

Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301

In The Matter Of: Docket No.: 2012-021
New Hampshire Real Estate Commission v. Kevin J. Shultz
Re: Complaint of Samuel & Patricia Deckert
License No.: 058809
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Kevin J. Shultz ("Respondent" or "Mr. Shultz") in Docket Number 2012-021.

Background Information:

On June 18, 2012, the Commission received a complaint from Samuel and Patricia Deckert, who alleged that the Respondent demonstrated incompetency and untrustworthiness acting as their buyer agent for the purchase of a bank-owned townhouse. The Deckert's lender, Holy Rosary Credit Union completed an appraisal of the property, and as a result of the appraisal, the Holy Rosary Credit Union sent an e-mail to the Deckerts regarding mold found in the downstairs bathroom, and required that an inspection be completed by a mold specialist to confirm the extent of mold and cost to repair, and that the mold would need to be removed and repaired prior to closing. The Deckerts forwarded this e-mail to the Respondent, and the Respondent failed to forward the e-mail to the listing agent, Linda Kramar. The Respondent submitted a written addendum to the purchase and sales agreement to the listing agent Linda Kramar which stated "seller to remove affected mold areas and treat". The listing agent hired a painting contractor/handyman to remove visible mold. The contractor only removed the mold that was visible. The lender's appraiser inspected the property and it was approved for financing. After the Deckerts closed on the property and began remodeling, they discovered that there was mold in the bathroom, kitchen, and dining area. The Deckerts feel that if the Respondent had forwarded the e-mail from their lender outlining

the steps that were required to remedy the mold issue to the listing agent Linda Kramar, she would have hired a mold specialist as required by the e-mail and that the mold specialist would have found the mold problem to be more extensive. Subsequent to an investigation, on August 27, 2012, the Commission issued a Notice of Hearing for a hearing scheduled for September 18, 2012.

On Tuesday, September 18, 2012, at 9:53 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Shultz was pro se.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2012-021: pages 1-78.
Exhibit #2 – Statement and Documents from Linda A. Kramer
- The Respondent's exhibits: none were introduced.

The following witnesses were present and testified at the hearing:

- Patricia Deckert
- Samuel Deckert

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

LICENSURE FACTS:

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

1. Respondent has held a license as a real estate salesperson from the Commission since March 10, 2004. At the time of the allegations, Respondent was licensed as a real estate salesperson, license #058809.

BUYER AGENCY FACTS:

2. On November 21, 2011, Samuel Deckert entered into an Exclusive Buyer Agency Agreement with Mr. Shultz of ReMax Executives for the period of November 21, 2011 to March 30, 2012.

3. After Respondent showed the Deckerts a townhouse located at 11 Dustin Homestead in Rochester, New Hampshire, Samuel Deckert entered into a Purchase and Sales Agreement with Federal Home Loan Mortgage Corporation for the purchase of this property. (Ex. 1, pg. 57-61)

4. The listing agent for Federal Home Loan Mortgage Corporation was Linda Kramar of Kramar & Landry Real Estate.

5. Mr. Deckert's lender Holy Rosary Credit Union appraised the property for the loan, and sent an e-mail to the Deckerts on December 19, 2011, indicating that substantial mold was present in the downstairs bathroom, and required that an inspection be completed by a mold specialist to confirm the extent of the mold and cost to repair. The mold would also need to be removed and repaired prior to closing. (Ex. 1, pg. 13)

6. The e-mail sent to the Deckerts by the lender regarding the mold issue was forwarded to the Respondent by Patricia Deckert on December 19, 2011. (Ex. 1, pg. 15)

7. Patricia Deckert sent an e-mail to the Respondent on December 20, 2011, stating that the Deckerts were interested in moving forward on the deal provided that any mold issues were remedied at the seller's expense. (Ex. 1, pg. 16)

8. Respondent prepared and submitted an Amendment to the Purchase and Sales Agreement to Linda Kramar, stating that "Due to appraisers inspection results report, buyer requests seller to remove affected mold areas and treat." (Ex. 1, pg. 25)

9. Respondent admitted at the hearing that he did not forward the e-mail from the lender to the listing agent, Linda Kramar, but did have a discussion with Ms. Kramar about the addendum to remove all affected areas of mold.

10. Linda Kramer stated that she had a telephone conversation with the Respondent regarding the mold, and the Respondent said to remove the side of the vanity and cut out any other moldy sheetrock that we could see then "let's get the appraiser back out there and get this closed". (Exhibit 2)

11. The Respondent admitted at the hearing that he did not recall ever communicating verbally to Linda Kramar that the mold remediation needed to be completed by a mold specialist.

12. The seller contracted with Thomas Wight, of Affordable Painting Contractors & Remodeling to remove and repair all areas of mold and treat the areas that the seller and listing agent were aware of. (Exhibit 2)

13. Thomas Wight submitted an invoice to the seller for \$271 for services rendered: removal of moldy sheetrock, moldy vanity area and treating affected areas. (Ex. 1, pg. 26)

14. Respondent forwarded a copy of the contractors invoice to the buyer's lender for inspection by the lender's appraiser. (Ex. 1, pg. 23)

15. Respondent testified at the hearing that he was fully aware that the repair to the areas of mold was completed by a painter/handyman and not by a mold specialist prior to the closing of the transaction.

16. Samuel Deckert testified that the Respondent informed him by phone that the mold assessment and removal had taken place and that everything was fine.

17. Respondent testified at the hearing that when he initially received a copy of the invoice from Thomas Wight for \$271, he originally thought that the invoice was low for mold remediation, but after seeing the repair work and the lender's appraiser signed off on it, he thought it was okay.

18. Respondent testified at the hearing that after he received a copy of the invoice, he did not consult with his principal broker, Frederick Bussiere, on the assessment of the mold remediation.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

331-A:26, Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

XXXVI. – Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. The Respondent had the opportunity to advocate for the buyers as their buyer agent and did not, and failing to do so demonstrated incompetency to act as a salesperson, in violation of RSA 331-A:26, XXXVI. (Notice of Hearing, paragraph 5A)

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS ORDERED that the Respondent pay a disciplinary fine in the amount of two-thousand dollars (\$2,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order; and Respondent shall show proof of full attendance at two New Hampshire Real Estate Commission accredited 3-hour continuing education courses, one on Ethics and one on Agency by submitting to the Commission affidavits of the completed courses (these continuing education courses are to be completed by classroom delivery method only and will not to be counted towards Respondent's continuing education requirements for renewal of license) within thirty (30) days of the effective date of this

Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent's real estate license until the fine is paid and the courses are completed.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

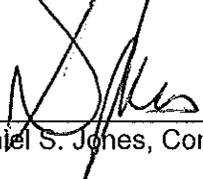
IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



David C. Dunn, Presiding Officer

10/16/12
Date



Daniel S. Jones, Commissioner

10/16/12
Date

William E. Barry

William E. Barry, Commissioner

10/16/2012
Date



Paul A. Lipnick, Commissioner

Oct. 16/2012
Date

*\ James R. Therrien, Commission member, (case evaluator) recused.