

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

In The Matter Of: Docket No.: 2013-030  
New Hampshire Real Estate Commission v. Kenneth J. Smith  
License No.: 042393  
(Adjudicatory/Disciplinary Proceeding)

**AMENDED ORDER**

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Kenneth J. Smith ("Respondent" or "Mr. Smith") in Docket Number 2013-030.

**Background Information:**

Respondent had been listing and selling properties under the name of Mid-State Realty without registering the firm name with the NH Secretary of State or registering or licensing Mid-State Realty with the NH Real Estate Commission. Subsequent to an investigation, on September 24, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for November 19, 2013.

On Tuesday, November 19, 2013, at 9:40 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present<sup>1</sup> were:

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

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

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

- Complainant Investigator Flanagan's Exhibits:  
Exhibit #1 - Complaint File 2013-030: pages 1-36.

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<sup>1</sup> These same Commission members also deliberated and voted on this Final Decision and Order.

Exhibit #2 – Mid-State Realty, Inc. registration with the NH Secretary of State,  
pages 1-6

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- The Respondent's exhibits: none were introduced.

There were no witnesses 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 February 13, 1992, and first issued a license as a real estate broker on July 1, 1994. At the time of the allegations, Respondent was licensed as a real broker, license #042393, in active status with a license period of September 14, 2012 – July 1, 2014.
2. Respondent had been listing and selling properties under the name of Mid-State Realty without first registering the firm name with the NH Secretary of State or registering or licensing Mid-State Realty with the NH Real Estate Commission.
3. Respondent had filed and incorporated Mid-State Realty, Inc. with the NH Secretary of State on August 11, 1995, and dissolved Mid-State Realty, Inc. on November 3, 1997. (Ex. 2, page 1)
4. Mid-State Realty, LLC was filed by Julia L. Smith with the NH Secretary of State on March 17, 2009 with a trade name Mid-State Realty filed with the NH Secretary of State on April 14, 2009.
5. Mid-State Realty, LLC dba: Mid-State Realty is currently registered with the NH Secretary of State and is licensed with the Commission by real estate broker Julia Smith. Ms. Smith did not give Respondent permission to use the trade name Mid-State Realty and is upset that Respondent was using the name when she had it legally registered and licensed.

6. Ms. Smith contacted the Commission because Respondent would not stop using Mid-State Realty after she first contacted Respondent directly.

7. Respondent, as Mid-State Realty listed 44 & 48 Clearview Drive, Loudon, NH (MLS #s 4241787 & 4241781); and Respondent as Mid-State Realty sold listings including 11 Hammond Road, Gilford, NH (MLS #4184731); 225 Mountain Road, Concord, NH (MLS #4195499); and 53 Lawndale Avenue, Nashua, NH (MLS #4122409). (Ex. 1, pages 21-28)

8. Respondent stated in his response (Form 11-A) to the Complaint and testified at the hearing that he made two requests to the Northern New England Real Estate Network (NNEREN), the multiple listing service where Respondent as Mid-State Realty had the following listings MLS #'s 4241787, 4241781, 4184731, 4195499, and 4122409, to remove the name Mid-State Realty from his name. (Ex. 1, pg. 34) Respondent testified that he was unable to remove the name, and only someone from NNEREN could remove it.

9. Respondent stopped using Mid-State Realty since receiving the Complaint from the Commission.

10. Respondent testified at the hearing that NNEREN required that he have a firm or trade name. When Respondent submitted a request to NNEREN to remove the name Mid-State Realty on August 5, 2013 from the multiple listing service, he requested the name be replaced with JNA Quality Homes. (Ex. 1, pg. 34) Respondent currently has JNA Quality Homes registered as a trade name with the NH Secretary of State with the purpose of business as a home builder. Respondent does not have the trade name JNA Quality Homes registered with the Commission.

11. On August 5, 2013, Respondent had the name Mid-State Realty removed from his listing for 48 Clearview Drive, Lot #25, Loudon, NH, and had the trade name JNA Quality Homes, which is not registered with the Commission, added to this listing. (Ex. 1, pg. 35)

12. Respondent in his response stated that he had not been involved in a transaction using Mid-State Realty in over 10 years. Respondent stated that he mainly does real estate

appraising and home building, and that the majority of real estate transactions he is involved in are homes he purchases, remodels, and sells under Ken Smith or JNA Quality Homes. (Ex. 1, page 31)

13. Respondent testified at the hearing that he should have been more active in having the name Mid-State Realty removed. Respondent stated that he is an appraiser, a builder, and buys and renovates homes, and doesn't actively list unless he has a friend who asks him to list their home, and did not think about removing the name Mid-State Realty.

14. Respondent testified that he never used Mid-State Realty in any transaction and he has always used Kenneth Smith or the trade name JNA Quality Homes in real estate transactions, on the purchase and sale agreements and HUD statements.

15. Respondent stated at the hearing that he did not understand why he couldn't use trade name JNA Quality Homes which is not registered with the Commission on listing agreements.

**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:15 Issuance of License; Certificates.**

II. No license shall be issued to a broker doing business under a trade name unless and until such trade name is lawfully registered as provided in RSA 349.

**Rulings of Law:**

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

1. The Respondent was listing and selling properties under the name of Mid-State Realty without registering the company name with the NH Secretary of State or registering or licensing Mid-State Realty with the NH Real Estate Commission, and listing property under the trade name of JNA Quality Homes without registering the trade name with the Commission. Therefore, the Commission found Respondent in violation of RSA 331-A:15, II. (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 must meaningfully complete and show proof of full attendance of 40 hours of New Hampshire Real Estate Commission accredited continuing education courses, including the following 9 hours of courses, Property Disclosure, Buyer's Representation, and the Core course, and 31 hours of Commission accredited elective courses by submitting to the Commission affidavits of completed courses (this continuing education course is to be completed by classroom delivery method only and is not to be counted towards Respondent's continuing education requirements for renewal of license) by November 1, 2014.

IT IS FURTHER ORDERED that failure to comply with this disciplinary Order will result in the suspension of Respondent's real estate license until the course is 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*

David C. Dunn, Presiding Officer

*4/15/2014*  
Date

*William E. Barry*

William E. Barry, Commissioner

*4/15/2014*  
Date

*James R. Therrien*

James R. Therrien, Commissioner

*4/15/2014*  
Date

*Paul A. Lipnick*

Paul A. Lipnick, Commissioner

*4/15/2014*  
Date

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