

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

**OCTOBER 21, 2008**

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 21, 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 8:35 a.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Pauline Ikawa, Barbara Heath, Daniel Jones, Executive Director Beth Edes, and Investigator Ann Flanagan.

- I.** On motion by Commissioner Heath, seconded by Commissioner Jones, the Commission unanimously approved the Minutes of the Commission meeting held on August 19, 2008.

On motion by Commissioner Ikawa, seconded by Commissioner Jones, the Commission unanimously approved the Minutes of the Commission meeting held on September 16, 2008.

**II. APPOINTMENTS**

Equivalency Appointments

8:40 a.m. HEATHER SPELLMAN

On motion by Commissioner Jones, seconded by Commissioner Heath, the Commission approved Ms. Spellman real estate experience as sufficient experience pursuant to RSA 331-A:10, II(c) and (g). Ms. Spellman will provide a Broker Transaction Verification Form.

8:50 a.m. NATAHN R. DUBE 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 Heath, decided to allow Mr. Dube to apply for his original salesperson's license, contingent upon the receipt of a letter from his principal broker notifying the Commission that he/she is aware of Mr. Dube's previous legal incident.

8:55 a.m. ATTORNEY MATTHEW JOHNSON appeared before the Commission to request a clarification on the following:

A Real Estate Company currently has a corporate license to sell real estate and a licensed principal broker. The principal broker is an employee of the Real Estate Company as are certain administrative and support personnel. All other licensees are independent contractors and are not employees of the Real Estate Company. As a result of the sale of the business, the Real Estate Company would like to transfer all employees, including the principal broker, to an employee leasing company that would then lease these same employees back to the Real Estate Company. This is envisioned to be a temporary arrangement for a period of approximately 60 days until the sale of the business is completed. During that approximate 60 day period, the agents would remain independent contractors of the Real Estate Company, but the principal broker would be an employee of the employee leasing company. The Real Estate Company would continue to operate,

hold its corporate license, and continue through its independent contractor licensees to represent buyers and sellers in real estate transactions under its own name.

Attorney Johnson requested a clarification as to whether the Real Estate Company can receive commissions on transactions during this time period and pay the independent contractor licensees when the principal broker, who still oversees and supervises all the activities of the Real Estate Company licensees, is no longer technically an employee of the Real Estate Company but rather the employee leasing company.

After review and discussion, the Commission stated that as long as the principal broker remains the principal broker of the Real Estate Company and the escrow account remains with the Real Estate Company the above noted scenario would be in compliance with RSA 331-A. The Commission requested Attorney Johnson to submit a letter to the Commission confirming that escrow account will remain as it is currently and the principal broker will remain the principal of the Real Estate Company.

9:05 a.m. RICHARD BROIDER appeared before the Commission to request reinstatement of his lapsed license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Heath, the Commission approved the reinstatement of Mr. Broider's license based on good cause demonstrated as required by RSA 331-A:18, II.

9:13 a.m. ARTHUR DESMEULES 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 Ikawa, seconded by Commissioner Jones, decided to allow Mr. Desmeules to apply for his original salesperson's license, contingent upon the receipt of a letter from his principal broker notifying the Commission that he/she is aware of Mr. Desmeules' previous legal incident.

9:17 a.m. GARY O'CONNELL, CHRIS NORWOOD, AND MARIE BODI, Representatives of the NH CIBOR Education Committee appeared before the Commission to discuss acceptable subject matter of commercial education courses that may be submitted in the future for Commission accreditation. The Committee had concerns with a Commission discussion held at a previous commission meeting about the possibility of basing acceptable subject matter on the Association of Real Estate License Law Official's list, and on other states' lists of acceptable and non-acceptable course topics. The Commission explained that the lists of acceptable and non-acceptable subject matter is used as guidelines and that courses will continue to be reviewed using the course outlines and descriptions that are submitted.

9:44 a.m. PRESCOTT LANE appeared before the Commission to discuss why he taught the core course after his accreditation had expired. Fran West, the Commission's Education Program Assistant reported to the Commission that Mr. Lane was aware of the expired status of the course and decided to teach it after telling his students that the course would probably soon be re-

accredited so they could receive credit. This was not the first incident of Mr. Lane teaching a course which had expired and it had previously been brought to his attention that he may not teach a course which is not currently accredited and offer credit for it. Mr. Lane agreed that he had taught an unaccredited course and stated that he had told students about the status of the course and that they may not receive credit. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Ikawa decided not to suspend Mr. Lane's accreditation as a NH real estate instructor and stated that Mr. Lane will not be allowed to give credit for any courses in the future for courses that have expired.

