NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JULY 15, 2003

ı meeting of the New Hampshire Real Estate Commission was held on Tuesday, July 15, 2003 at 9:00 a.m. ı Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY
Present: Commissioners ARTHUR SLATTERY, MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, NANCY LeRoy, Executive Director BETH EMMONS, and Investigator ANN FLANAGAN.

Motion by Commissioner SMITH, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on June 17, 2003.

APPOINTMENT OF AN ALTERNATE COMMISSIONER – Pursuant to RSA 331-A:5, VIII, the Commission, on motion by Commissioner SLATTERY, seconded by Commissioner LeRoy, unanimously appointed former Commissioner GEORGOPOULOS to hear the scheduled hearing of File No. 2002-10-03 Rachel & Richard Poulin & The New Hampshire Real Estate Commission v. Denise Williams & Henry Maxfield.

APPOINTMENTS

9:00 a.m. - Equivalency Interviews

CANDIDATE	COMMISSIONER	DETERMINATION
SUSAN BRYANT	SMITH	APPROVED

9:05 a.m. – RICARDO PIMENTEL appeared before the Commission to explain a "yes" answer to question #7 on his original salesperson's application. After explanation, discussion and review, the Commission unanimously decided to allow Mr. Pimentel to apply for his salesperson's license.

9:15 a.m. – BRUCE BROUILLARD appeared before the Commission in accordance with RSA 331-A:26 XXXVII to explain a recent arrest and conviction. After explanation, discussion and review, and on motion by Commissioner HEATH, seconded by Commissioner LeRoy, the Commission voted to allow Mr. Brouillard to keep his salesperson's license active, based on Mr. Brouillard's principal broker's assurance that he will be closely monitored in the future. Commissioner IKAWA was opposed to the decision.

9:25 a.m. WILLIAM FRALICK appeared at the June 17, 2003 Commission meeting to explain a previous legal incident prior to applying for a salesperson license. The Commission had tabled its decision at its previous meeting to obtain further information. After review and discussion, the Commission, on motion by Commissioner SMITH, seconded by Commissioner IKAWA unanimously denied Mr. Fralick's request for a salesperson's license. Mr. Fralick to be so notified.

III. DISCUSSION

JOSEPHINE GERMANO requested that the Commission reconsider its determination of File No. 2002-11-02. Upon a re-evaluation of File No. 2002-11-02, the Commission unanimously decided to uphold its original decision of no violation, should not be heard.

RICHARD HARRIS of Harris School of Real Estate requested approval of a video pre-licensing course. After review and discussion, the Commission decided to table its decision and requested the Education Program Assistant, Fran West to conduct a further review of the course.

NEAL BARRETT submitted a proposed 40 hour pre-licensing course for approval, and requested a clarification of the recently passed legislation requiring all applicants for the salesperson's exam to have 40 hours of approved education. The Commission tabled its discussion on this matter and will discuss it at its next Commission meeting.

Pursuant to RSA 331-A:5, VIII, former Commission member Aphrodite Georgopoulos was sworn in as an alternate member to hear the following hearing: File No. 2000-10-03 Rachel & Richard Poulin and the New Hampshire Real Estate Commission vs. Denise Williams & Henry Maxfield, Jr.

IV. HEARING 9:55 AM

FILE NO. 2000-10-03 RACHEL & RICHARD POULIN AND THE NEW HAMPSHIRE REAL ESTATE COMMISSION VS. DENISE WILLIAMS & HENRY MAXFIELD

Evaluator: Commissioner HEATH

The following persons were present at the hearing:

Commission: Commissioners MARTIN SMITH, PAULINE IKAWA, Alternate Commission Member APHRODITE GEORGOPOULOS, Executive Director BETH EMMONS and Investigator ANN FLANAGAN.

Stenographer: Barry Nolin

Gerard J. Nolin & Associates, LLC
P.O. Box 1088
Concord, NH 03302-1088

Evaluator: Commissioner HEATH evaluated the above matter and abstained from participation in the discussion and resulting decisions. Commissioners Slattery and LeRoy were recused members and abstained from participation in the discussion and resulting decisions.

