

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JANUARY 31, 2007

A meeting of the New Hampshire Real Estate Commission was held on Wednesday, January 31, 2007 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 9:10 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Nancy LeRoy, Pauline Ikawa, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. The Commission approved the following Minutes with Commissioner Heath in attendance by telephone:

On motion by Commissioner LeRoy, seconded by Commissioner Slattery, the Commission present and voting, unanimously approved the Minutes of June 20, 2006.

On motion by Commissioner Ikawa, seconded by Commissioner LeRoy, the Commission present and voting, unanimously approved the Minutes of July 18, 2006.

On motion by Commissioner Slattery, seconded by Commissioner Stephen, the Commission present and voting, unanimously approved the Minutes of August 22, 2006.

On motion by Commissioner Slattery, seconded by Commissioner Stephen, the Commission present and voting, unanimously approved the Minutes of September 19, 2006.

On motion by Commissioner Slattery, seconded by Commissioner LeRoy, the Commission present and voting, unanimously approved the Minutes of October 17, 2006.

On motion by Commissioner Slattery, seconded by Commissioner Ikawa, the Commission present and voting, unanimously approved the Minutes of November 21, 2006.

On motion by Commissioner Slattery, seconded by Commissioner Ikawa, the Commission present and voting, unanimously approved the Minutes of December 19, 2006.

II. APPOINTMENTS

Equivalency Appointments

The following candidates were interviewed by Commissioners Arthur Slattery, Robert Stephen, Nancy LeRoy, and Pauline Ikawa:

NANCY WHITE

On motion by Commissioner LeRoy, seconded by Commissioner Ikawa, the Commission approved Ms. White's experience as equivalent experience required for a broker license.

MASON BROWNE

On motion by Commissioner LeRoy, seconded by Commissioner Stephen, the Commission approved Mr. Browne's experience as equivalent experience required for a broker license.

ERIC GIUSTI

On motion by Commissioner Ikawa, seconded by Commissioner LeRoy, the Commission approved Mr. Giusti's real estate transaction experience as equivalent experience required for a broker license pursuant to RSA 331-A:10, II (g), contingent upon the approval of real estate transactions submitted and certified by his lieutenant colonel of the U.S. Army Reserves, and transactions submitted by the real estate agency he is employed by or under contract with to equal at least 6 acceptable real estate transactions.

8:50 a.m. ROBERT L. WSZOLEK appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Slattery, seconded by Commissioner Ikawa, decided to allow Mr. Wszolek to apply for his original salesperson's license.

9:20 a.m. SCOTT PATTERSON 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, on motion by Commissioner Stephen, seconded by Commissioner LeRoy, decided to allow Mr. Patterson to apply for his original salesperson's license.

9:30 a.m. AMY REISERT 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, on motion by Commissioner Slattery, seconded by Commissioner Ikawa, decided to deny Ms. Reisert's application for an original broker's license. Should Ms. Reisert show proof that she has taken immediate action to attempt to get her conviction annulled, the Commission will allow her to apply for the license upon successful annulment of her conviction, and if the annulment process takes longer than the 6 month period requirement to activate her license, the Commission will accept her application after this 6 month period. The Commission highly recommended that Ms. Reisert complete a continuing education course in Ethics.

9:45 a.m. LOUISE LORDEN appeared before the Commission to request a reinstatement of her license pursuant to RSA 331-A:18, II, due to extenuating circumstances. After review and discussion, and based on evidence and testimony provided by Ms. Lorden, the Commission, on motion by Commissioner Slattery, seconded by Commissioner LeRoy, decided to allow Ms. Lorden to reinstate her license based on her extenuating circumstances.

III. DISCUSSION

EMERGENCY MOTION TO CONTINUE FILE NO. 2006-017 – The Commission after review and discussion, and based on testimony presented by Carlos Moreira on complaint File No. 2006-017 on why the Continuance should not be granted, the Commission decided to issued an Order that would require the Respondent to appear for a hearing that will be scheduled on March 22, 2007. Should the Respondent not appear, the case shall be heard in his absence, and should his attorney be unable to appear on his behalf, Mr. Robinson shall seek alternate counsel to represent him at the hearing. The Commission ordered that there will be no further continuances. The parties to be so notified.

COMMISSION EXPRESS – At the August 22, 2006 Commission meeting, the Commission requested the Executive Director to forward its concerns to the Attorney General's office on the activities of a company called Commission Express and whether the company's activity is in compliance with RSA 331-A. After Commission discussion with Attorney Wynn Arnold from the Attorney General's office, the Commission determined that there is no need to pursue the issue with the activities of Commission Express at this time.

