

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

NOVEMBER 18, 2008

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, November 18, 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 8:30 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 October 21, 2008.

II. APPOINTMENTS

Equivalency Appointments

8:30 a.m. BRYAN DUBOIS

On motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission did not approve Mr. Dubois' real estate experience as sufficient experience pursuant to RSA 331-A:10, II(c) and (g).

8:35 a.m. KEVIN LACASSE

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

8:45 a.m. ERIC HUMES appeared before the Commission to discuss his previous legal incidents prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner LeRoy decided to allow Mr. Humes to apply for his original salesperson's license contingent upon receipt of a letter from his principal broker notifying the Commission that he/she is aware of Mr. Humes previous legal incidents. Once licensed Mr. Humes agreed to notify the Commission of any future convictions within 30 days of the conviction. Commissioner Ikawa was opposed to the decision.

8: 50 a.m. COMMISSIONER STEPHEN arrived at the meeting.

8:50 a.m. EUGENE P. BILODEAU 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 Jones, seconded by Commissioner Stephen decided to allow Mr. Bilodeau to apply for an original broker's license.

8:55 a.m. THOMAS J. MEADE 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 Jones, seconded by Commissioner Stephen decided to allow Mr. Meade to apply for an original salesperson's license, contingent upon receipt of a letter from his principal broker notifying the Commission that he/she is aware of Mr. Meade's previous legal incident.

9:10 a.m. MARY BETH RUDOLPH AND ATTORNEY MATTHEW JOHNSON on behalf of the NH Association of Realtors appeared before the Commission to present Questions and Answers about Designated Agency and Facilitation developed for NHAR members, and to request the Commission to consider a Safe Harbor proposal for licensees during the transition to Designated Agency. After reviewing the NHAR Questions and Answers, Commissioner Stephen made a suggestion on the second paragraph of the answer to Question #21 under Designated Agency that the words "always liable" be replaced with the word "responsible." Commissioner Stephen had concerns with the words "always liable" because he felt that actions of licensees that are so far out of the scope could make the principal liable for these actions. The Commission, on motion by Commissioner Jones, seconded by Commissioner Stephen agreed to the concept of providing safe harbor guidelines for those firms and/or licensees transitioning from traditional agency to designated agency. Commissioner Stephen to draft guidelines.

BROKERAGE RELATIONSHIP DISCLOSURE FORM – the Commission discussed the Brokerage Relationship Disclosure Form developed by the Commission-appointed disclosure form committee. Commissioner LeRoy felt that the description of brokerage relationships on the back of the form be replaced with the description of brokerage relationships from the Consumer Brochure and adding the description of Designated Agency and Facilitator.

9:50 a.m. TERESA GELO appeared before the Commission to discuss a previous legal incident prior renewing her salesperson's license. After review and discussion, the Commission tabled its decision and requested Ms. Gelo to obtain the police report regarding her legal incident and re-appear before the Commission after she supplies the police report.

III. HEARING 10:07 AM

FILE NO. 2007-016 MARIANN PATTERSON VS SUSAN MESITIT & NICHOLAS
KALANTZAKOS

The Commission continued the hearing based on the recusal of one commission member and the lack of a quorum of commissioners to hear the case. The Commission agreed to have a former commission member as an alternate to hear the case pursuant to RSA 331-A:5, VIII, and scheduled the hearing for 9:15 a.m. on December 16, 2008.

IV. DISCUSSION

BRIAN SPRINGMAN submitted a request for Commission clarification regarding payment of

referral fees in real estate transactions. After review and discussion, the Commission directed the Investigator to suggest to Mr. Springman that he seek legal advice for a clarification to his request.

KATHY ROOSA of Kathy Roosa School of Real Estate submitted a request for the Commission to reconsider its decision made at the October Commission meeting about not allowing stamped signatures to be used by instructors on education affidavits. Ms. Roosa insured the Commission that if stamped signatures were allowed, she would always be in control of her stamp and would be the sole person stamping her signature. After review and discussion, the Commission decided to allow instructors to use stamped signatures only when the instructor is the sole person in control of the stamp and is the sole person stamping his/her signature. Ms. Roosa to be so notified.