Complainants: Rachel & Richard Poulin — 10 Quarry Drive, Rochester, NH 03867

&

N.H.R.E.C. through its Investigator Ann Flanagan

Attorney: Pro Se

Witnesses: None

Respondents: Denise Williams — Henry S. Maxfield Real Estate, 15 Railroad Avenue, P.O. Box 738, Wolfeboro, NH 03894

Henry Maxfield — Henry S. Maxfield Real Estate, 15 Railroad Avenue, P.O. Box 738, Wolfeboro, NH 03894

Attorney: Joseph E. Mitchell, Esquire — Joseph E. Mitchell, P.C., P.O. Box 446, Merrimack, NH 03054-0446

Witnesses: Judy Marzerka
&
Lisa Williams

DECISION: Pending – subject to review of transcripts and exhibits.

V. OTHER BUSINESS

1. Tuesday, August 19, 2003, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

   (a) **FILE NO. 2003-02-07**
   Evaluator: Commissioner HEATH
   Determination: No violation, should not be heard.

(b) **FILE NO. 2003-04-01**
Evaluator: Commissioner LeRoy
Determination: No violation, should not be heard.

(c) **FILE NO. 2003-05-03**
Evaluator: Commissioner LeRoy
Determination: Should be heard, hearing to be scheduled.

(d) **FILE NO. 2003-05-05**
Evaluator: Commissioner HEATH
Determination: Should be heard, hearing to be scheduled.

The above determinations were unanimously approved.

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. 2002-07-02 YOUNG HEE KIM & NEW HAMPSHIRE REAL ESTATE COMMISSION VS. JAMES N. TAYLOR

4. SETTLEMENT AGREEMENTS

The following Settlement Agreements were issued by the New Hampshire Real Estate Commission. Copies of the Settlement Agreements are attached and become part of the official minutes of this meeting.

FILE NO. 2001-03-01 THOMAS & CHRISTINE ADDINGTON AND THE NEW HAMPSHIRE REAL ESTATE COMMISSION VS. DAVID E. LARRABEE, SR.

FILE NO. 10-7-99 CHARLES WALLACE VS. JEFFREY S. BADGER

VI. ADJOURNMENT

Motion by Commissioner SMITH, seconded by Commissioner IKAWA to adjourn the meeting. Acting Chairman SMITH adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Barbara J. Heath

BARBARA J. HEATH
Clerk

YOUNG HEE KIM & NEW HAMPSHIRE REAL ESTATE COMMISSION
VS
JAMES N. TAYLOR

FILE NO. 2002-07-02

This matter comes before the Real Estate Commission on the complaint of Young Hee Kim, alleging violations of NH RSA 331-A:25-b, I (a); NH RSA 331-A: IV, V; and New Hampshire Code of Administrative Rules Rea 701.02, by James Taylor, and on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of New Hampshire Code of Administrative Rules Rea 202.04, by James Taylor. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. James N. Taylor (hereinafter referred to as respondent) was licensed as a New Hampshire real estate salesperson on December 19, 1991, and was so licensed and associated with Prudential Verani Realty at the time of the alleged violations.

2. Young He Kim (hereinafter referred to as complainant) purchased a new construction home from respondent. Respondent was the builder, seller, and listing agent; and complainant was a buyer-client through the same real estate agency in a dual agency situation.

3. Complainant testified that she experienced serious problems with the property, the worst of which was a terrible flooding problem in the basement level. Complainant indicated that the water problem was a terrible situation because she designed and purchased the property from respondent to accommodate lower level handicap access for elderly parents who relocated from a foreign country to reside with complainant.

3. Attorney Blake M. Sutton, counsel for respondent, indicated that respondent felt that the problems at the house were essentially minor problems, but respondent stood ready to fix the problems that still exist at the house (Tr. p. 13, lines 17-19).

4. Complainant submitted pictures of the damage at her property (Complainant's Exhibit 1) to refute respondent's minimization of the problems.