**III. DISCUSSION**

JOHN DORAN submitted a request for Commission clarification as to whether a stamped signature is acceptable as an original signature of a real estate instructor as required on the Commission's real estate credit affidavit, and if a stamped signature is acceptable, would it be permissible for the real estate instructor to allow others to use the stamp to complete the credit affidavit on behalf of the instructor. After review and discussion, the Commission, on motion by Commissioner Heath, seconded by Commissioner Jones decided that stamp signatures will not be accepted as the original signature and only original signatures will be allowed on the education credit affidavits. NH accredited instructors to be so notified.

**IV. HEARING 9:45 AM**

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

The following persons were present at the hearing:

Commission: Commissioners Nancy LeRoy, Barbara Heath and Daniel Jones

Stenographer: Lynne A. Beck

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

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

Complainant: The NH Real Estate Commission through its Investigator Ann Flanagan

Attorney: Pro Se

Witnesses: Kenneth Shaw

Respondent: James Bowen

Bowen Realty  
1557 First NH Turnpike  
Northwood, NH 03261

Attorney: Pro Se

Witnesses: David Pettigrew

**V. OTHER BUSINESS**

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

November 18, 2008 at 8:30 a.m.

2. CASE EVALUATIONS

- (a) File No. 2008-010

Evaluator: Commissioner Jones

Determination: No violation, no hearing necessary.

- (b) File No. 2008-020

Evaluator: Commissioner Jones

Determination: Requested further investigation by the Commission's Investigator.

The above determinations were unanimously approved by the Commission.

3. ORDERS

The following Orders were approved by the Commission and are attached to the Minutes of this meeting:

FILE NO. 2006-028 ELIZABETH DAVISION & BRIAN JACOBY VS BRENDA GREENE

FILE NO. 2008-007 NEW HAMPSHIRE REAL ESTATE COMMISSION VS LAURIE  
DUNLOP

**VI. RULEMAKING**

CONDITIONAL APPROVAL OF FINAL PROPOSAL OF 2008-128 – The Executive Director presented the Commission with a Conditional Approval of the Joint Legislative Committee on Administrative Rules on Final Proposal 2008-128. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Jones responded to the Conditional Approval and amended Final Proposal 2008-128 in accordance with the Conditional Approval.

FINAL PROPOSAL 2008-128 – The Executive Director presented the Commission with the approval from the Office of Legislative Services to adopt Rule Notice Number 2008-128 as

amended, relative to various sections and paragraphs of Rea 300-700. The Commission, on motion by Commissioner Ikawa, seconded by Commissioner Jones, adopted the following administrative rules to become effective on October 22, 2008:

**VII. INITIAL RULEMAKING PROPOSAL**

The Executive Director presented the following rulemaking proposal to the Commission for consideration:

Rea 301.02 Fees.

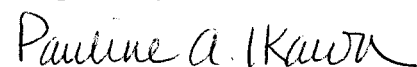
- (a) The applicant for each original individual or firm broker license and renewal thereof shall pay a fee of ~~\$90~~ **\$100**.
- (b) The applicant for each original salesperson license and renewal thereof shall pay a fee of ~~\$70~~ **\$80**.
- (c) The broker, salesperson or firm shall pay a fee of \$5 for each duplicate license.
- (d) The broker, salesperson or firm shall pay a fee of ~~\$15~~ **\$20** for each license amendment.
- (e) The broker, salesperson or firm shall pay a fee of \$5 for each certificate of license and good standing.
- (f) The applicant for each qualifying examination shall pay a fee of ~~\$100~~ ***\$115 for a salesperson examination and \$130 for a broker examination.***
- (g) The broker or salesperson shall pay a fee of \$25 or 5% of the face amount of the check, whichever is greater, plus all protest and bank fees for each check, draft or money order dishonored and returned to the commission pursuant to RSA 6:11-a.
- (h) The broker, salesperson or firm shall pay a late fee of ~~\$50~~ **\$60**, in addition to the regular renewal fee, for renewal of a license up to 6 months after its expiration.
- (i) Real estate course providers shall pay an evaluation fee of ~~\$30~~ **\$50** each time a course is submitted to the commission for accreditation or reaccreditation.
- (j) Real estate applicants and licensees shall pay a fee of \$10 for each course submitted to the commission to be evaluated for pre-licensing education credit or continuing education credit.

