

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

SEPTEMBER 15, 2009

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, September 15, 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, Pauline Ikawa, Daniel Jones, David Dunn, James Therrien, Executive Director Beth Edes, and Investigator Ann Flanagan.

I. On motion by Commissioner Ikawa, seconded by Commissioner Dunn, the Commission unanimously approved the Minutes of the Commission meeting held on August 18, 2009.

II. **APPOINTMENTS**

8:30 a.m. CHRISTOPHER NICHOLOPOULOS appeared before the Commission to request approval of his real estate experience and real estate transaction experience without the notarized signature of his principal broker. Mr. Nicholopoulos stated he is unable to obtain his former principal broker's notarized signature because his broker is deceased. After review and discussion, the Commission on motion by Commissioner Dunn, seconded by Commissioner Ikawa approved Mr. Nicholopoulos' broker experience and real estate transaction experience, pursuant to RSA 331-A:10, II (c) and (g).

8:40 a.m. THOMAS WILEY 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 Dunn, denied Mr. Wiley's request for an original salesperson's license. Commissioner Therrien abstained from the decision.

8:55 a.m. DANIEL QUINTILIANI 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 Therrien, approved Mr. Quintiliani to apply for an original broker's license.

9:15 a.m. BRYAN RIEF submitted a request for reinstatement of his lapsed broker's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones, approved the reinstatement of Mr. Rief's broker license for good cause shown, contingent upon Mr. Rief's submission of a broker renewal form requesting an inactive broker license.

9:20 a.m. CHARLES ERFF appeared before the Commission to discuss an undischarged court judgement prior to applying for an original broker's license. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones, decided to allow Mr. Erff to apply for an original broker's license.

9:30 a.m. FAITH WHITFIELD appeared before the Commission to request the reinstatement of her lapsed salesperson's license, pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Jones, tabled its decision until Ms. Whitfield submits to the Commission evidence of payment to the Ripaldi School of Real Estate for continuing education courses and medical documentation of her surgeries.

III. **DISCUSSION**

BRENDA LYON – the Commission reviewed and discussed a fax received from Brenda Lyon in response to the Commission's request at the August meeting for the submission of evidence of continuing education credits that she completed for her Maine license renewal. Ms. Lyon submitted a fax on September 15th which stated that she found numerous Maine continuing education credits that she had completed prior to her Maine renewal, but did not submit evidence of these credits to the Commission. After review and discussion, the Commission directed the Commission's Investigator to investigate the matter and proceed with the complaint process if necessary.

LISA YASSINGER, Counsel for Rent.com submitted a request for Commission clarification as to whether Rent.com is required to continue to maintain a real estate broker's license in New Hampshire to operate its advertisement of rentals submitted by third parties on its website. After review and discussion, the Commission directed the Executive Director to inform Ms. Yassinger that in order for the Commission to consider a request for an opinion, Ms. Yassinger will need to submit a Request for Declaratory Ruling, pursuant to administrative rule Rea 201.08. Ms. Yassinger to be so notified.

LOON MOUNTAIN REAL ESTATE – The Commission received a request from Loon Mountain Real Estate for Commission clarification as to whether it is permissible to deposit funds into an escrow account to cover credit card fees and whether RSA 331-A:13, VIII applies to rentals. After review and discussion, the Commission stated that RSA 331-A:13 does apply to rentals and does not allow the deposit of business or personal funds into an escrow account to cover credit card fees.

RICHARD BERMAN submitted a request for information from the Commission on what protection for the public exists if escrow accounts can be seized by the bank for debts of the broker and/or real estate firm. After review and discussion, the Commission directed Ann Flanagan, the Commission's Investigator to research the issue and to check with other jurisdictions to find out what protection exists in those jurisdictions and report her findings to the Commission.

