

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

In The Matter Of: **Docket No.: 2013-045**
New Hampshire Real Estate Commission v. Joseph P. Armano
License No.: 067468
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Joseph P. Armano ("Respondent" or "Mr. Armano") in Docket Number 2013-045.

Background Information:

On October 31, 2013, Respondent submitted a falsified New Hampshire Real Estate Commission continuing education affidavit to the Commission by email that was issued by Course Provider OmniSpect, Instructor Robert MacDonald, for 2 continuing education credits for Course #E975 "Chimneys & Fireplaces" taught at the RE/MAX Legacy Office in Dover, NH on October 16, 2013, for renewal of Respondent's New Hampshire real estate salesperson's license, which was due to expire on October 31, 2013. On December 4, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-045 against Respondent. Subsequent to an investigation, on March 25, 2014, the Commission issued a Notice of Hearing for a hearing scheduled for April 15, 2014.

On Tuesday, April 15, 2014, at 10:34 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
James R. Therrien, 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. Armano was pro se.

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

- Complainant Investigator Flanagan's Exhibits:
 - Exhibit #1 - Complaint File 2013-045: pages 1-53.
- Exhibit #2 – E-mail from Patti Kemen on April 3, 2014

- The Respondent's exhibits: none were introduced.

The following witnesses were present and testified at the hearing:

- Laurel A. Untiet, Licensing Coordinator of the NH Real Estate Commission
- Sheila Haines, Administrative Assistant of the NH Real Estate Commission
- Fran LeSaffre, Corporate Admin. for Coco Early and Associates
- Harry Cheney, Real Estate Licensee for RE/MAX Legacy

Findings of Fact:

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

Respondent was first granted a real estate salesperson's license in the State of New Hampshire on October 31, 2011. At the time of the allegations, Respondent was licensed as a real estate salesperson, license #067468, in active status with a license period of October 31, 2011 – October 31, 2013. Respondent is currently licensed as a salesperson in active status until October 31, 2015.

1. On October 31, 2013, Respondent submitted a New Hampshire Real Estate Commission continuing education affidavit to the Commission by email that was issued by Course Provider OmniSpect, Instructor Robert MacDonald, for 2 continuing education credits for Course #E975 "Chimneys & Fireplaces" taught at the RE/MAX Legacy Office at 601 Central Avenue in

Dover, NH on October 16, 2013, for renewal of Respondent's New Hampshire real estate salesperson's license, which was due to expire on October 31, 2013.

2. The continuing education credit affidavit was not accepted by the Commission because it was a copy and difficult to read, so Respondent was asked by the Commission's Licensing Coordinator Laurel Untiet to submit the original education credit affidavit.

3. Respondent indicated to Laurel Untiet that he couldn't find a post office to mail the original education credit affidavit for the course, "Chimneys & Fireplaces", so he took another course online, Course #E1611, "Fair Housing", on November 3, 2013 from another instructor and faxed the education credit affidavit to the Commission to use to renew his license instead of the "Chimneys & Fireplaces" course. (Ex. 1, page 21)

4. Laurel Untiet, the Commission's Licensing Coordinator testified at the hearing that Respondent's salesperson renewal application, along with continuing education affidavits to satisfy the education requirement for license renewal was received at the Commission office on October 30, 2013, and one of the continuing education affidavits for Course #E940, "Radon Overview & Radon Air Mitigation" for 2 credit education hours was rejected due to the course being completed prior to the Respondent's two year license period. (Ex. 1, pages 15-24)

5. Ms. Untiet stated at the hearing that she contacted Respondent to let him know that he needed to submit an additional 2 credit hours of continuing education, and Respondent submitted an affidavit for Course #E975, "Chimneys & Fireplaces" by e-mail on October 31, 2013. (Ex. 1, pages 26-27)

6. Ms. Untiet testified at the hearing that when she received the affidavit from Respondent for Course #E975, "Chimneys & Fireplaces" she contacted the Respondent by phone to request that he submit the original affidavit because the affidavit was not legible and that he stated he could not find a post office to mail the affidavit to the Commission.

7. The "Chimneys & Fireplaces" course was taught at the RE/MAX Legacy office located at 601 Central Avenue in Dover, NH, and the managing broker, Patricia Kemen, of that office was present at the course.

