

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

NOVEMBER 17, 2009

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, November 17, 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, Daniel Jones, David Dunn, James Therrien, and Executive Director Beth Edes.

- I. On motion by Commissioner Dunn, seconded by Commissioner Jones, the Commission unanimously approved the Minutes of the Commission meeting held on October 20, 2009.

COMMISSIONER IKAWA arrived at the meeting at 8:32 a.m.

II. APPOINTMENTS

8:35 a.m. Equivalency Appointment

STEPHEN PATTERSON

After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Dunn unanimously decided to approve Mr. Patterson's real estate experience as sufficient experience pursuant to RSA 331-A:10 (c) and (g).

RICHARD A. JOSEPH

After review and discussion, the Commission, decided to approve Mr. Joseph's real estate experience as sufficient experience pursuant to RSA 331-A:10 (c) and (g). Commissioner Ikawa and Commissioner Jones were opposed to the decision.

9:30 a.m. ASHLEIGH M OHRTMANN 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 Therrien, did not approve Ms. Ohrtmann to apply for a license and directed Ms. Ohrtmann to request to re-appear before the Commission once she is released from probation to request an original salesperson's license.

9:40 a.m. MARGOT VARNEY appeared before the Commission to request reinstatement of her lapsed real estate salesperson's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa, decided to grant the reinstatement of Ms. Varney's real estate salesperson's license based on good cause shown, pursuant to RSA 331-A:18, II.

9:43 a.m. RANDALL HART appeared before the Commission to request reinstatement of his lapsed real estate broker's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Therrien, decided to

grant the reinstatement of Mr. Randall's lapsed broker's license, contingent upon receipt of his renewal fee and required documentation within 7 days of the date of the Commission meeting.

III. **DISCUSSION**

ANDREW WERRY of NNEREN submitted a Request for a Declaratory Ruling on what constitutes a "concession", and whether "concessions" in connection with the sale or lease of real estate, as negotiated by the seller/landlord or buyer/tenant are confidential under RSA 331-A:25-b,I(c); RSA 331-A:25-c,I(c); and RSA 331-A:25-d,II(e). After review and discussion, the Commission ruled that there is no definition of concession under RSA 331-A or Administrative Rules Rea 100-700. However; RSA 331-A:25-b,I(c), RSA 331-A:25-c,I(c), and RSA 331-A:25-d,II(e) specifies when confidential information received from the seller/landlord or buyer/tenant shall be preserved as confidential by the licensee.

WALT ELLARD submitted the following scenarios and requested a clarification on which sections of the Brokerage Relationship Disclosure Form apply:

1. When the firm is a Designated Agency Firm and a customer comes in and would like to see property, in general, but does not want representation, which of the following needs to be checked?
2. In the case of a customer wishing to be represented, which of the following needs to be checked?
3. In the case of a Seller wishing to list their property, which of the following needs to be checked?

This form is being presented Seller/Landlord Buyer/Tenant

Licensee to check all that apply:

Currently the Seller/Landlord is a Customer Client

Currently the Buyer/Tenant is a Customer Client

The licensee is a Seller's Agent for all listings of the Firm

The licensee is a Seller's Agent for the licensee's listings only (Designated Agent)

The licensee represents neither the Buyer/Tenant nor the Seller/Landlord and is a Facilitator

After review and discussion the Commission stated that the following would apply:

1. The licensee would check off:

This form is being presented to the Buyer/Tenant

Currently the Buyer/Tenant is a Customer

The Licensee is a Seller's Agent for the licensee's listings only (Designated Agent)

2. The licensee would check off:
This form is being presented to the Buyer/Tenant
Currently the Buyer/Tenant is a Customer
The licensee is a Seller's Agent for the licensee's listings only (Designated Agent)
3. The licensee would check off:
This form is being presented to the Seller/Landlord
Currently the Seller/Landlord is a Customer
The licensee is a Seller's Agent for the licensee's listings only (Designated Agent)

IV. **HEARING 10:30 AM**
FILE NO. 2009-010 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JAMES BOWEN

The following persons were present at the hearing:

Commission: Commissioners David Dunn, Nancy LeRoy, James Therrien and Daniel Jones

Stenographer: Lynn A. Beck

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

Evaluator: Commissioner Ikawa evaluated the above matter and did not take part in any of the discussions of this matter.

