracts (Rea 404.04). Respondent's listings of these properties were not through an authorized direct link, which has resulted in some inaccurate information such as price, year built, square footage, bathrooms, and

condo fees. The Commission Investigator spoke to Respondent about this approximately 3 months prior to filing this complaint due to concerns received from other real estate agents, and Respondent indicated that he would comply with the regulations regarding the marketing of property but the subsequent listings indicated otherwise. Respondent indicates in reply to the formal complaint that he will comply with the regulations.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall show proof of full attendance (not to be counted towards Respondent's continuing education requirements) at a New Hampshire Real Estate Commission accredited 3-hour continuing education course on Course #E1243 Real Estate Advertising Compliance and the Law, within four (4) months of the effective date of this Agreement; this continuing education course is to be completed by live classroom delivery method only. Respondent shall also pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within sixty (60) days of the effective date of this Agreement.
4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement

may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.

6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her/him other than those terms and conditions expressly stated herein.
7. Respondent understands that her/his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
8. Respondent has had the opportunity to seek and obtain the advice of an attorney of her/his choosing in connection with her/his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced her/his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that she/he has read this document titled Settlement Agreement. Respondent understands that she/he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she/he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her/his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and

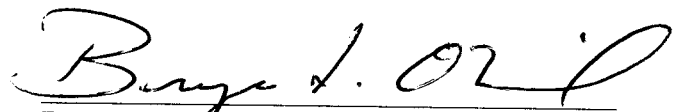
dimensions of these rights. Respondent understands that by signing this Agreement, she/he waives these rights as they pertain to the misconduct described herein.

11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

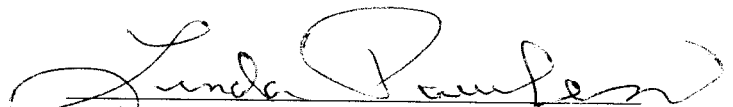
For the Respondent

I, Bryan L. O'Neil, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

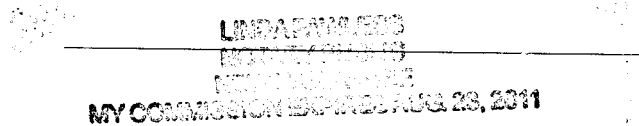
Dated: 8/11, 2009


Bryan L. O'Neil
Respondent

On this 11 day of August A.D. 2009
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.

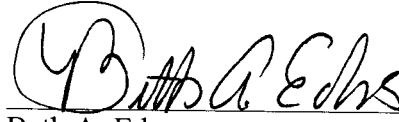

Justice of the Peace/Notary Public

My commission expires:


LINDA PAULSEN
NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 20, 2011

For the Commission

Dated: August 18, 2009

A handwritten signature in cursive script, appearing to read "Beth A. Edes". The signature is written over a horizontal line.

Beth A. Edes
Executive Director
of the NH Real Estate Commission

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2007-007 Randal Hnizdor vs. Linda Rosenthal, Marilyn Kidder, Steven Sidmore and John Linehan
Allegations: RSA 331-A:26, XXIX

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission (“Commission”) and Steven R. Sidmore (“the Licensee” or “the Respondent”), a real estate salesperson currently licensed by the Commission until July 20, 2009, when his license expired, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent admits that he was a licensed salesperson on the date of the incident; that he was not involved in the representation of either the buyer or seller in the underlying transaction; and that his actions were unprofessional as defined by RSA 331-A:26, XXIX.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.

3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall attend a New Hampshire Real Estate Commission accredited 3-hour course on Ethics through classroom delivery method only, not to be counted towards Respondent's continuing education requirements for renewal of license, within six (6) months of the effective date of this Agreement; and Respondent shall pay a disciplinary fine in the amount of five-hundred dollars (\$500) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within three (3) months of the effective date of this Agreement.
4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations against Steven Sidmore in File No. 2007-007, provided, however, that this Agreement may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
7. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.

8. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she/he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this Agreement, he waives these rights as they pertain to the misconduct described herein.
11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

I, Steven R. Sidmore, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress,

and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

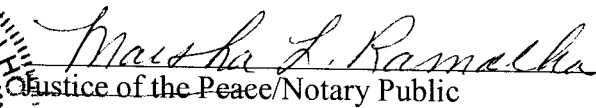
Dated: AUGUST 17, 2009, 2009



Respondent

On this 17th day of August A.D. 2009 personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.



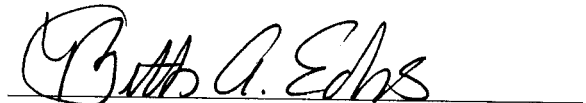

Justice of the Peace/Notary Public

My commission expires:

10/21/2010

For the Commission

Dated: August 18, 2009


Beth A. Edes
Executive Director
of the NH Real Estate Commission