

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

OCTOBER 17, 2006

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 17, 2006 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 Arthur Slattery
Present: Commissioners Arthur Slattery, Robert Stephen, Barbara Heath, Nancy LeRoy, Executive Director Beth Edes, and Investigator Ann Flanagan.

- I. The Commission tabled the June 20, 2006, Minutes due to a lack of a quorum of members present to approve or disapprove. The Commission tabled the July 18, 2006, August 22, 2006 and September 19, 2006 Minutes for further review.

II. APPOINTMENTS

Equivalency Appointments

The following candidates were interviewed by Commissioners Arthur Slattery, Robert Stephen, Barbara Heath, and Nancy LeRoy.

CANDIDATE

DETERMINATION

PETER STILLMAN

APPROVED

On motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission approved Mr. Stillman's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

PETER G. MCGRATH

APPROVED

On motion by Commissioner Stephen, seconded by Commissioner Heath, the Commission approved Mr. McGrath's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

DAWN READ

APPROVED

On motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission approved Ms. Read's experience presented as equivalent experience, pursuant to RSA 331-A:10, II (c)(3).

8:55 a.m. JOHN LIVINGSTONE 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 Heath, seconded by Commissioner LeRoy decided to allow Mr. Livingstone to apply for his salesperson's license.

The Commission meeting was adjourned at 9:05 a.m. for a fire drill and reconvened at 9:15 a.m.

9:25 a.m. DONNA KELLSTROM 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 LeRoy, seconded by Commissioner Heath, decided to allow Ms. Kellstrom to apply for her salesperson's license.

9:35 a.m. ADAM R. PLUMMER 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 decided to allow Mr. Plummer to apply for his salesperson's license, on the stipulation that should Mr. Plummer change his affiliation with his broker that he notify any subsequent principal brokers of his previous legal incident. Commissioner Stephen was opposed to the decision.

9:50 a.m. MELINA LEARY appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. Frederick Afshar, managing broker of Eastern Massachusetts Real Estate, Inc. located in Manchester appeared before the Commission to testify on Ms. Leary's behalf. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner LeRoy, decided to allow Ms. Leary to apply for her salesperson's license.

III. **PUBLIC HEARING ON ADMINISTRATIVE RULES 10:05 AM**

A public hearing was held on initial rule proposals on the following administrative rules:

- Rea 101.01 Terms Used In Rules
- Rea 101.02 Unprofessional Conduct
- Rea 204.06 Adjustment by Conciliation
- Rea 301.01 Application Form
- Rea 301.02(j) Fees
- Rea 301.03 Filing Requirements
- Rea 301.04 Dishonored Checks, Drafts or Money Orders
- Rea 302.02 Course Outline
- Rea 303.01 Examination Schedule
- Rea 303.05(b) Partial Examinations
- Rea 304.02 Reciprocity of Continuing Education (Repeal)
- Rea 404.04 Brokerage Contracts
- Rea 501.01(b) Agency Code of Ethics
- Rea 701.01 Agency and Non-Agency Disclosure
- Rea 702.01 Trust Accounts
- Rea 703.01 Cooperating Agreements

This hearing was called by the Commission as part of the formal administrative rulemaking process under RSA 541-A, to solicit input from the public and the real estate industry before proceeding further with the process. The Real Estate Commission will be accepting written testimony from any members of the public regarding these rule proposals until the end of the business day of October 17, 2006.. The Public Hearing adjourned at 12:00 p.m. for a scheduled show cause hearing and was reconvened at 1:35 p.m. The Public Hearing was adjourned at 3:00 p.m.