Complainant: The Commission Investigator Ann Flanagan on behalf of the Commission

Attorney: Pro Se

Witnesses: None

Respondent: James Bowen (failed to appear, not present at hearing)

Attorney: None

Witnesses: None

V. **HEARING 10:50 AM**
FILE NO. 2008-033 KENNETH L. SHAW, III VS JAMES BOWEN

The following persons were present at the hearing:

Commission: Commissioners David Dunn, Nancy LeRoy, James Therrien and Daniel Jones

Stenographer: Lynn A. Beck

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

Evaluator: Commissioner Ikawa evaluated the above matter and did not take part in any of the discussions of this matter.

Complainant: Kenneth L. Shaw, III

Attorney: Pro Se

Witnesses: None

Respondent: James Bowen (failed to appear, not present at hearing)

Attorney: None

Witnesses: None

VI. **DELIBERATION OF FILE NO. 2003-09-01**

File No. 2003-09-01 New Hampshire Real Estate Commission vs. Michael J. Pagliarulo. After review of the records, transcripts and exhibits, the Commission made a finding on File No. 2003-09-01. An Order will be issued and presented to the Commission for approval at its next meeting.

VI. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the December meeting:
December 15, 2009 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. 2006-004 NEW HAMPSHIRE REAL ESTATE COMMISSION VS SHANNON
M. MCCARTHY

FILE NO. 2007-011 KRISTINE HUGHES & JOHN PEREZ & NEW HAMPSHIRE REAL
ESTATE COMMISSION VS TIMOTHY WADE, PAMELA ROSS, KIERA RUSSELL &
MARGERY MACDONALD

VII. **ADJOURNMENT**

On a motion by Commissioner Dunn, seconded by Commissioner Jones, Chairman Nancy
LeRoy adjourned the meeting at 12:00 p.m.

Respectfully submitted,



Pauline A. Ikawa
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

V.

SHANNON M. McCARTHY

ORDER

FILE NO. 2006-004

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violation of NH RSA 331-A:18, IV, by Shannon McCarthy. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Shannon McCarthy (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 9/27/90, and licensed as a real estate broker on 12/17/99.
2. Respondent's principal broker license #040555 expired on 12/17/03.
3. Respondent's license lapsed 6 months later on 06/17/04.
4. Respondent's trade name registration as Shannon McCarthy Group Realty & Development became inactive when she expired as its principal broker.
5. Respondent was the listing agent for Shannon McCarthy Group Realty & Development for properties posted on the MLS during the time period that her license had lapsed.
6. Respondent listed for sale property at 236 Brickett Road in Manchester, NH and entered the listing as MLS #227068 into the Multiple Listing System on September 8, 2005; designated the listing as pending on October 6, 2005; and designated the listing as withdrawn on November 15, 2005.

7. Respondent listed for sale property at 64 Martins Ferry Rd, in Hooksett, NH and entered the listing into the Multiple Listing Service on September 13, 2005; and designated the listing as withdrawn on September 26, 2005.
8. Respondent's licensing history print out indicates that she has previously allowed her license to lapse (1992) and expire (2001), and has had other renewal forms (1996, 1998) returned to the NHREC as undeliverable because Respondent had not reported her change of address to the New Hampshire Real Estate Commission.
9. Greg Barrett of Kas-Bar Realty and Joseph Kelly Levasseur witnessed Respondent's brokerage activities during the above referenced time period during which Respondent's license was lapsed.
10. Respondent testified that once she realized on November 16, 2005 that she had been listing property without a real estate license, she withdrew her request to the closing company for a commission.
11. Respondent testified that approximately four months prior to her license expiration on August 28, 2003 she transferred from being an associate broker to becoming the principal broker for her own company, Shannon McCarthy Group Realty & Development, and that although she was unaware that she needed to renew her license by December 17, 2003, and that the oversight was unintentional, she takes full responsibility for allowing her license to expire and lapse.

