

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JULY 21, 2009

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, July 21, 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, James Therrien, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. On motion by Commissioner Jones, seconded by Commissioner Dunn, the Commission unanimously approved the Minutes of the Commission meeting held on June 19, 2009.

II. RULEMAKING

CONDITIONAL APPROVAL OF FINAL PROPOSAL #2009-67 – The Executive Director presented the Commission with a Conditional Approval of the Joint Legislative Committee on Administrative Rules on Final Proposal 2009-67. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones responded to the Conditional Approval and amended Final Proposal 2009-67 in accordance with the Conditional Approval.

III. APPOINTMENTS

8:30 a.m. Equivalency Appointment

DEANE NAVOROLI

Appeared before the Commission to request a reconsideration of the Commission's denial of equivalency at the June 19, 2009 meeting. After further review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Dunn decided to approve Mr. Navoroli's real estate experience as sufficient experience pursuant to RSA 331-A:10(c) and (g).

8:50 a.m. BRUNO FERRARI-SCACCO appeared before the Commission to discuss a previous legal incident prior to applying for his original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Dunn, decided to table its decision until Mr. Ferrari-Scacco supplies the Commission with the police reports and sentencing reports for two incidences which occurred in 2003 and one incident in 2009. Mr. Ferrari-Scacco to appear before the Commission once he supplies the requested documentation.

9:05 a.m. DAWN DREW appeared before the Commission to request a clarification on questions about doing non-brokerage consulting activities with a real estate license. After review and discussion, the Commission directed Ms. Drew to decide what type of activity she is going to pursue and come back to the Commission and present her specific business plan to determine whether it will be in compliance with RSA 331-A.

9:15 a.m. DONALD TURNER appeared before the Commission to request accreditation as a core

continuing education instructor, pursuant to Rea 302.01. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa approved the accreditation of Mr. Turner as a core continuing education instructor contingent upon the submission of an acceptable course outline and materials.

9:35 a.m. DIANE DALEY appeared before the Commission to request accreditation as a pre-licensing instructor, pursuant to Rea 302.01. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones approved the accreditation of Ms. Daley as a pre-licensing education instructor, pursuant to Rea 302.01.

IV. DISCUSSION

LYNN POSTON submitted a request for Commission interpretation at the June 19, 2009 meeting regarding a previous ruling made by the Commission on May 23, 2007 and whether an Agency is allowed under RSA 331-A to pay an agent his commission to his LLC when it is a partnership with his wife rather than a sole proprietorship. After review and discussion, the Commission decided at the June meeting that it was not permissible under RSA 331-A for the Agency to pay the agent his commission to his LLC where the LLC is not solely owned by the agent. The Commission discussed this issue further and after review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Ikawa, determined that pursuant to RSA 331-A:26, XXIV, only licensees can be paid compensation by a broker. The Commission's decision of May 2007 is vacated. LLC's or other entities that are not licensed can not be compensated for brokerage activities. Ms. Poston to be so notified. Robert Anthonyson was present for the discussion.

V. OTHER BUSINESS

1. The Commission unanimously approved the following date for the August meeting:
August 18, 2009 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2008-024

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled.

(b) FILE NO. 2008-029

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled.

- (c) FILE NO. 2009-004
Evaluator: Commissioner Jones
Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$100.
- (d) FILE NO. 2009-005
Evaluator: Commissioner LeRoy
Determination: No violation, should not be heard.
- (e) FILE NO. 2009-006
Evaluator: Commissioner Therrien
Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$250 and a 3 hour continuing education course #E1243.
- (f) FILE NO. 2009-008
Evaluator: Commissioner LeRoy
Determination: Should be heard, hearing to be scheduled.
- (g) FILE NO. 2008-041
Evaluator: Commissioner Jones
Determination: Should be heard, hearing to be scheduled.

The above determinations were unanimously approved by the Commission.