IV. **SHOW CAUSE HEARING 12:00 PM**
FILE NO. 2004-024 PAUL GRIFFIN, NH ASSOCIATION OF REALTORS VS ED WILLIAMS,
ISOLDMYHOUSE.COM

The following persons were present at the hearing:

Commission: Commissioners Robert Stephen, Barbara Heath, Nancy LeRoy

Stenographer: Camille M. Palladino-Duffy Nolin, McKenna & Duffy Reporting Associates
P.O. Box 1658
Dover, NH 03821-1658

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

Appearances:

Attorneys representing Paul Griffin,
NH Association of Realtors

Peter G. Callaghan, Esq.
Preti, Flaherti, Bleiveau, Pachios
& Haley, PLLP
57 North Main Street
Concord, NH 03302

&
John M. Sullivan, Esq.
Preti, Flaherti, Bleiveau, Pachios
& Haley, PLLP
57 North Main Street
Concord, NH 03302

Attorneys representing East/West Mortgage Co., Inc.
d/b/a: ISoldMyHouse.com

Christopher C. Gallagher, Esq.
Gallagher, Callaghan & Gartrell
214 North Main Street

Concord, NH 03302
&
Jeanne Herrick, Esq.
Gallagher, Callaghan & Gartrell
214 North Main Street
Concord, NH 03302

DECISION: An Order will be subject to review of transcripts.

V. **OTHER BUSINESS**

1. The Commission unanimously approved November 21, 2006 as the next regularly scheduled meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2006-020**

Evaluator: Commissioner LeRoy

Determination: No violation, no hearing necessary.

(b) **FILE NO. 2006-021**

Evaluator: Commissioner Slattery

Determination: Should be heard, hearing to scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a settlement agreement with a disciplinary fine in the amount of \$250.

The above determinations were unanimously approved by the Commission.

3. ORDERS

The following Order was issued by the New Hampshire Real Estate Commission. A copy of the Order is attached and becomes part of the official minutes of this meeting.

FILE NO. 2004-010 JOHN KULA VS JEAN A. YONKIN

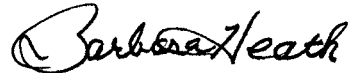
4. SETTLEMENT AGREEMENTS

The following Settlement Agreement was issued by the New Hampshire Real Estate Commission. A copy of the Settlement Agreement is attached and becomes part of the official minutes of this meeting.

VI. ADJOURNMENT

Motion by Commissioner LeRoy, seconded by Commissioner Heath to adjourn the meeting. Commissioner Slattery adjourned the meeting at 3:05 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara H. Heath". The signature is written in black ink and is positioned above the printed name and title.

Barbara H. Heath
Clerk

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2004-013 Gordon & Joanne Haym & New Hampshire Real Estate Commission
vs. Andrew Smith (Peabody & Smith Realty)
Allegations: NH RSA 331-A:13, IV

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 Andrew Smith (“the Licensee” or “the Respondent”), a real estate broker currently licensed by the Commission until 09/21/06, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

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:

Respondent represented the sellers (Complainants) as principal broker for the listing agency. A deposit dispute arose between Complainants and the buyers. Respondent released \$5,900 to the buyers and \$200 to the sellers without signed releases of deposit. There were no signed releases executed for this release of deposit. Respondent indicates that he misunderstood the handling of escrow funds because he was doing what he felt that the contract provisions indicated. The Commission is not concerned about the contract provisions because the law indicates that he can only release fully executed contract funds with releases signed by all parties or a judge’s order. A buyer and seller cannot contractually agree in a purchase and sales agreement for the escrow broker to disobey the law; furthermore, the broker is not a signatory to the P&S. A contract for sale is not a contract for release of deposit; the provisions of a P&S

cannot pre-suppose or negate the broker's obligations in the event of an actual deposit dispute.

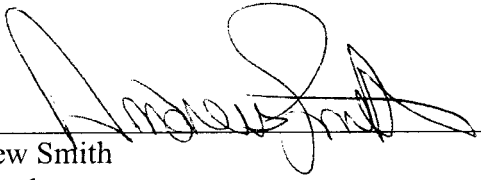
1. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
2. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall pay a disciplinary fine in the amount of five-hundred fifty dollars (\$500) to the New Hampshire Real Estate Commission, payable to the Treasurer, State of New Hampshire, within sixty (60) days of the effective date of this Agreement.
3. 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.
4. 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.
5. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to him/her other than those terms and conditions expressly stated herein.
6. Respondent understands that his/her action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
7. Respondent has had the opportunity to seek and obtain the advice of an attorney of his/her choosing in connection with her/his decision to enter into this Agreement.

