

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

AUGUST 22, 2006

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, August 22, 2006 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:33 a.m. by Chairman Arthur Slattery

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

I. The Commission tabled the June 20, 2006 Minutes and the July 18, 2006 Minutes due to a lack of a quorum of members present to approve or disapprove.

II. APPOINTMENTS

Equivalency Appointments

The following candidates were interviewed by Commissioners Arthur Slattery, Robert Stephen, and Barbara Heath:

CANDIDATE

DETERMINATION

LINDA E. TOOMEY

APPROVED

On motion by Commissioner Slattery, seconded by Commissioner Heath, the Commission approved Ms. Toomey's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

BRIAN RIEF

APPROVED

On motion by Commissioner Heath, seconded by Commissioner Stephen, the Commission approved Mr. Rief's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

8:50 a.m. CHRISTIAN FLETCHER appeared before the Commission to further discuss a previous legal incident prior to renewing his salesperson's license. Mr. Fletcher appeared before the Commission in February 2005 and August 2005 to discuss a previous legal incident. The Commission at its August 2005 meeting requested Mr. Fletcher to re-appear before the Commission with additional documentation. After review and discussion of the additional documentation provided by Mr. Fletcher, the Commission, on motion by Commissioner Heath, seconded by Commissioner Stephen approved Mr. Fletcher to renew his license upon receipt of a letter acceptable to the Commission from his probationary officer and based on a condition that should Mr. Fletcher decide to possess a weapon he must petition the Commission on the matter of his license.

9:10 a.m. HOWARD H. GILBERT, JR. 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, and based on previous educational and broker experience, the Commission unanimously accredited Mr. Gilbert as a pre-licensing instructor.

9:14 a.m. DAVID F. HENNESSEY 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 and based on previous educational and broker experience, the Commission unanimously accredited Mr. Hennessey as a pre-licensing instructor.

9:16 a.m. KELLY GIRAUD appeared before the Commission to request approval as an accredited real estate instructor to teach pre-licensing education, pursuant to Rea 302.01. The Commission at its October 2005 Commission meeting requested Ms. Giraud to provide evidence of at least 8 real estate transactions in which she was actively involved and evidence of completion of 40 hours of pre-licensing instruction. After review and discussion on the documentation presented by Ms. Giraud, the Commission unanimously accredited Ms. Girard as a pre-licensing instructor.

9:40 a.m. RANDY T. CARPENTER 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 unanimously approved Mr. Carpenter to apply for his broker's license.

III. DISCUSSION

ATTORNEY CARMINE TOMAS submitted a request for a Commission interpretation of RSA 331-A:4, I regarding whether an entity providing property management services on property which the entity has 30% ownership interest in the property will require a broker's license to provide such services. After review and discussion, the Commission unanimously decided that a real estate license would not be required for property management brokerage activities where there is a minimum of 25% deeded ownership interest in the property. Attorney Tomas to be so notified. The Commission asked the Executive Director to draft legislative language on this matter for Commission consideration.

JOHN KINNEY submitted a request for an interpretation of RSA 331-A:16, IV regarding requirements for an associate broker's sign at her home. The real estate associate broker has a sign in front of her house that has her name, the name of the firm, with the word "office" under the firm name, with an arrow pointing in the direction of the real estate associate broker's home. The broker's home is not a branch office licensed with the Real Estate Commission. After review and discussion, the Commission decided that if the arrow within the word "office" pointing toward the

associate broker's home is removed that the sign would be in compliance with RSA 331-A:16, IV. In order for the licensee to continue with the existing sign, the principal broker of the firm would be required to license the associate broker's home as a branch office and would require a licensed managing broker for the branch location. Mr. Kinney to be so notified.

DARLENE CRANE submitted a request for a Commission interpretation of RSA 331-A:26, XXIV regarding HungryAgents.com receiving a fee from real estate agents after the sale of the property. After review and discussion and based on the facts presented to the Commission and that the Commission determined that HungryAgents.com is not licensed in the State of New Hampshire, the Commission directed the Executive Director to inform Ms. Crane of their appreciation of bringing this issue to their attention and that subsequent investigation will be conducted into the matter.