3. ORDERS

The following Order was issued by the Commission and is attached to the Minutes of this meeting:

FILE NO. 2006-032 THOMAS P & RAE CROWLEY & NEW HAMPSHIRE REAL
ESTATE COMMISSION VS GILDA STIGLIANO

VI. RULEMAKING

FINAL PROPOSAL 2009-67 – The Executive Director presented the Commission with the approval from the Office of Legislative Services to adopt Rule Notice Number 2009-67 as amended, relative to Rea 302.01 Programs of Study Accreditation and Re-accreditation. The Commission adopted the following administrative rule to become effective on July 24, 2009:

Rea 302.01 Programs of Study Accreditation and Re-accreditation.

(a) Any individual applying for accreditation or any firm applying for accreditation to instruct a real estate pre-licensing or continuing education course shall submit to the commission documents substantiating the applicant's qualifications to instruct such course, including, but not limited to (b), (c), and (d) below. The applicant shall be scheduled to appear before the commission to address any questions the commission has prior to the commission deciding whether to approve or deny accreditation.

(b) All individuals applying for accreditation as a pre-licensing education instructor shall demonstrate the following:

(1) Brokerage experience qualifications or other qualifications found by the commission to be equivalent to an active license with a minimum of 3 years of on-going experience in real estate brokerage in New Hampshire; and

(2) Teaching experience qualifications or other qualifications found by the commission to be equivalent to the following:

a. Documentation of at least 72 hours of teaching, speaking or presentation experience; or

b. Demonstration of teaching, speaking or presentation skills, such as, but not limited to a one hour unedited video or DVD recording which depicts the applicant teaching pre-licensing material that includes New Hampshire state-specific material; and

(3) Demonstration of subject matter knowledge before the commission as necessary to substantiate the qualifications or information submitted, pursuant to Rea 302.01(a).

(c) All individuals applying for accreditation as a core continuing education instructor shall demonstrate the following:

(1) Brokerage experience qualification or other qualifications found by the commission to be equivalent to an active license with a minimum of 3 years of on-going experience in real estate brokerage in New Hampshire within 3 years of the date of application; and

(2) Teaching experience qualifications or other qualifications found by the commission to be equivalent to the following:

a. Documentation of at least 72 hours of teaching, speaking, or presentation experience; or

b. Demonstration of teaching, speaking or presentation skills, such as, but not limited to a 1 hour unedited video or DVD recording which depicts the applicant teaching New Hampshire core course material; and

(3) Demonstration of subject matter knowledge before the commission as necessary to substantiate the qualifications or information submitted, pursuant to Rea 302.01(a).

(d) All individuals applying for accreditation as an elective continuing education instructor shall demonstrate the following:

(1) Experience qualifications or other qualifications found by the commission to be equivalent to the following:

a. A degree from an accredited institution with a major related to the subject matter of the course within 3 years prior to the date of application; or

b. A certification from an accredited institution related to the subject matter of the course within 3 years prior to the date of application; or

c. Two years of on-going work experience or teaching experience or a combination of both within the previous 3 years of the date of application that is related to the subject matter of the course; and

(2) Either of the following:

a. Documentation of at least 15 hours of teaching, speaking or presentation experience or other qualifications found by the commission to be equivalent; or

b. Demonstration of teaching, speaking or presentation skills, such as, but not limited to a one hour unedited video or DVD recording which depicts the applicant teaching material on the subject matter of the course.

(e) All individuals or firms shall apply for re-accreditation of pre-licensing, core, and elective continuing education courses within one year from the date of original accreditation or re-accreditation.

VII. ADJOURNMENT

On motion by Commissioner Therrien, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Pauline A. Ikawa". The signature is written in a cursive style with a long horizontal flourish at the end.