After review and discussion, the Commission directed the Executive Director to initiate the rulemaking process on changes above on Rea 301.02.

**VIII. ADJOURNMENT**

On motion by Commissioner Ikawa, seconded by Commissioner Jones, to adjourn the meeting, Chairman Nancy LeRoy adjourned the meeting at 12:55 p.m.

Respectfully submitted,



Pauline A. Ikawa  
Acting Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION  
ORDER  
FILE NO. 2006-028

ELIZABETH DAVISON & BRIAN JACOBY  
V.  
BRENDA GREENE

This matter comes before the Real Estate Commission on the complaint of Elizabeth Davison & Brian Jacoby, alleging violations of NH RSA 331-A:3; RSA 331-A:12-a; RSA 331-A:34, by Brenda Greene. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Brenda Greene (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 11/19/87, and her license was expired between 11/19/03 and 3/16/04, and inactive between 3/16/04 and 4/22/05 during the times of the alleged violations.
2. During these expired and inactive time periods, Complainants indicate that Respondent was managing their rental property including activities such as collecting deposits and rents.
3. Complainants indicate that Respondent was not accounting for funds, and converted funds by not paying funds due to Complainants and tenants.
4. Respondent did not have a written rental brokerage agreement or agency disclosures, and Respondent's reply to the complaint indicates that Respondent thought she had a fiduciary duty to the tenants.
5. The NH Real Estate Commission had a difficult time locating Respondent because she did not notify the Commission of her change of address; although in

Respondent's reply she indicates that she called the NH Real Estate Commission about her address change but there was no amendment form or \$15 fee.

6. Respondent admits in her reply to the complaint that she did not realize that she needed an active license under a broker to do property rentals.
7. Respondent tries to implicate her former broker Carol Byatt; however, when Carol Byatt was Respondent's broker, Respondent was not doing rentals at Complainants' property, and the property she was managing at that time Respondent was in the exempted classes as a tenant in the property.
8. Respondent's principal broker after Respondent's inactive period was Lynn Marcoux on 4/22/05; however, this was after Complainants had fired Respondent from renting Complainants' property.

9. Summary of Respondent's licensing history:

Initial License	11/19/87	Records 1987 – 1999 are archived
Licensed under Carole Byatt	8/9/94 – 11/19/97	
Licensed under Richard Burbine	11/19/97 – 11/19/99	
Expired License	11/19/99 – 1/27/00	
Licensed under Richard Burbine	1/27/00 – 12/23/02	
Pending Employing Broker	12/23/02 – 1/14/03	
Licensed under Lawrence White	1/14/03 – 4/9/03	
Licensed under Christy Goodhue	4/9/03 – 11/19/03	
Expired License	11/19/03 – 3/16/04	
Inactive License	3/16/04 – 4/22/05	
Licensed under Lynn Marcoux	4/22/05 – 11/19/05	
Expired License	11/19/05 – 5/19/06	
Licensed under Lynn Marcoux	5/19/06 – 10/23/06	
Inactive License	10/23/06 – 11/19/07	
Expired License	11/19/07 – 12/24/07	
Inactive License	12/24/07 – Present	

Dates with no active license (either expired or inactive):

11/19/99 – 1/27/00  
12/23/02 – 1/14/03

11/19/03 – 4/22/05  
11/19/05 – 5/19/06  
10/23/06 to Present

10. Complainant submitted exhibits documenting Respondent's rental activities at Complainant's property.
11. Respondent testified acknowledging that she did rental activities while her salesperson license was expired, inactive, and not under an employing broker.
12. Respondent testified that she received funds directly from tenants into her own account rather than into her broker's account.
13. Complainant testified that Respondent owed her money and did not provide appropriate accounting of rental transaction.
14. Respondent testified that she misunderstood the regulations requiring that rental transactions require a real estate license.
15. Respondent testified that she did not know her license had expired because she moved and did not get the renewal notification.
16. Respondent testified that she did not know her license was inactive because she was not notified that her broker had returned it to the Commission.