8. 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 his/her right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
9. Respondent certifies that he/she has read this document titled Settlement Agreement. Respondent understands that he/she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he/she 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, he/she waives these rights as they pertain to the misconduct described herein.
10. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

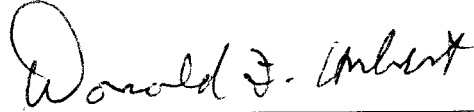
For the Respondent

I, Andrew Smith, 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: _____, 2006


Andrew Smith
Respondent

On this 22nd day of August A.D. 2006
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:

9/25/2007

For the Commission

Dated: October 17th, 2006


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

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2004-010

JOHN KULA
V
JEAN A. YONKIN

This matter comes before the Real Estate Commission on the complaint of John Kula, alleging violations of NH RSA 331-A:26, V and RSA 331-A:25-b, II(a) by Jean A. Yonkin. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Jean A. Yonkin (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 1/6/93, and was so licensed and associated with REMAX Properties One, Inc. at the time of the alleged violations.
2. John Kula (hereinafter referred to as Complainant) bought a property listed by Respondent.
3. Complainant feels that the seller did not adequately fill out the property information report and Complainant believes that Respondent should have verified the seller's representations, and Complainant thinks that Respondent "bears the responsibility".
4. Complainant says that Respondent told him that the property was well maintained and that the furnace was good.
5. Respondent denies making the statements which Complainant alleges.
6. The furnace had a previous puffback that the seller's insurance company hired ServPro to clean.

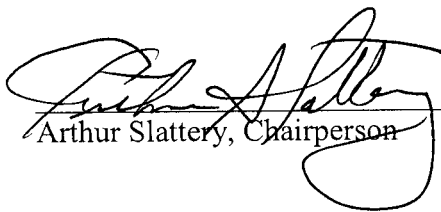
7. Respondent testified that she had little knowledge about puffbacks because she had never encountered or seen other transactions involving puffbacks; and even though occasionally properties do experience puffbacks that in all her years in real estate she had never seen mention of it on a property representation disclosure for other transactions.
8. Respondent testified that she was in the property after the puffback but prior to its cleaning and she did not see or smell anything unusual.
9. Respondent testified that the sellers' insurance was mitigating the situation and she had no reason to believe that there might be subsequent issues.
10. Complainant testified that there was soot under the carpeting that remained and that this was an expense and health hazard for his family.
11. Complainant is upset that the property taxes went up, but Complainant was buying and selling a home in the same town so he knew that the taxes would be increasing in that town.
12. Complainant had a buyer-agent and a home inspector.
13. Complainant testified that his buyer-agent was not very involved in this transaction and they had to rely on Respondent during the transaction.
14. Complainant has litigated his complaint against the seller in small claims court.

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

The Commission believes Respondent's testimony that she had little previous knowledge about puffbacks, and that she was not intentionally trying to misrepresent the

condition of the property to Complainant. If an insurance company is paying to mitigate the damage from an event and the cleanup is not done thoroughly, it seems that would be a civil matter between the insurance company and the cleanup company they hired. It is unreasonable to expect that the real estate agents would pull up carpeting, although a home inspector might if there were indications to do so. Perhaps if the puffback had been disclosed then the home inspector might have initiated inspection activities to verify that the cleanup was adequate. However, ultimately ServPro was hired by the insurance company so the quality of the cleanup is a civil matter between the insurance company and Servpro. The Commission has directed its Investigator to initiate a formal complaint against the buyer-agent for not being more involved in this transaction. The Commission rules that Respondent did not violate RSA 331-A:26, V or RSA 331-A:25-b, II(a).


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


Arthur Slattery, Chairperson

10-17-06
DATE


Nancy LeRoy, Commissioner

10-17-06
DATE


Pauline Ikawa, Commissioner

11/13/06
DATE