

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

In The Matter Of: **Docket No.: 2013-008**
New Hampshire Real Estate Commission v. Patrick W. Keeler
License No.: 001198
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Patrick W. Keeler ("Respondent" or "Mr. Keeler") in Docket Number 2013-008.

Background Information:

Respondent Patrick Keeler, dba: LifeLong Realtors was the listing agent for a mobile home property located at 3 Flamingo Drive, Concord, New Hampshire. A potential buyer entered into a written offer to purchase the property indicating a \$15,000 deposit to be held in escrow by LifeLong Realtors. The prospective buyer was asked by Respondent to write two checks: one for \$14,500 to LifeLong Realtors and one for \$500 to Patrick Keeler personally, which Respondent hand wrote the request for the two checks on the back of Respondent's business card and gave it to the prospective buyer. Respondent cashed the \$500 check and subsequently the prospective buyer put a stop payment on the \$14,500 check because Respondent did not return the check when the seller rejected the offer. On March 1, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-008 against Respondent. Subsequent to an investigation, on June 27, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for August 20, 2013.

On Tuesday, August 20, 2013, at 9:30 a.m., the Commission commenced the adjudicatory/disciplinary hearing in the above captioned matter. Commission members present¹ were:

James R. Therrien, Commissioner, Presiding Officer
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

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

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

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

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2013-008: pages 1-24.

- The Respondent's exhibits: none were introduced.

Witnesses: Michael Littlefield (not present at the hearing).

Findings of Fact:

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

1. Respondent was first issued a license as a real estate salesperson from the Commission on June 7, 1978, until he received his real estate broker's license on April 13, 1999. At the time of the allegations, Respondent was licensed as a real estate broker, license #001198, in active status with a license period of April 13, 2011 – April 13, 2013, dba: LifeLong Realtors.

2. Respondent was the listing agent dba: LifeLong Realtors for a two bedroom mobile home located at 3 Flamingo Drive, Concord, NH (Ex. 1, pg. 12).

3. Respondent, in his Response (Form No. 11-A) to Complaint File No. 2013-008,

stated the following:

- That Michael Littlefield ("Mr. Littlefield"), the prospective buyer, contacted Respondent on February 6, 2013 to see the property located at 3 Flamingo Drive, Concord, NH, and on February 7, 2013, Respondent showed the property to Mr. Littlefield. (Ex. 1, pg. 19)

- After showing Mr. Littlefield the property, Respondent met with him at the

McDonalds Restaurant on Fisherville Road in Concord, because Mr. Littlefield had numerous questions and concerns regarding the property that he needed to address prior to making an offer on the property. (Ex. 1, pg. 19)

- Mr. Littlefield asked Respondent if he could help him with the details of the closing and made an offer during their meeting at McDonalds on the property at 3 Flamingo Drive (Ex. 1, pg. 19).

- Respondent explained to Mr. Littlefield that the buyer is responsible for paying their closing costs, including a title search, recording fees and NH real estate tax stamps, etc., and that those costs could be in the range of \$300 to \$500. (Ex. 1, pg. 19)

- Respondent asked Mr. Littlefield to write a check for \$15,000 to LifeLong Realtors for the deposit and \$500 to Patrick Keeler or Cash, so that Respondent could endorse it to whichever title company best fit his schedule and budget. (Ex. 1, pg. 19-20)

- Respondent wrote the check amounts of \$14,500 to LifeLong Realtors and \$500 to Patrick Keeler on the back of his business card. (Ex. 1, pages 10 & 20)

- Mr. Littlefield wrote two checks out, one for \$14,500 to LifeLong Realtors and a second one for \$500 to Patrick Keeler or Cash. Respondent noticed the discrepancy of \$500 on the check issued by Mr. Littlefield to LifeLong Realtors during their meeting on February 7, 2013 and asked Mr. Littlefield to write an additional check to LifeLong Realtors for \$500. (Ex. 1, pg. 20)

- Respondent stated that after requesting the additional \$500 check, he continued to talk to Mr. Littlefield for another hour regarding the offer to purchase and other life situations, and at the end of their discussion Respondent forgot to collect the additional \$500 check. (Ex. 1, pg. 20)

- Respondent received another personal check on February 7, 2013 for \$500 issued to Patrick Keeler from Rich Burns. Respondent stated that later that day he made the mistake of depositing in his personal checking account the incorrect check for \$500, and deposited Mr. Littlefield's check thinking that he was depositing Rich Burn's check. (Ex. 1, pg. 20)

- Respondent stated that he was suffering from severe pain from a right knee injury, and had been taking narcotics for the pain and was unable to sleep for weeks and was physically and mentally drained to the point of exhaustion. Respondent stated that he was in a lot of pain on the day he met with Mr. Littlefield which caused him confusion and to make mistakes. (Ex. 1, pg. 20)

