

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JANUARY 30, 2009

A meeting of the New Hampshire Real Estate Commission was held on Friday, January 30, 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 8:35 a.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Pauline Ikawa, Daniel Jones, 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 November 18, 2008.

II. APPOINTMENTS

Equivalency Appointments

8:35 a.m. JOHN T. GOSSELIN

On motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission approved Mr. Gosselin's real estate experience as sufficient experience pursuant to RSA 331-A:10, II(c) and (g).

8:40 a.m. SCOTT J. CONSAUL

On motion by Commissioner Ikawa, seconded by Commissioner Jones, the Commission approved Mr. Consaul's real estate experience as sufficient experience pursuant to RSA 331-A:10, II(c) and (g).

8:45 a.m. TERESA GELO appeared before the Commission at the November 2008 to discuss her previous legal incidents prior to renewing her salesperson's license. At this meeting, the Commission requested Ms. Gelo to submit additional documentation and re-appear before the Commission. After review and discussion of the additional documentation submitted by Ms. Gelo, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa, decided to allow Ms. Gelo to renew her salesperson's license based on the fact that her principal broker appeared at this meeting on Ms. Gelo's behalf and stated that she was aware of her past legal incidences.

9:05 a.m. MARGHERITA VERANI appeared before the Commission to request the Commission to reconsider its recent decision that "appointment centers" are branch offices and must be licensed as branch offices under RSA 331-A. Ms. Verani explained that there are no agents and no telephones located at her firm's appointment centers and that the centers are just a convenient location to meet a customer. She stated that the appointment centers are better for the consumer because it eliminates the need to meet at other places, such as Dunkin Donuts where there is no confidentiality for the customer. Ms. Verani explained that the centers are locked at all times and that an agent needs to use his/her electronic key to enter the center. All telephone numbers posted at the centers

are telephone numbers of the firm or firm branch offices. Ann Flanagan, the Commission's Investigator stated that the complaints and concerns that she was receiving about the appointment centers versus the restaurant or coffee shop as a meeting place is that the appointment centers have signage that advertises particular properties and give the perception of a fully functioning branch office. After review and discussion, the Commission directed the Executive Director to ask other states if they have laws or rules regarding appointment centers.

III. APPOINTMENT OF ALTERNATE COMMISSION MEMBER On motion by Commissioner Jones, seconded by Commissioner LeRoy, the Commission, pursuant to RSA 331-A:5, VIII, appointed Arthur Slattery as the Alternate Commission Member to participate in the discussions and decisions of the disciplinary hearing of File No. 2007-031 New Hampshire Real Estate Commission vs. Scott Heidenreich, due to the recusal of Commissioners Stephen and Ikawa.

IV. HEARING 9:35 AM
FILE NO. 2007-031 NEW HAMPSHIRE REAL ESTATE COMMISSION VS SCOTT
HEIDENREICH

The following persons were present at the hearing:

Commission: Commissioners Nancy LeRoy, Daniel Jones and Alternate Commission Member Arthur Slattery

Stenographer: Lynne A. Beck

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

Evaluator: Commissioner Ikawa evaluated the above matter and abstained from participation in the discussion and resulting decisions. Commissioner Stephen who was not present at the meeting was recused from the matter and did not take part in the discussion and resulting decisions.

Appearances:

Complainant: Investigator Ann Flanagan on behalf of the NH Real Estate Commission

Attorney: Pro Se

Witnesses: None

Respondent: Scott A. Heidenreich

Regal Real Estate
63 South River Road
Bedford, NH 03110

Attorney: Pro Se

Witnesses: None

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

V. **DISCUSSION**

BROKERAGE RELATIONSHIP DISCLOSURE FORM – the Commission discussed the Brokerage Relationship Disclosure Form developed by the Commission-appointed disclosure form committee which was effective on January 1, 2009. Several licensees appeared at the meeting and expressed concerns and made suggestions for change to the existing form. After review and discussion and on motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission adopted the existing form and stated that they will take all suggestions into consideration and will hold another meeting with the Commission appointed committee and invited those who were in attendance to attend the meeting to make any necessary changes. The Brokerage Relationship Disclosure Form adopted by the Commission is attached to these Minutes.