APPOINTMENT CENTERS – Due to many inquiries and complaints, the Commission’s Investigator Ann Flanagan submitted a request for Commission clarification as to whether “Appointment Centers” which are not licensed with the Real Estate Commission as real estate offices, should be prohibited from having an office phone number, displaying agent business cards, allowing agents access other for specific appointments, or from displaying visible signage, other than a notice legible only from the entrance indicating it is an “Appointment Center” with contact information. After review and discussion, the Commission decided that appointment centers are considered branch offices under RSA 331-A:2 Definitions, and will require a branch office license and a licensed managing broker.

EDUCATION AFFIDAVITS – the Executive Director requested a clarification as to whether copies of education affidavits sent to the Commission office by fax from real estate instructors are acceptable. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Stephen decided that it is acceptable to receive education affidavits issued to real estate applicants and licensees from real estate instructors by fax. Commissioner Ikawa abstained from the decision.

V. OTHER BUSINESS

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

December 16, 2008 at 8:30 a.m.

2. CASE EVALUATIONS - NONE

3. ORDERS

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

FILE NO. 2008-003 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JAMES
BOWEN

VI. ADJOURNMENT

On motion by Commissioner Ikawa, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 11:35 p.m.

Respectfully submitted,



Pauline A. Ikawa
Acting Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION
V.
JAMES BOWEN

ORDER

FILE NO. 2008-003

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violation of NH RSA 331-A:13, IV, VI, by James Bowen. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. James Bowen (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 9/3/04, and licensed as a real estate broker on 9/16/06, and was so licensed and the principal broker of Bowen Realty at the time of the alleged violations.
2. Respondent was the listing broker for a property located at 1557 First NH Turnpike, Northwood, New Hampshire.
3. Respondent mishandled trust funds when he released a \$2,500 escrow deposit to the seller without performance, signed releases by all parties, or court order, pursuant to RSA 331-A:13, IV.
4. Respondent did release the deposit subsequent to sending certified mail notices, but did not follow the 90 day/60 day release process pursuant to RSA 331-A:13, VI.
5. When the Commission Investigator confronted Respondent about this, Respondent said he approached the seller and got the deposit back from the seller and re-deposited it into his escrow account.

6. The Commission Investigator requested the transaction documentation from Respondent.
7. In his reply to this complaint, Respondent indicates that the buyer verbally indicated during a phone call that he did not want his deposit back; however, it was the buyer complaining to the NH Real Estate Commission that prompted this complaint against Respondent for mishandling escrow funds.
8. The buyer Kenneth Shaw testified at the hearing that he never told Respondent that he did not want his deposit back.
9. The seller David Pettigrew testified that he was on the conference call with Respondent and the buyer regarding the transaction.
10. Respondent became a principal broker on 9/18/06 and he indicated that this was the first time he has had a contract not close with a pending deposit problem.
11. Respondent testified that he misinterpreted the deposit release procedure and takes accountability for his mistake.

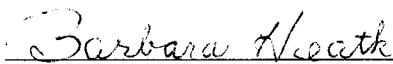
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Although the Commission feels that Respondent did not intentionally mishandle escrow funds, Respondent admits he released the deposit to the seller because of his misunderstanding of the escrow release procedures. Therefore, the Commission rules that Respondent did violate RSA 331-A:13, IV, VI.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Escrow (this continuing education course is to be completed by a live classroom delivery method only and is not to be counted towards Respondent's continuing education requirements) within six (6) months of the 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.

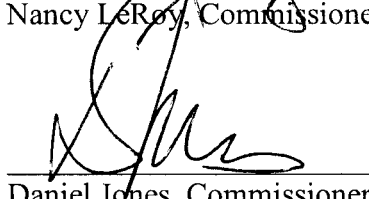
Commissioner Pauline Ikawa evaluated this case and did not take part in the hearing or decision.


Barbara Heath, Commissioner


DATE


Nancy LeRoy, Commissioner


DATE


Daniel Jones, Commissioner


DATE