5. Ann Flanagan, Investigator for the New Hampshire Real Estate Commission, testified that respondent came into the Commission office unannounced and without being questioned, stated that he knew the water table was unusually high when he was digging the foundation, but that he thought it was within tolerable limits; he thought that the problem might have been because the property was formerly an irrigated apple orchard.

6. Counsel for respondent indicated that respondent never made those statements, and that the Investigator had a misunderstanding (Tr. p. 12, lines 20-21).

7. Respondent testified that he had no knowledge of the water problem until complainant notified him after she moved into the property that in the spring she started having terrible water flooding problems in the basement level. Respondent indicated that he made several attempts to remedy the problem with various sump pumps.

8. Both complainant and respondent attempted to present hearsay testimony of other witnesses to support their respective positions, but neither complainant nor respondent provided any substantiation of what these others may have actually stated or observed.

9. The Commission Investigator added the allegation of violation of Rea 202.04 because respondent had failed to reply to complainant's original complaint against him on Form 11-A as required. The Investigator testified that respondent had stated that he believed he did not have to respond to the complaint because it concerned his activities as a builder/seller rather than as a real estate agent (Tr. p. 8, lines 2-12).

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

The Commission does not feel the evidence as presented was strong enough to determine whether or not respondent knew about any potential for water problems prior to complainant moving into the property and later experiencing such problems. Therefore, the Commission rules that respondent did not violate the aforementioned statutes or administrative rules.

The Commission feels heartfelt sorrow for what Ms. Kim is going through regarding her new home. The scope of the Real Estate Commission cannot help her with respect to the civil and/or monetary aspects of her complainant against respondent in terms of his obligations as a builder/seller. The Commission feels that this justice would be best sought in the civil court system.

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

Arthur H. Slattery, Chairperson

7-15-03
DATE

Martin F. Smith, Jr., Commissioner — 7/15/03 DATE

Pauline Ikawa, Commissioner — 7/15/03 DATE

Nancy LeRoy, Commissioner — 7/15/03 DATE

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NH REAL ESTATE COMMISSION

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

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NH REAL ESTATE COMMISSION

In the Matter of:

File No. 2001-03-01 New Hampshire Real Estate Commission & Thomas & Christine Addington v. David E. Larrabee, Sr.
Allegations: RSA 331-A:25-a, I; 331-A:25-d, I, II-d; 331-A:26, IV, XII, XXVIII, Rea 404.04 and Rea 701.01

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 David E. Larrabee, Sr. ("the Licensee" or "the Respondent"), a real estate broker currently licensed by the Commission until November 13, 2003, 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:

On March 24, 2000, Respondent brokered a property located at 7 Healy Pasture Road, Chichester, New Hampshire, without either a listing contract with the sellers, Frank L. Merrill and Sue J. Merrill, or a buyer-agency contract with the buyers (Complainants), Thomas A. Addington and Christine G. Addington, pursuant to Rea 404.04. The Sales Agreement and Deposit Receipt indicated that

Respondent represented both the sellers and the buyers, but Respondent had no written dual agency consent form, pursuant to RSA 331-A:25-d, I, and RSA 331-A:26, XII, and no dual agency disclosure form, pursuant to Rea 701.01. Respondent did not show reasonable care, pursuant to RSA 331-A:25-a, I, by indicating ASAP rather than a specific closing date on the Sales Agreement and Deposit Receipt. The property Complainants purchased was not zoned for the use that the Complainants intended. Respondent indicated in his Form 11-A Response that the buyers should have shown diligence and should have some level of personal responsibility, but Respondent admits he discouraged them from seeking legal counsel, pursuant to RSA 331-A:26, IV. As their agent, Respondent would be expected to check or advise buyers to check local zoning, pursuant to RSA 331-A:25-a, I; RSA 331-A:25-d, II(d), and; RSA 331-A:26, XXVIII. Therefore, the Commission finds the Respondent in violation of RSA 331-A:25-a, I; 331-A:25-d, I, II-d; 331-A:26, IV, XII, XXVIII, Rea 404.04 and Rea 701.01.