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

The evidence is conclusive through documentation and the testimony of both the Complainant and Respondent that Respondent was renting Complainant's property and engaged in brokerage activities without an active real estate license. Therefore, the

Commission rules that Respondent did violate RSA 331-A:12-a; RSA 331-A:3; RSA 331-A:34.

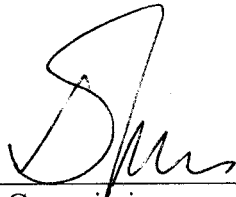
In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent's real estate license is suspended until such time that Respondent shows proof of full attendance at a New Hampshire Real Estate Commission accredited 40-hour pre-licensing course. During the time period of suspension, Respondent will continue to complete the continuing education requirements and renew her real estate license, otherwise it will lapse.

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

  
\_\_\_\_\_  
Robert S. Stephen, Presiding Commissioner

10/29/08  
DATE

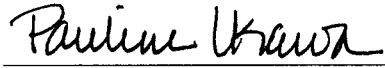


---

Daniel Jones, Commissioner

10/21/08

DATE



---

Pauline Ikawa, Commissioner

10/21/08

DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION

V.

LAURIE A. DUNLOP

ORDER

FILE NO. 2008-007

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violation of NH RSA 331-A:26, I, by Laurie Dunlop. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

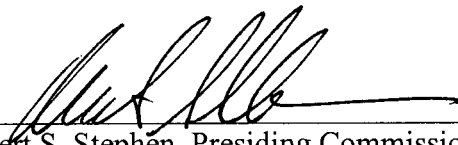
1. Laurie Dunlop (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 11/4/87, and licensed as a real estate broker on 2/9/93, and was so licensed at the time of the alleged violation.
2. Respondent met with the Commission at its September 7, 2007 and October 16, 2007 meetings to address concerns about her application for real estate broker received at the NHREC on August 31, 2007.
3. At the October 16, 2007 meeting Respondent indicated to the Commission that the problems with the septic system at Respondent's rental property led to court proceedings with her tenant and Respondent stated: "it wasn't that she had sewer backing to her apartment or anything. It was a slight odor in the summertime, so we had it checked out and they did say that it should be replaced, but I didn't have the money to replace it".

4. Subsequently on November 5, 2007 the Commission received U.S. Bankruptcy Court documentation indicating: “the septic system ceased working properly, which caused sewage to pool at the bottom of the stairs to Landry’s apartment and occasionally to back up into the apartment. In addition, a bad odor was pervasive and prevented Landry from opening her windows”.
5. Respondent had indicated “No” to question #7: “Are there any undischarged court judgments or liens against you at this time?”; and “No” to question #9: “Have you ever been or are you now involved in any matters which may affect your good repute or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?”.
6. The U.S. Bankruptcy Court on December 27, 2006 had ruled that Respondent’s debt to her tenant is nondischargeable.
7. Respondent had not paid the judgment.
8. The Commission had granted Respondent’s broker license based on Respondent’s representation regarding this issue.
9. Witness Sandy Lamanuzzi testified that she lived in the apartment for about a year and after she moved out she often visited the new tenant Tara Landy, and although the backyard sometimes was wet, the sewerage never backed into the apartment because the septic system was downhill from the building and the apartment was on the second floor over a garage.
10. Respondent testified that she was telling the truth on her application and to the Commission even though she lost her case in court.

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

Even though the documentation from the court initially indicated otherwise, the Commission found the explanation of the witness and the Respondent to be credible regarding Respondent's representations to the Commission. Therefore, the Commission rules (three to one vote with Commissioner Ikawa opposed) that Respondent did not violate RSA 331-A:26, I.

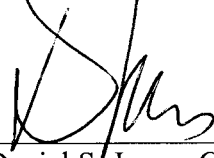
Commissioner Barbara Heath evaluated this case and did not take part in the hearing or decision.

  
\_\_\_\_\_  
Robert S. Stephen, Presiding Commissioner

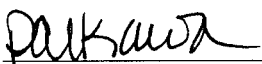
10.29.08  
DATE

  
\_\_\_\_\_  
Nancy G. LeRoy, Chairperson

10/21/08  
DATE

  
\_\_\_\_\_  
Daniel S. Jones, Commissioner

10/21/08  
DATE

  
\_\_\_\_\_  
Pauline A. Ikawa, Commissioner

10/21/08  
DATE