IV. **HEARING 9:30 AM**

FILE NO. 2003-09-01 NEW HAMPSHIRE REAL ESTATE COMMISSION VS MICHAEL J. PAGLIARULO

The following persons were present at the hearing:

Commission: Commissioners Nancy LeRoy, David Dunn, 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's Investigator Ann Flanagan on behalf of the Commission

Attorney: Pro Se

Witnesses: None

Respondent: Michael J. Pagliarulo

Attorney: Pro Se

Witnesses: None

V. **EQUIVALENCY APPOINTMENT 10:10 AM.**

RICHARD J. JOYAL, ESQ

On motion by Commissioner Dunn, seconded by Commissioner Jones, the Commission conditionally approved Mr. Joyal's experience, contingent on Mr. Joyal's submission of 4 additional real estate transactions which are acceptable to the Commission.

VI. **HEARING 10:15 AM**

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

The following persons were present at the hearing:

Commission: Commissioners Pauline Ikawa, David Dunn, and James Therrien

Stenographer: Lynn A. Beck

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

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

Complainants: Kristine Hughes
John Perez
The Commission's Investigator Ann Flanagan on behalf of the Commission

Attorney: Pro Se

Witnesses: None

Respondent: Timothy Wade
Pamela Ross
Kiera Russell
Margery MacDonald

Attorney: Sherry M. Heiber, Esq. (representing Margery MacDonald)

Witnesses: None

VI. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the October 20, 2009 meeting:
October 20, 2009 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2008-016

Evaluator: Commissioner Therrien
Determination: No violation, no hearing necessary.

(b) FILE NO. 2008-017

Evaluator: Commissioner Jones
Determination: Should be heard, hearing to be scheduled.

(c) FILE NO. 2008-033

Evaluator: Commissioner Ikawa
Determination: Should be heard, hearing to be scheduled.

(d) FILE NO. 2009-010

Evaluator: Commissioner Ikawa

Determination: Should be heard, hearing to be scheduled.

The above determination was unanimously approved by the Commission.

3. SETTLEMENT AGREEMENTS

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

FILE NO. 2009-004 NEW HAMPSHIRE ESTATE COMMISSION VS STEPHEN WELLS

VII. **ADJOURNMENT**

On motion by Commissioner Jones, seconded by Commissioner Therrien, to adjourn the meeting, Acting Chairman David Dunn adjourned the meeting at 1:10 p.m.

Respectfully submitted,



Pauline A. Ikawa

Clerk

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2009-004 New Hampshire Real Estate Commission v Stephen Wells
Allegations: RSA 331-A:26, II

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 Stephen Wells (“the Licensee” or “the Respondent”), a real estate broker currently licensed by the Commission until September 22, 2009, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. 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 Stephen Wells failed to comply with a disciplinary Order for File No. 2006-008 requiring Respondent to attend a NH Real Estate Commission accredited 3-hour course about property disclosure through classroom delivery by September 18, 2008. In his reply to this complaint, Respondent apologized for not complying with the Order for File No. 2006-008 on time, and indicated that the requirement to take a course

slipped his mind, but as soon as he received this complaint he immediately took the course.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall pay a one-hundred dollar (\$100) disciplinary fine to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) days of the effective date of this Agreement.
4. 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.
5. 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.
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her/him other than those terms and conditions expressly stated herein.
7. Respondent understands that her/his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.

8. Respondent has had the opportunity to seek and obtain the advice of an attorney of her/his choosing in connection with her/his decision to enter into this Agreement.
9. 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 her/his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that she/he has read this document titled Settlement Agreement. Respondent understands that she/he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she/he 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, she/he waives these rights as they pertain to the misconduct described herein.
11. 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

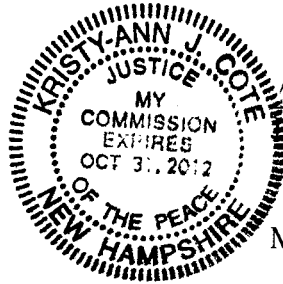
I, Stephen Wells, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being

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: 8/27/, 2009

[Signature]
Stephen Wells
Respondent

On this 27th day of August A.D. 20 09
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.



[Signature]
Justice of the Peace/Notary Public

My commission expires:

10/31/2012

For the Commission

Dated: 9/15, 2009

[Signature]
Beth A. Edes
Executive Director
of the NH Real Estate Commission