SAFE HARBOR FOR DESIGNATED AGENCY – After review and discussion, the Commission adopted the following Safe Harbor guidelines for firms and/or licensees transitioning from traditional agency to designated agency:

SAFE HARBOR FOR DESIGNATED AGENCY

The Commission recognizes the difficulties that brokerage firms will face when changing to a designated agency model from a traditional brokerage model. The Commission also does not want to discourage firms from making the transition for fear of regulatory or licensing related issues. To that end, the Commission provides the following guidance for firms making the transition to designated agency.

Brokerage firms should adopt reasonable policies providing, but not limited to the following:

- * A method to assess which licensees have actual knowledge of confidential information of existing clients
- * A method to either isolate or appoint all such agents as Designated Agents
- * A method to protect such confidential information from subsequent use by other than the Designated Agents
- * A form for existing clients to opt into Designated Agency with an explanation of the key elements of Designated Agency

While the Commission cannot guarantee the results or response to any licensing complaint and will not agree in advance not to pursue any investigation or enforcement actions as it deems

appropriate, the Commission does recommend the policy guidelines set forth above as appropriate steps to protect the public during the transition to designated agency and will consider such efforts as substantial mitigating factors if a licensing complaint or investigation is commenced relative to the transition to designated agency.

VI. APPOINTMENT OF COMMISSION CHAIRMAN AND CLERK

Commission Clerk – On motion by Commissioner Jones, seconded by Commissioner LeRoy, the Commission appointed Commissioner Ikawa as the Commission Clerk.

Commission Chairman – On motion by Commissioner Ikawa, seconded by Commissioner Jones, the Commission appointed Commissioner LeRoy as the Commission Chairman.

VII. OTHER BUSINESS

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

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

2. CASE EVALUATIONS

- (a) FILE NO. 2006-003

Evaluator: Commissioner Ikawa

Determination: No violation, should not be heard.

- (b) FILE NO. 2007-029

Evaluator: Commissioner Jones

Determination: No violation, should not be heard. A letter to be sent to the licensee and principal broker reminding them of their responsibility to ensure that their listing information is correct.

- (c) FILE NO. 2008-015

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

- (d) FILE NO. 2008-019

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

- (e) FILE NO. 2008-020

Evaluator: Commissioner Jones

Determination: 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 contracts within 3 months of the date of the Agreement.

(f) FILE NO. 2008-022

Evaluator: Commissioner Jones

Determination: No violation, should not be heard.

(g) FILE NO. 2008-026

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

(h) FILE NO. 2008-027

Evaluator: Commissioner Jones

Determination: 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 within 6 months of the date of the Agreement.

The above determinations were unanimously approved by the Commission.

3. SETTLEMENT AGREEMENTS

The following Settlement Agreement was approved by the Commission and is attached to the Minutes of this meeting:

FILE NO. 2008-002 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JOHN D.
KELLEY

VIII. ADJOURNMENT

On motion by Commissioner Ikawa, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 12:35 p.m.

Respectfully submitted,



Pauline A. Ikawa
Clerk

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2008-002 New Hampshire Real Estate Commission vs John D. Kelley
Allegations: RSA 331-A:18, IV

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 John D. Kelley (“the Licensee” or “the Respondent”), a real estate broker currently licensed by the Commission until June 17, 2009, 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:

A principal broker called the New Hampshire Real Estate Commission complaining that John Kelley of Kelley Seacoast Realty had an expired license. John Kelley was notified and he immediately came to the Commission office to renew his license and paid a \$50 late penalty (his continuing education had been completed before his expiration date). It expired on June 17, 2007 and was renewed on August 20, 2007. An audit conducted at John Kelley’s home office on 9/7/07 revealed that a listing for 53 Abigale Lane, New Castle NH was procured on 7/15/07 by salesperson

Margaret Pesce during the time Respondent's principal broker license was expired.

John Kelley feels he may have been distracted by some civic volunteer activities at the time, and regrets he forgot to renew his license, and that he will make sure it never happens again.

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 pay a one-hundred dollar (\$100) disciplinary fine to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) 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, John D. Kelley, 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: 11/17/08, 2008

John D. Kelley
John D. Kelley
Respondent

On this 17 day of November A.D. 20 08 personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.

Nicole Perl
Justice of the Peace/Notary Public

My commission expires:
NICOLE PERL
JUSTICE OF THE PEACE
STATE OF NEW HAMPSHIRE
My commission expires Jan. 26, 2010

January 26, 2010

For the Commission

Dated: January 30, 2008
9

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