HUNGRY AGENTS.COM – the Commission at its August meeting discussed an inquiry submitted by Darlene Crane as to whether HungryAgents.com was allowed to receive a fee from a real estate agent after the sale of the property. After review and discussion, the Commission determined that HungryAgents.com was not licensed in the State of New Hampshire. The Commission directed the Commission's Investigator to look into the matter to determine if HungryAgents.com is in compliance with RSA 331-A:26, XXIV. After review of evidence submitted by the Commission's Investigator of proof of HungryAgents.com being registered in the state of Missouri, the Commission determined that HungryAgents.com was in compliance with RSA 331-A:26, XXIV. Ms. Crane to be so notified.

FILE NO. 2006-015 – The Complainant requested the withdrawal of File No. 2006-015, due to the resolution of the dispute between the parties to the Complaint. After review and discussion, and based on insufficient evidence to make a decision, the Commission tabled its decision and requested the Commission's Investigator to supply documentation to the Commission to make a decision to deny or approve the request.

FILE NO. 2006-027 – Attorney David C. Dunn, on behalf of the Complainants, requested a withdrawal of File No. 2006-027, due to the resolution of the dispute between the parties to the Complaint. After review and discussion, the Commission approved the complainants' withdrawal, and requested Ann Flanagan, the Commission's investigator to file a parallel complaint against the Respondent. The parties to be so notified.

VIVIAN SARLO submitted a request for Commission interpretation regarding RSA 331-A:13, IV. After review and discussion, the Commission determined that Ms. Sarlo's question was not within its jurisdiction to make a determination and that she should seek legal advice from an attorney. Ms. Sarlo to be so notified.

ATTORNEY GARY MARKOFF submitted a request for clarification as to whether an entity may claim the owner exemption from licensure as a New Hampshire real estate broker when the owner of New Hampshire property is a New Hampshire limited partnership, and the sole general partner is LLC "ABC", a New Hampshire limited liability company. The members of LLC "ABC" are also members of a Massachusetts limited liability company LLC "XYZ", which will be selling condominium units on behalf of the owner. LLC "XYZ" was created specifically to act as a broker on behalf of the owner and other entities affiliated with LLC "ABC", and desires to claim exemption from the licensing requirement as an affiliate entity of the owner. LLC "XYZ" will not advertise its services as a real estate broker in New Hampshire since its intention is to sell property owned by the affiliate owner. After review and discussion, the Commission, on motion by Commissioner LeRoy, seconded by Commissioner Ikawa, decided that the company would not fall under the exemption of licensure and would require a license to sell the condominium units, based on the fact that LLC "ABC" and LLC "XYZ" are two separate entities and the request does not state that the only members of "XYZ" are the members of "ABC." Attorney Markoff to be so notified.

CRS DESIGNATION – The Commission's Education Assistant submitted a request for Commission consideration as to whether the current CRS designation should continue to be accepted to meet the 60 hour broker education requirement. After review and discussion, the Commission directed the Education Assistant to work with Commissioner LeRoy to determine whether or not the CRS Designation should be accepted as the equivalent of 60 hours of broker education.

IV. **ADOPTION OF RULEMAKING PROPOSALS**

The Commission, on motion by Commissioner Slattery, seconded by Commissioner LeRoy unanimously adopted the proposals as final and requested the Executive Director to submit them to Legislative Services for adoption effective May 1, 2007.

V. **HEARING 10:47 PM**

FILE NO. 2005-015 JOSEPH & MICHELLE GOMES VS. LORNA GAGNON

The following persons were present at the hearing:

Commission: Commissioners Arthur Slattery, Robert Stephen, Nancy LeRoy, and Pauline Ikawa

Stenographer: Harry J. McKenna

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

Evaluator: Commissioner Heath evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Appearances:

Complainants: Joseph & Michelle Gomes

42 Cavney Drive
Northfield, NH 03276

Attorney: Pro Se

Witnesses: None

Respondent: Lorna Gagnon

Re/Max Priority
156 West Road
Canterbury, NH 03224

Attorney: Pro Se

Witnesses: Jennifer Gagnon

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

VI. **NON-PUBLIC SESSION**

The Commission adjourned the public meeting at 12:35 p.m. to go into a non-public session to consult with its legal counsel, pursuant to RSA 91-A. The non-public session was adjourned at 2:10 p.m. and the commission meeting was reconvened.

VII. **OTHER BUSINESS**

1. The Commission did not approve a date in February for the next regularly scheduled meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2006-031**

Evaluator: Commissioner

Determination: Should be heard, hearing to be scheduled.

The above determination was unanimously approved by the Commission.

VIII. ADJOURNMENT

Motion by Commissioner LeRoy, seconded by Commissioner Ikawa to adjourn the meeting. Commissioner Slattery adjourned the meeting at 2:55 p.m.

Respectfully submitted,



Pauline A. Ikawa
Acting Clerk