

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JULY 15, 2008

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, July 15, 2008 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 Ikawa, seconded by Commissioner Jones, the Commission approved the Minutes of the Commission meeting held on June 17, 2008.

II. APPOINTMENTS

8:35 a.m. - Equivalency Appointments

EDWARD A. SMITH

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

8:50 a.m. CHRISTINE M. CONRAD appeared before the Commission to discuss her answer to question #5 on her application for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa decided to allow Ms. Conrad to apply for an original salesperson's license.

III. DISCUSSION

FILE NO. 2008-006 – The Complainant of File No. 2008-006 submitted a request to the Commission for withdrawal of the complaint based on the resolution of issues between the parties of the complaint. After review and discussion, the Commission decided to grant the withdrawal of Complaint File No. 2008-006. The parties to be so notified.

PETER STILLMAN of Alternative in Realty, LLC requested a Commission clarification as to whether his plan for services complies with RSA 331-A. Mr. Stillman submitted a plan to refer business to brokers and others, whom would not pay for a particular lead, but would be billed on a monthly, annually, or semi-annually for his referrals through services similar to others, such as ads placed in the phone book, mass mailings, consulting services, or internet-based company referral services. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa, decided that Mr. Stillman's proposed plan for services and compensation would require a real estate license under RSA 331-A. Mr. Stillman to be so notified.

MICHAEL CAOUETT submitted a request for clarification as to whether it is permissible for a property to be listed within a range, such as \$550,000 to \$640,000 when the seller has no interest in selling the property for the lowest price of the range. After review and discussion, the Commission directed the Commission Investigator to investigate the situation submitted to see whether this would fall under deceptive advertising pursuant to RSA 331-A.

IV. ORDER ON MOTION TO CONTINUE

FILE NO. 2005-010 PAUL CROUTWORST & NEW HAMPSHIRE REAL ESTATE COMMISSION VS KEVIN HAMPSEY & THOR MICHAEL GRENIER. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Jones, approved an Order granting the Motion to Continue, submitted by the Respondents' attorney to allow for the informal disposition of the complaint. The parties to be so notified.

V. OTHER BUSINESS CONTINUED

1. The Commission unanimously approved the following dates for August meetings:

August 4, 2008 at 9:00 a.m. – Public Hearing on Administrative Rule Adoptions and Amendments

August 19, 2008 at 8:30 a.m.

2. CASE EVALUATIONS

- (a) File No. 2008-014

Evaluator: Commissioner LeRoy

Determination: No violation, no hearing necessary.

The above determination was unanimously approved by the Commission.

3. SETTLEMENT AGREEMENTS

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

FILE NO. 2006-034 NEW HAMPSHIRE REAL ESTATE COMMISSION VS ROBERT BROOKS

VI. RULEMAKING

The Executive Director presented the Commission with the Interim Rules INT 2008-18 for various sections and paragraphs of Rea 200-700 which were approved by the Joint Legislative Committee on Administrative Rules on June 20, 2008. The Commission, on motion by Commissioner Ikawa,

seconded by Commissioner Jones, adopted the following administrative rule adoptions to become effective on July 16, 2008:

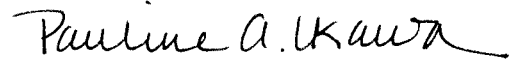
- Rea 201.01 Petition and Adoption of Rules
- Rea 201.02 Public Hearings
- Rea 201.03(b)
- Rea 201.04 Record
- Rea 201.05 Opening the Hearing
- Rea 201.06 Testimony
- Rea 201.07 Concluding the Hearing
- Rea 201.08 Petition for Declaratory Rulings
- Rea 202.01 Date of Issuance or Filing
- Rea 202.02 Format of Documents
- Rea 202.03 Delivery of Documents
- Rea 203.01 Computation of Time
- Rea 204.01 Complaint Form
- Rea 204.02 Filing of Complaint
- Rea 204.03 Notice of Complaint
- Rea 204.04 Answer
- Rea 204.05 Investigation
- Rea 205.01 Notice
- Rea 205.02 Request for Continuance
- Rea 205.04(a)
- Rea 205.05 Withdrawal of Commissioner
- Rea 205.06 Appearances and Representation
- Rea 205.08 Role of Agency Staff in Enforcement of Disciplinary Hearings
- Rea 205.09 Role of Complainants in Enforcement of Disciplinary Hearings
- Rea 205.10 Postponements
- Rea 205.11 Failure to Attend Hearing
- Rea 205.12 Witnesses
- Rea 205.13 Evidence
- Rea 205.14 Standard and Burden of Proof
- Rea 205.15 Reopening the Record
- Rea 205.16 Hearing Procedures
- Rea 205.17 Record of the Hearing
- Rea 206.02 Appeals
- Rea 303.02 Answer Sheets
- Rea 303.03 Examination Failure
- Rea 303.04 Failure to Attend Examination
- Rea 303.05(a)
- Rea 304.01 Reciprocity for Licensure