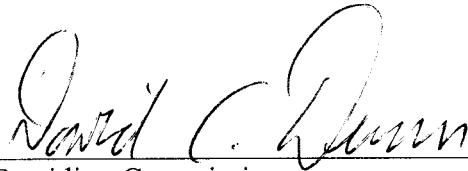
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent admits and the evidence confirms that Respondent acted or attempted or offered to act in matters as a real estate broker or salesperson under an expired or lapsed license. Therefore, the Commission rules that Respondent did violate RSA 331-A:18, IV.

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-thousand dollars (\$1,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within thirty (90) 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.

Commissioner Nancy G. LeRoy evaluated this case and did not take part in the hearing or decision.



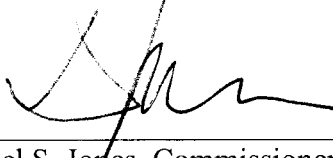
David C. Dunn, Presiding Commissioner

11/17/09
DATE



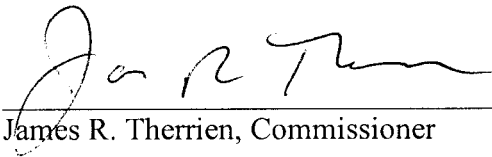
Pauline A. Ikawa, Commissioner

11/17/09
DATE



Daniel S. Jones, Commissioner

11/17/09
DATE



James R. Therrien, Commissioner

11/17/2009
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2007-011

NEW HAMPSHIRE REAL ESTATE COMMISSION
&
KRISTINE HUGHES & JOHN PEREZ
VS
TIMOTHY WADE, PAMELA ROSS, KIERA RUSSELL, & MARGERY
MACDONALD

This matter comes before the Real Estate Commission on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan and Kristine Hughes & John Perez, alleging violations of NH RSA 331-A:12-a; RSA 331-A:16, IV(a); RSA 331-A:26, X; RSA 331-A:26, V; and RSA 331-A:26, IV by Timothy Wade; NH RSA 331-A:12-a; RSA 331-A:16, IV(a); and RSA 331-A:26, X by Pamela Ross; RSA 331-A:26, XXVII by Kiera Russell; and RSA 331-A:26, XXVII by Margery MacDonald. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Respondent Timothy Wade was licensed as a New Hampshire real estate salesperson on 9/28/99, and was so licensed in inactive status at the time of the alleged violations. Respondent Pamela Ross was licensed as a New Hampshire real estate salesperson on 9/28/99, and was so licensed in inactive status at the time of the alleged violations. Respondent Kiera H. Russell was licensed as a New Hampshire real estate salesperson on 8/7/01 and as a real estate broker on 11/21/05, and was so licensed and the managing broker of RE/MAX Presidential at the time of the alleged violations. Respondent Margery MacDonald was licensed as a New Hampshire real estate salesperson on 11/29/72 and as a real

estate broker on 12/27/73, and was so licensed and the principal broker of RE/MAX Presidential at the time of the alleged violations.

2. Timothy Wade and Pamela Ross were both salespersons in inactive status between 3/19/07 and 3/28/07. On 3/21/07 their website at www.reinnh.com offered their brokerage services while they were in inactive status and without a principal broker or firm affiliation.
3. While licensed under RE/MAX Presidential, Pamela Ross used the name "Wade" in her advertising and business cards although she was not licensed as such.
4. RE/MAX Presidential placed newspaper advertisements using the name Pamela "Wade", and kept her business cards with the name Pamela "Wade" on display in the office.
5. Kiera Russell was the managing broker and Margery MacDonald was the principal broker of RE/MAX Presidential at the time of the alleged violations.
6. Kiera Russell testified that all the advertisements for all the agents were handled and coordinated by an administrative assistant.
7. Kiera Russell testified that as the managing broker it was not her role to review advertisements, and the office general manager was responsible for authority over policies, procedures, daily functioning, and supervision of agents at all five offices.
8. Principal broker Margery MacDonald testified that if the managing broker had any concerns, she would go to the office general manager rather than the principal broker.

