

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

AUGUST 21, 2007

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, August 21, 2007 at 1:30 p.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 1:31 p.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Pauline Ikawa, Barbara Heath, Education Program Assistant Fran West, and Investigator Ann Flanagan.

### I. APPOINTMENTS

Equivalency Appointments

#### CANDIDATE

#### DETERMINATION

The following candidate was interviewed by Commissioners Nancy LeRoy, Barbara Heath and Pauline Ikawa:

DENISE TROMBLY

On motion by Commissioner Heath, seconded by Commissioner Ikawa, the Commission approved Ms. Trombly's experience as equivalent experience required for a broker's license.

COMMISSIONER STEPHEN was present and voting at 1:40 p.m.

The following candidates were interviewed by Commissioners Nancy LeRoy, Barbara Heath, Pauline Ikawa, and Robert Stephen:

AMBER BRENT

On motion by Commissioner Heath, seconded by Commissioner Ikawa, the Commission denied Ms. Brent's experience as equivalent experience required for a broker's license.

GWEN TIMBAS

On motion by Commissioner Heath, seconded by Commissioner Stephen, the Commission approved Ms. Timbas' experience as equivalent experience required for a broker's license.

2:05 p.m. JONATHAN FELCH 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 tabled its decision and instructed Mr. Felch to obtain a letter from a certified counselor, his probationary officer or from Mr. Bouchard that states that he is not a threat to the community due to his weapons charge or from substance abuse, as well as submit his criminal record report to the Commission. Once he submits all requested documentation to the Commission, he can request to re-appear before the Commission for a decision as to whether he can apply for an original salesperson's license.

2:21 p.m. NICHOLAS LEBOEUF 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 tabled its decision until Mr. Leboeuf can submit proof of completion of the court required DWI program. Once Mr. Leboeuf submits proof of completion to the Commission, he can request to re-appear before the Commission for a decision as to whether he can apply for an original salesperson's license.

2:27 p.m. The Commission held a conference call with Attorney John Arthur regarding a request for Commission interpretation of RSA 331-A:2, IX regarding licensing requirements involving timeshares, and Commission requested clarification about the points system. Attorney Arthur explained to the Commission that when a consumer pays money into the program they receive a contract that entitles them to use a certain number of points. These points relate to all of the condominium units or intervals that are in the VI Program at resorts across the country. When a condominium is purchased and put into the program it is given a yearly point value and the contracts that the company sells to individuals have a yearly point value. These individuals can use these points yearly to reserve a certain amount of time at a resort. The contract that is signed by the individual is a P & S Agreement which states the points purchased and that individual has a personal property interest. The contract is not recorded. The points that the individual purchases do not relate to any particular property. The individual doesn't have any interest in any of the real estate. All of the units and intervals are in a trust and the individuals don't have an interest in anything other than their contract, which gives them the right to use the properties. Whenever a resort property is acquired, a trust is filed and the real estate is conveyed from the developer. The beneficiaries of the trust are the owners of the points. The Commission questioned whether this type of activity falls under the definition of real estate, pursuant to RSA 331-A:2, IX. Attorney Arthur felt that the company didn't fall under the definition of real estate, because they don't sell an interest in the actual real estate like most timeshares. Attorney Arthur referred to two documents submitted to Investigator Ann Flanagan, a Certificate of Registration and Application for Comprehensive Registration. The Commission was not provided with these documents and decided to table its decision until they review the documents. The Commission directed the Investigator to provide them with the documents.

2:50 p.m. KATHY ROOSA, the NH Association of Realtors Designated Agency Task Force Chair appeared before the Commission to present the findings of the task force regarding Designated Agency. Kathy Roosa, Charline Mason and Bonnie Geuvin presented the Commission with a summary of the findings from the NHAR Designated Agency Task Force. Kathy Roosa stressed to the Commission that Designated Agency wouldn't change the practice that currently exists. It wouldn't change the traditional agency relationships of seller agency, buyer agency or dual agency and wouldn't change the fiduciary obligations in these relationships. Ms. Roosa explained that dual agency would not be eliminated, but could be minimized by Designated Agency. She stressed that this type of agency will benefit the consumer. Ms. Roosa explained that the Task Force adequately addressed confidentiality of communications within a firm when Designated Agency is practiced.

Chris Nicholopoulos of NHAR was present and stated that legislation was being drafted and when completed, the Commission will be provided with a copy of the legislative language for review. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Heath, approved the concept of Designated Agency as presented.

2:15 COMMISSIONER STEPHEN was not present for the remainder of the meeting.

II. **DISCUSSION**

FILE NO. 2005-020 Attorney Thomas Walker submitted a request for withdrawal of Complaint File No. 2005-020 on behalf of the Complainant due to a settlement between the parties of the complaint. After review and discussion, the Commission unanimously voted to accept the request to withdraw. The parties to the complaint to be so notified.

ANDY WERRY of NNEREN submitted the following request for Commission clarification: 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 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 on this request and directed the Executive Director to request an opinion from the Attorney General's office.

FRAN WEST, the Commission's Education Program Assistant provided a report to the Commission regarding information about one class of the Rob Calkins School of Real Estate's accredited pre-licensing course that she had monitored. The course was being taught by Gary Best, who had not been approved as a pre-licensing instructor at the June commission meeting, and neither of the two approved school instructors was present to supervise Mr. Best's teaching. The class was 30 minutes shorter than the syllabus indicated it would be and some of the information taught was not correct. The recommendation of Ms. West, based on observations of the class taught by Gary Best was that Mr. Best not be approved as a pre-licensing instructor at this time. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Heath, denied Mr. Best's request for approval as a pre-licensing instructor at this time and instructed Ms. West to contact Mr. Calkins and advise him that these issues could put his school's accreditation in jeopardy of revocation.

RICK MCENTEE submitted a request for clarification on the following scenario and questions:

In an effort to encourage showings of our properties, I will have 12 listing agents from different agencies who are willing to contribute to a fund from which one prize will be awarded. There would be a drawing of one name from a hat from all the agents who had shown any of our 12 properties within the month of September. The agents doing the showings will not be contributing

anything or buying anything, unless it happens to be one of the sponsoring agents showing one of the other 11 agents' listings, in which case they will have already contributed for their own listing.

Mr. McEntee would like to know whether there is any problem with holding this kind of contest or having a prize drawn and awarded to an agent for doing a showing;

Whether he can hold the contributions and disburse the prize as an associate broker or whether it needs to be held and disbursed from his principal broker; and

Whether it can go directly to the agent (as a prize from an open house would normally do) or whether (perhaps because of the dollar value) it needs to be disbursed through their principal broker.

After review and discussion, the Commission directed Ann Flanagan, the Commission's Investigator to suggest to Mr. McEntee to check the laws on conducting drawings.

III. On motion by Commissioner Ikawa, seconded by Commissioner Heath, the Commission unanimously approved the Minutes of the Commission meeting held on July 26, 2007.

IV. **OTHER BUSINESS**

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

September 26, 2007 at 8:30 a.m.

2. CASE EVALUATIONS

FILE NO. 2007-003

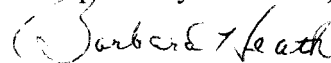
Evaluator: Commissioner Heath

Determination: No violation, should not be heard.

V. **ADJOURNMENT**

Motion by Commissioner Ikawa, seconded by Commissioner Heath, to adjourn the meeting. Commissioner LeRoy adjourned the meeting at 3:59 p.m.

Respectfully submitted,



Barbara Heath  
Clerk