

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

**FEBRUARY 17, 2009**

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, February 17, 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, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. On motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission unanimously approved the Minutes of the Commission meeting held on January 30, 2009.

### II. DISCUSSION

JIM HARKINGS submitted a request for Commission clarification as to whether an agent's advertisement is false, misleading or deceptive regarding sold properties the agent did not list or sell. After review and discussion, the Commission felt that the advertising submitted is not false, misleading or deceptive advertising and does not violate RSA 331-A. Mr. Harkings to be so notified.

AMY FISH submitted a request for Commission clarification as to whether it is allowable under RSA 331-A to advertise that a personal donation of \$100 to a charity or private school of her choice be made upon the completion of a real estate transaction in which a party to the transaction is personally related to that charity or school. This would be advertised to the community of people associated with the charity or school via newsletter or flyer stating that she is a realtor and listing her services. The ad would let people know that she will personally donate \$100 to the charity or school as an added benefit of working with her. After review and discussion, the Commission decided that a personal donation of \$100 to a charity or private school would be permissible as long as the donation is not tied to a transaction. Ms. Fish to be so notified.

PATRICIA DOUGHTIE of Epstein Becker & Green, P.C. submitted a request for Commission clarification as to whether compensation of less than \$100 be paid to a non-licensed person for referrals. After review and discussion, the Commission referred to its decision made at the April 15, 2003 Commission meeting that only unsolicited third party referrals of \$100 or less are permitted. Ms. Doughtie to be so notified.

### III. DISCUSSION

Brokerage Relationship Disclosure Form – The Commission reviewed and discussed possible changes to the Brokerage Relationship Disclosure Form which was adopted by the Commission on January 30, 2009.

**IV. OTHER BUSINESS**

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

March 17, 2009 at 8:30 a.m.

2. CASE EVALUATIONS

- (a) FILE NO. 2008-021

Evaluator: Commissioner Jones

Determination: No violation, should not be heard.

- (b) FILE NO. 2008-027

Evaluator: Commissioner Jones

Determination: Commissioner Jones originally evaluated the complaint at the January 30, 2009 re-evaluated the complaint as follows: Should be heard, hearing to be scheduled. In the alternative to a hearing, the Commission unanimously decided to offer the Respondent a Settlement Agreement requiring the Respondent to show proof of completion of a 3 hour accredited continuing education course on escrow by class room delivery only within 6 months of the date of the Agreement and pay a disciplinary fine of \$500 within 60 days of the date of the Agreement.

- (c) FILE NO. 2007-030

Evaluator: Commissioner Jones

Determination: Originally evaluated by Commissioner Heath – no violation should not be heard. Commissioner Jones reconsidered the complaint upon a request by the Complainant. The Commission unanimously decided to uphold the original determination of no violation, no hearing necessary.

The above determinations were 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. 2007-024 GERALD MCHUGH, JR. VS GABRIEL BILC

FILE NO. 2004-037 JAMES SELTER VS ROBERT UTTLEY

V. ADJOURNMENT

On motion by Commissioner Ikawa, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 10:50 a.m.

Respectfully submitted,



Pauline A. Ikawa  
Clerk



because the owner had to be out of the country and asked Respondent to sell the property for him. Respondent feels that the POA made him a principal in the transaction. Respondent has provided evidence that his escrow account number had been changed because the bank was concerned that his former account might be electronically compromised. Respondent acknowledged and admitted responsibility for the inconsistency that the P&S says escrow account yet the money went into his operation account. Respondent indicated that he likes using the Realtor forms and that in the future he will make sure that the accounting is consistent with the P&S, even when he is a principal in the transaction.

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 Escrow course, within six (6) months of the effective date of this Agreement. This continuing education course is to be completed by classroom delivery method only.
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.

NOV 17 2008

NOV 21 2008

For the Respondent

NOV 21 2008

I, Gabriel Bilc, 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: Nov 17, 2008

Gabriel Bilc

Gabriel Bilc  
Respondent

On this 17 day of November A.D. 2008  
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.

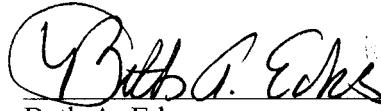
Julian Balanesou  
Justice of the Peace/Notary Public

My commission expires:

JULIAN BALANESOU, Notary Public  
My Commission Expires September 21, 2010

For the Commission

Dated: February 17, <sup>9</sup>~~2008~~



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

2008-02-17  
NOV 21 2006

BEFORE THE  
NEW HAMPSHIRE REAL ESTATE COMMISSION  
CONCORD NH 03301

In the Matter of:

File No. 2004-037 James Selter vs. Robert Uttley  
Allegations: RSA 331-A:26, IV and XXVI

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 Robert Thomas Uttley ("the Licensee" or "the Respondent"), a real estate salesperson currently licensed by the Commission until April 23, 2010, 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 Robert Uttley misrepresented property he owned through a listing with ERA The Masiello Group Real Estate. Respondent listed the property on the MLS, Listing #166033, containing the following statement within the property description: "Nice 7 acre raw land parcel. Ideal for 55+ hsng. Row installed, electric, town sewer & water at Lawrence Road. Nice river frontage. No wetland known at

this time. Seller is a NH licensed real estate agent". However, the Salem town map at that time showed wetland on the property.

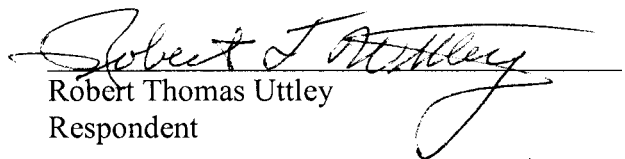
2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall attend a New Hampshire Real Estate Commission accredited 3-hour course on property disclosures and a 3 hour course on environmental issues above and beyond the continuing education requirements for license renewal within ninety (90) 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 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 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, 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.

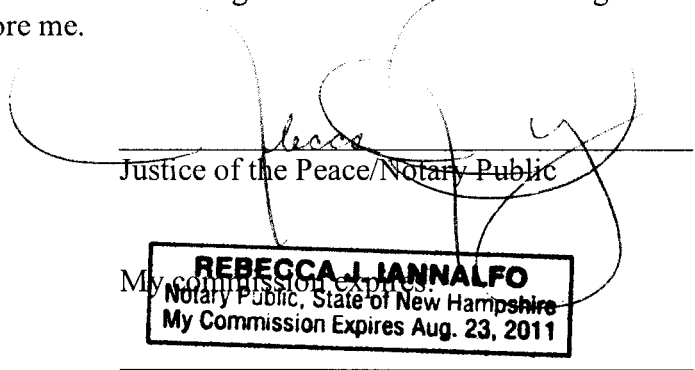
For the Respondent

I, Robert Thomas Uttley, 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: 21 NOV, 2008

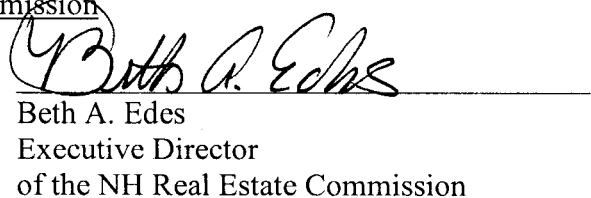
  
Robert Thomas Uttley  
Respondent

On this 21 day of November A.D. 2008  
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  
**REBECCA J. IANNALFO**  
Notary Public, State of New Hampshire  
My Commission Expires Aug. 23, 2011

For the Commission

Dated: February 17, 2008

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