Pauline A. Ikawa
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2006-032

THOMAS & RAE CROWLEY
&
NEW HAMPSHIRE REAL ESTATE COMMISSION
V
GILDA STIGLIANO

This matter comes before the Real Estate Commission on the complaint of Thomas & Rae Crowley and the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of NH RSA 331-A:25-b, I,b,2; RSA 331-A:26, IV, V, XXVII; Rea 404.04 (e,f); Rea 701.01(a), by Gilda Stigliano. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Gilda Stigliano (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 11/14/95 and as a real estate broker on 2/22/00, and Respondent was the principal broker of Gilda K. Stigliano Real Estate, LLC at the time of the alleged violations.
2. Thomas & Rae Crowley (hereinafter referred to as Complainants) claim they were introduced by Respondent to the property as prospective tenants but Respondent refused to present their offer unless they agreed to belatedly (after Complainants had been shown the property and expressed their interest in renting it) sign a Compensation Agreement and pay her a fee equal to one month rent.
3. Before Respondent showed the property to Complainants, Respondent had a brokerage agreement with the landlord for landlord to pay Respondent a fee, but

did not have an agreement with Complainants for Complainants to pay Respondent a fee.

4. The Commission Investigator Ann Flanagan requested a copy of the Exclusive Right to Lease listing contract from Respondent, and the contract with the landlord indicates: "Owner or Principal acknowledges that agent will charge a Real Estate service fee to the tenant" however, the amount of the fee Respondent charges tenants (equal to one month rent) is not disclosed to the landlord in the listing contract.
5. The landlord Ms. Acorn testified that she agreed to pay Respondent a fee equal to one-half month's rent, and she was aware that Respondent was also charging the tenant a fee equal to one month's rent.
6. The landlord Ms. Acorn testified that Respondent did present Complainant's offer to rent the property, but Ms. Acorn decided that she was going to rent to other tenants who did not have pets and were willing to pay Respondent's fee.
7. Respondent testified that prior to showing the property she presented Complainants with an approved Agency Disclosure Form, however by mistake she indicated that she was a non-agent when in fact she represented the landlord.
8. Complainant Rae Crowley testified that although Respondent may have made a mistake on the Agency Disclosure Form indicating she was a non-agent, that Complainants clearly understood that Respondent represented the landlord.
9. Complainants feel that Respondent advertised and showed the property in a deceptive manner by not indicating that she expected a fee from the prospective tenants until after procuring a showing and subsequent interest in the property.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

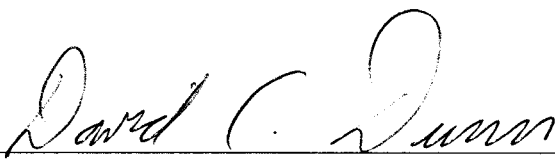
The failure to inform a prospective tenant until after a tenant has been shown the prospective rental property and expressed an interest in renting the shown property, that a fee will be owed by the tenant to the licensee, is misleading and deceptive. The Commission finds that Respondent advertised the availability of real estate or the services of a licensee in a misleading or deceptive manner by not indicating in the advertising that she expected a fee of one month rent from the tenant. Therefore, the Commission rules that Respondent did violate NH RSA 331-A:26, XXVII.

Due to a lack of evidence to the contrary the Commission rules that Respondent did not violate any of the other aforementioned statutes or rules.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent pay a disciplinary fine in the amount of one-hundred dollars (\$100) 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 Order.

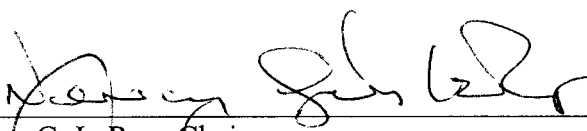
Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The Respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Former Commissioner Barbara Heath evaluated this case and did not take part in the hearing or decision.



David C. Dunn, Presiding Commissioner

7/24/09
DATE



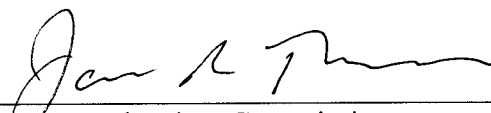
Nancy G. LeRoy, Chairperson

7/21/09
DATE



Daniel S. Jones, Commissioner

7/21/09
DATE



James R. Therrien, Commissioner

07/21/2009
DATE