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2. The Respondent neither admits nor denies 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 fine to the New Hampshire Real Estate Commission in the amount of $1,500.00, made payable to the Treasurer, State of New Hampshire within six (6) months of the effective date of this agreement, and submit an affidavit as proof of completion of a New Hampshire Real Estate Commission accredited continuing education course on Agency to the Commission within 60 days of the effective date of this agreement. This course shall be

in addition to the Respondent's required continuing education requirements for license renewal.

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 through 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 him other than those terms and conditions expressly stated herein.

7. Respondent understands that 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 his choosing in connection with 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 his right to

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a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.

10. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on 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 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, David E. Larrabee, Sr., 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.

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Dated: July 9, 2003

David E. Larrabee, Sr.
Respondent

On this 9th day of July A.D. 2003 personally appeared the person who subscribe to the following instrument and acknowledged the same as his/her voluntary act and deed before me.

STATE OF NEW HAMPSHIRE NOTARY PUBLIC
OFFICIAL SEAL
ANGELA M. HEARN
NOTARY PUBLIC – N.H.
My Comm. Expires August 9, 2005

Justice of the Peace/Notary Public

OFFICIAL SEAL
ANGELA M. HEARN
NOTARY PUBLIC – N.H.
My Comm. Expires August 9, 2005

My commission expires:
Aug. 9, 2005

For the Commission

Dated: July 17th, 2003

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

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BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 10-7-99 Charles Wallace v. Jeffrey S. Badger
Allegations: NH RSA 331-A:26 XXXI

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 Jeffrey S. Badger ("the Licensee" or "the Respondent"), a real estate broker currently licensed by the Commission until October 8, 2003, 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:

   Charles Wallace ("Complainant") stated in his complaint (Form 11) originally filed with the Commission on October 27, 1999, that on July 28, 1999 he had a telephone conversation with the Respondent regarding the process of selling his home located at 18 Port Wedeln Road, Wolfeboro, New Hampshire. The Complainant stated that the Respondent informed him that he would first have to sign some paperwork and take some measurements of the property. Complainant stated that the Respondent said he would stop by the following day, and at no time did he

mention that he would put a sign on the property on July 28, 1999. Respondent stated in his response (Form 11-A) filed with the Commission on November 12, 1999, that he had a telephone conversation with the Complainant on July 28, 1999, at which time the Complainant indicated that he wanted the Respondent to list his home and requested a sign be placed on the property located at 18 Port Wedeln Road that same day. Respondent informed the Complainant that various paperwork needed to be signed by the Complainant prior to placing a for sale sign on the property. Respondent told the Complainant that he was out of town and instructed the Complainant to stop by the Respondent's office and he would have his secretary have all of the necessary paperwork available for the Complainant to sign. Respondent told the Complainant that when he returned later that afternoon, he would place the for sale sign on the property. Respondent stated that the Complainant told him that he would go to the Respondent's office to sign the listing agreement and other necessary documents. When Respondent returned that afternoon he went directly to his storage building to get a sign and proceeded to place the sign on the Complainant's property. It was not until the Respondent returned to the office, that he realized the Complainant did not go to the office and sign the necessary documents. Respondent stated that later in the evening of July 28, 1999, he received a telephone call from a woman named Kim Knapp who demanded the Respondent to remove his sign from her property. The Respondent stated that he was unaware that the Complainant was not the sole owner of the property. The Respondent did attempt to offer the sale of the property without prior written consent of the Complainant and is therefore in violation of RSA 331-A:26, XXXI.

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 disciplinary fine to the New Hampshire Real Estate Commission in the amount of One Hundred Dollars ($100.00), made payable to the Treasurer, State of New Hampshire, within thirty 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 him other than those terms and conditions expressly stated herein.
7. Respondent understands that 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 his choosing in connection with 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 his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on 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 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.

<u>For the Respondent</u>

I, Jeffrey S. Badger, 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: 5-5-3, 2003

Jeffrey S. Badger
Respondent

On this 5th day of June A.D. 20 03
personally appeared the person who subscribe to the following instrument and acknowledged the same as his/her voluntary act and deed before me.

Justice of the Peace/Notary Public

My commission expires:

April 16, 2008

For the Commission

Dated: July 17th, 2003

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