Rea 305.01 Foreign Corporation
Rea 305.03 Form of License Certificates and Cards
Rea 305.04 Placement of License Certificates
Rea 404.02 Change of Addresses and Names
Rea 404.03 Copies of Written Instruments
Rea 501.01(a), (c)-(j)
Rea 701.03 Private Water Supply Disclosure
Rea 701.04 Insulation Disclosure
Rea 701.05 Sewage Disposal System Disclosure
Rea 702.03 Accounting

VII. ADJOURNMENT

On motion by Commissioner Ikawa, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 11:00 a.m.

Respectfully submitted,



Pauline A. Ikawa
Acting Clerk

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2006-034 New Hampshire Real Estate Commission vs Ellen Pfeiffer & Robert Brooks
Allegations: RSA 331-A:18, IV; RSA 331-A:26, XXVII

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 H. Brooks ("the Licensee" or "the Respondent"), a real estate broker currently licensed by the Commission until 6/17/08, 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:

The Commission Investigator conducted an on-site inspection at Habs Real Estate Group, 111 Route 101, Bedford, NH on 11/2/06. The Investigator found that the NH real estate firm license #006336 for Habs, Inc. was expired on 10/14/06 (RSA 331-A:18, IV), nor was it in good standing with the NH Secretary of State. Upon review of a transaction file for 55 Carlene Drive, # 21, Windsor Pond Condominium, Nashua, NH, the Investigator found that Ellen Pfeiffer presented an Agency Disclosure Form to the buyer indicating that she was representing the Seller as a Seller's Agent on any Habs Real Estate Group listings and she would be assisting the buyer on other brokers' listings as an Another Relationship (Non-Agent); however,

the Agency Disclosure on the P&S indicated that Ellen Pfeiffer of Habs Real Estate Group was the Listing Agent/Agency representing the Seller as Seller's Agent and acting in the transaction as an Another Relationship (Non-Agency) for the buyer. (RSA 331-A26, XXVII).

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 Agency Relationships through classroom delivery only, not to be counted towards Respondent's continuing education requirements for renewal of license, within three (3) months of the effective date of this Agreement; and Respondent shall pay disciplinary fines in the amounts of two-hundred dollars (\$200) for violation of RSA 331-A:18, IV, and two-hundred dollars (\$200) for violation of RSA 331-A:26, XXVII, totaling four-hundred dollars (\$400), 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 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.

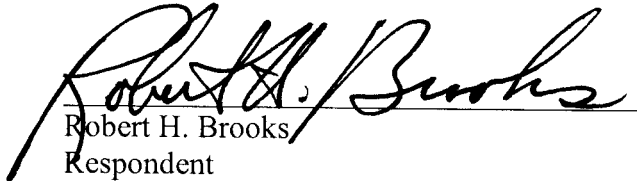
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her/him other than those terms and conditions expressly stated herein.
7. Respondent understands that her/his action in entering into this agreement is a final act and not subject 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.

Notary Public
State of New Hampshire
Commission Expires 09/30/2010

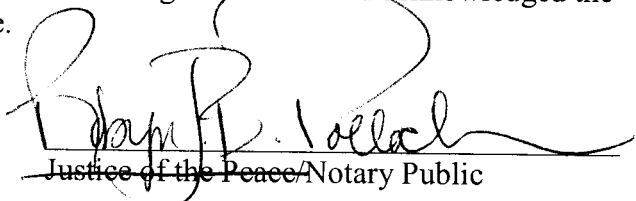
For the Respondent

I, Robert H. Brooks, 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: 6/6, 2008


Robert H. Brooks
Respondent

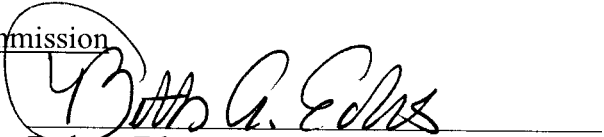
On this 6th day of June A.D. 2008
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.


~~Justice of the Peace~~ Notary Public

My commission expires:
Sept. 2010

For the Commission

Dated: July 15th, 2008


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