Respondent stated that the first time he became aware that he mistakenly deposited Mr. Littlefield's \$500 check issued to Patrick Keeler or Cash into his personal checking account was in late February 2013, when the Commission's Investigator Ann Flanagan contacted Respondent to inform him that Mr. Littlefield had contacted her complaining about Respondent. (Ex. 1, pg. 20)

4. Respondent testified at the hearing that he told Mr. Littlefield to put down a \$15,000 down payment.

5. Michael Littlefield entered into a written offer to purchase the property located at 3 Flamingo Drive indicating a \$15,000 deposit to be held in escrow by LifeLong Realtors (Ex. 1, pg. 12).

6. Respondent testified that he asked Mr. Littlefield if he would like Respondent to work with him and find a title company for him. Respondent informed Mr. Littlefield that the cost for the title company would be \$350 to \$500. Respondent stated that Mr. Littlefield agreed to have the Respondent find a title company for him and wrote a personal check for \$500 to Patrick Keeler or Cash to pay the title company. Respondent informed Mr. Littlefield that the title company would rebate him any amount owed at the closing.

7. Respondent testified that he had no intentions of cashing the \$500 check issued by Mr. Littlefield, and did so erroneously. Respondent stated that he had another check issued to Respondent in the same amount on the same day by Rich Burns, and Respondent thought that he had deposited Mr. Burn's check into his personal checking account. Respondent provided a copy of the check issued to Respondent by Rich Burns at the hearing.

8. Mr. Littlefield's offer to purchase the property at 3 Flamingo Drive was not accepted by the seller. Respondent testified that the seller rescinded the offer and there was no counter offer made, and there was nothing in writing from the seller regarding the offer, just a verbal conversation by telephone with the Respondent.

9. Respondent testified that the first time that he was aware that the check he cashed was Mr. Littlefield's \$500 check was when Investigator Flanagan contacted him regarding Mr. Littlefield's concerns in late February 2013 that he did not get his \$500 returned to him, and that Mr. Littlefield told Investigator Flanagan that he put a stop payment on the \$14,500 check, because the Respondent did not return the check when the seller rejected the offer.

10. Respondent testified that after he spoke with Investigator Flanagan he issued a check on March 1, 2013 to Michael Littlefield in the amount of \$528.00. Respondent explained that he paid Mr. Littlefield the \$500 he owed him and \$28 for the stop payment fee on the \$14,500 check, in addition to the \$500 to make him whole.

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.

RSA 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:

VII. – Conversion of any money, contract, deed, note, mortgage, abstract or other evidence of title, to the licensee's own use, to the use of the licensee's principal, or any other person, when delivered to the licensee in trust or on condition, in violation of the trust or before the happening of the condition. Failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within 30 days after the owner is entitled to and makes demand for such evidence, shall be prima facie evidence of such conversion.

Rulings of Law:

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

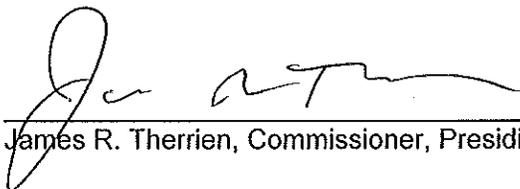
1. There was no evidence presented to the Commission to indicate that the Respondent converted Mr. Littlefield's \$500 check issued to "Patrick Keeler or Cash" for his own use.

Respondent returned the \$500 to Mr. Littlefield within 30 days of the date that the check was issued. Therefore the Commission found that Respondent did not violate RSA 331-A:26, VII. (Notice of Hearing, paragraph 5).

IT IS 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...").

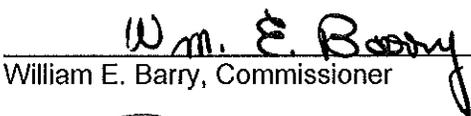
IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



James R. Therrien, Commissioner, Presiding Officer

11/19/2013

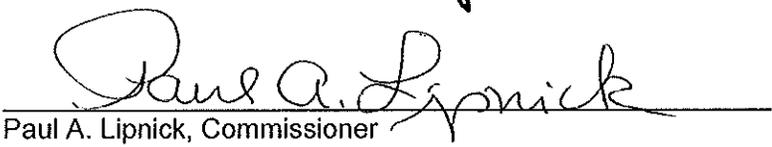
Date



William E. Barry, Commissioner

11-19-2013

Date



Paul A. Lipnick, Commissioner

Nov. 19 - 2013

Date

*\ Daniel S. Jones, Commission member, (case evaluator) recused.