FILE NO. 2004-041 – Attorney Jed Z. Callen submitted a request to withdraw the complaint File No. 2004-041 on behalf of the Complainant. After review and discussion, the Commission decided to accept the request and withdrew the complaint. The parties to be so notified.

COMMISSION EXPRESS – At the June 2006 meeting, the Commission discussed the activities of a company called Commission Express and whether the company's activity is in compliance with RSA 331-A. The Commission requested a response from the company on the legality of the issue. Commission Express explained in their response that it is a company which purchases business account receivables (a commission due to an agent) at a discount from a real estate licensee, known as "Factoring." Commission Express, as the factoring agent, provides cash flow to the real estate agent. The parties execute a Master Repurchase and Security Agreement and an Account Receivable Sale and Assignment Agreement whereby the sales agent sells his/her interest in an earned account receivable on the sale of a specific property which is scheduled to close within 60 to 90 days to Commission Express at a discount. After review and discussion, the Commission continues to have the following concerns:

1. The agent is receiving the compensation from other than the broker;
2. Is the agent receiving compensation prematurely?;
3. Could the agent be placed in the position of not working in the best interest of the party?; and
4. Does the principal broker and the parties to the transaction need to provide written notice of this arrangement?

The Commission directed the Executive Director to forward the information on this matter to the Attorney General's office for an opinion as to whether the activity is permissible under RSA 331-A.

GARY LACEY of The Lacey Group submitted a request for a Commission interpretation of whether a real estate broker license is required under RSA 331-A to operate a MLS listing service for individuals who wish to personally sell their home either in conjunction with a real estate broker or on their own to try to save the 3% buyer-side broker commission. Mr. Lacey explained that he would only accept a one-time fixed fee for advertising and provide the seller contact information on

the listing or the Lacey Group contact information if the seller prefers not to publish their information on the listing. If the prospective buyer contacts the Lacey Group directly, the customer representative from the Lacey Group will provide the seller contact information directly and immediately to the prospective buyer. In addition the Lacey Group will make available basic forms on their website to the seller and buyer. After review and discussion, the Commission stated that as long as the compensation received by The Lacey Group is an upfront fixed fee for advertising only and the representatives of the Lacey Group do not conduct brokerage activity as defined under RSA 331-A:2 III, the Lacey Group or its representative would not require a broker license under RSA 331-A. The Commission directed the Executive Director to notify Mr. Lacey of its decision and to also suggest that he contact legal counsel to ensure that he is in compliance with all laws and regulations regarding his activities including the basic forms that the company will provide on the website and using the term MLS.

IV. **PUBLIC HEARING ON ADMINISTRATIVE RULE CHANGES 10:00AM**

The public hearing was postponed due to insufficient notice of the public hearing by newsletter to all licensees, pursuant to RSA 331-A:7, VII. The report populated through the Office of Information Technology for mailing labels did not include all licensees. The Commission will re-schedule the public hearing and send proper notice to all licensees of the time, date and location.

V. **OTHER BUSINESS**

1. The Commission unanimously approved September 19, 2006 as the next regularly scheduled meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2005-020**

Evaluator: Commissioner Slattery

Determination: Should be heard, hearing to be scheduled.

(b) **FILE NO. 2006-014**

Evaluator: Commissioner Slattery

Determination: No violation, no hearing necessary.

(c) **FILE NO. 2006-019**

Evaluator: Commissioner Heath

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondents a settlement agreement with a disciplinary fine in the amount of \$500 and a 3 hour accredited continuing education course on disclosure or risk management.

The above determinations were unanimously approved by the Commission.

VI. **ADJOURNMENT**

Motion by Commissioner Heath, seconded by Commissioner Stephen to adjourn the meeting. Commissioner Slattery adjourned the meeting at 11:57 p.m.

Respectfully submitted,



Barbara H. Heath
Clerk