9. Complainants John Perez and Kristine Hughes alleged that Timothy Wade made several misrepresentations and false statements regarding his marital status, experience as a builder, condo association dues, wetlands issues, and availability of property.
10. In his testimony, Timothy Wade denied that he ever made any misrepresentations or false statements to Complainants.
11. Complainants did not contact the managing or principal broker regarding the problems they were having with Timothy Wade.

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

Respondent Timothy Wade offered brokerage services on the website (www.reinnh.com) while inactive. Therefore the Commission rules that Respondent Timothy Wade did violate RSA 331-A:12-a.

Respondent Pamela Ross offered brokerage services on the website (www.reinnh.com) while inactive. Therefore the Commission rules that Respondent Pamela Ross did violate RSA 331-A:12-a.

Respondent Timothy Wade offered brokerage services on the website (www.reinnh.com) without a principal broker or firm affiliation. Therefore the Commission rules that Respondent Timothy Wade did violate RSA 331-A:16, IV(a); RSA 331-A:26, X.

Respondent Pamela Wade offered brokerage services on the website (www.reinnh.com) without a principal broker or firm affiliation. Therefore the

Commission rules that Respondent Pamela Ross did violate RSA 331-A:16, IV(a); RSA 331-A:26, X.

Respondent Pamela Ross used the name “Wade” in her advertising and business cards although she was not licensed as such. Therefore the Commission rules that Respondent Pamela Ross did violate RSA 331-A:16, IV(a).

The organizational structure of a firm does not negate the statutory responsibilities of supervision as a managing broker. Respondent Keira Russell failed to exercise reasonable supervision over the activities of licensees and any unlicensed staff when RE/MAX Presidential placed newspaper advertisements using the name Pamela “Wade” and kept business cards with the name Pamela “Wade” on display in the office. Therefore the Commission rules that Respondent Keira Russell did violate RSA 331-A:26, XXVII.

The organizational structure of a firm does not negate the statutory responsibilities of supervision of a principal broker. Respondent Margery MacDonald failed to exercise reasonable supervision as principal broker when RE/MAX Presidential placed newspaper advertisements using the name Pamela “Wade” and kept business cards with the name Pamela “Wade” on display in the office. Therefore the Commission rules that Respondent Margery MacDonald did violate RSA 331-A:26, XXVII.

Based on a preponderance of the evidence, the Commission rules that Respondent Timothy Wade did not violate RSA 331-A:26, IV, V.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders Respondent Timothy Wade shall show proof of full attendance (not to be counted

towards Respondent's continuing education requirements) at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Advertising within three (3) months of the effective date of this Order; these continuing education courses are to be completed by live classroom delivery method only; Respondent Timothy Wade shall also 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 forty-five (45) days of the effective date of this Order.

Respondent Pamela Ross shall show proof of full attendance (not to be counted towards Respondent's continuing education requirements) at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Advertising within three (3) months of the effective date of this Order; these continuing education courses are to be completed by live classroom delivery method only; Respondent Pamela Ross shall also 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 forty-five (45) days of the effective date of this Order. Respondent Keira Russell shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within forty-five (45) days of the effective date of this Order. Respondent Margery MacDonald shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire, within forty-five (45) 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 Respondents have 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 Nancy LeRoy evaluated this case and did not take part in the hearing or decision.



David C. Dunn, Presiding Officer 11/17/09
DATE



James R. Therrien, Commissioner 11/17/2009
DATE



Pauline A. Ikawa, Commissioner 11/17/09
DATE