8. The Commission Investigator Ann Flanagan contacted Patricia Kemen by telephone to find out if Respondent attended the "Chimneys & Fireplaces" course and Ms. Kemen stated to Investigator Flanagan that the course was only offered to RE/MAX Legacy agents and that Respondent did not work for their office and that he was not at the course. RE/MAX Legacy provided to the Commission a list of agents who attended the course and Respondent was not on the list. Patricia Kemen provided a copy of each agent's education credit affidavit from the course "Chimneys & Fireplaces" to the Commission and Ms. Kemen spoke to each agent and none of them knew Respondent. (Ex. 1, pages 33-42) and (Ex. 2)

9. Harry Cheney of RE/MAX Legacy testified that he was in attendance at the Chimneys & Fireplaces course held at the RE/MAX Legacy office in Dover, NH on October 16, 2013, and the instructor was Robert MacDonald of OmniSpect. Mr. Cheney testified that Respondent was not present at the course and he had never seen Respondent prior to the hearing. (Ex. 1, pg. 39)

10. Investigator Flanagan spoke to the course instructor, Robert MacDonald, who stated he remembered that there was only one man at the course and the rest of the attendants were women, but that he did not have a sign-in list, and that this course was the only course without a sign-in list because Karen, at OmniSpect used to prepare the sign-in list for him, but she was no longer working for OmniSpect at the time the course was offered.

11. Investigator Flanagan spoke to Respondent on November 14, 2013, and Respondent stated that he was at the course at RE/MAX Legacy Office on October 16, 2013, and when Respondent was informed by Investigator Flanagan that there was a list of agents who attended the course and he was not on the list, Respondent stated again that he was at the course, and then stated to Investigator Flanagan that it didn't matter anyway because he didn't end up using the course for his renewal.

12. When Investigator Flanagan told Respondent that the course was only open to RE/MAX Legacy Office agents and that he didn't work for RE/MAX Legacy, the phone call was disconnected.

13. Investigator Flanagan asked the instructor, Robert MacDonald, how Respondent could have gotten a copy of the education credit affidavit for "Chimneys & Fireplaces" if Respondent had not attended the course and Mr. MacDonald stated that he only passed one education credit affidavit out to each person at the class so he didn't know how Respondent could have gotten a copy of the education credit affidavit. Investigator Flanagan told Instructor Robert MacDonald to check the OmniSpect emails to see if Respondent was sent an education credit affidavit.

14. On November 15, 2013, Investigator Flanagan spoke to Respondent who stated that he had called OmniSpect at the end of October 2013 and told the man on the telephone his situation about not being able to use the "Radon Overview & Radon Air Mitigation" Course #E940 that he took on October 27, 2011 from OmniSpect 4 days before his original license was effective, and Respondent thought OmniSpect might just send him a new education credit affidavit for the "Radon Overview & Radon Air Mitigation" course with a date that he could use with his license renewal, but Respondent stated that the man said it was just a technicality and sent Respondent an affidavit for the "Chimneys & Fireplaces" course held on October 16, 2013.

15. Respondent admitted at the hearing that he spoke to Investigator Flanagan on November 14, 2013 and stated to Investigator Flanagan that he was in attendance at the course "Chimneys & Fireplaces" held at the RE/MAX Legacy office in Dover, NH on October 16, 2013, and when Investigator Flanagan informed Respondent that she had a list of attendants that were at the course and he was not on the list, he stated again that he was in attendance at the course. Respondent stated that he told Investigator Flanagan that that it didn't matter anyway because he didn't end up using the course for his renewal.

16. Respondent stated at the hearing that he attempted to find out if the Radon Overview & Radon Air Mitigation course that he completed before was available online because it would be the easiest course to complete since he was familiar with it, and unfortunately an easier solution came up. Respondent stated that it was a pretty poor judgment on his part.

17. On November 15, 2013, Investigator Flanagan spoke to Fran LeSaffre at Coco Early and Associates where Respondent worked at the time and she state that Respondent told her that

the Commission was not going to accept the "Radon Overview & Radon Air Mitigation" course because he took it before his license renewal period, and she also stated that she told Respondent to take another course; 2 weeks later Respondent told Ms. LeSaffre that he had forgotten that he had previously taken the "Chimneys & Fireplaces" course that he could use for his license renewal.

18. Sheila Haines, the Commission's Administrative Assistant, testified at the hearing that Laurel Untiet came to her regarding the affidavit for the Radon Overview & Radon Air Mitigation course which was taken before the Respondent's 2 year license period. Ms. Haines stated that she spoke to Fran LeSaffre at Coco Early and Associates and she stated that Ms. LeSaffre informed her that Respondent did not have any other courses to submit and asked what he needed to do. Ms. Haines informed Ms. LeSaffre that the Respondent would need to take another course.

19. Respondent testified at the hearing that he sent a letter to Fran LeSaffre stating that he didn't need another course because he took the Chimneys & Fireplaces course before his renewal and submitted to the Commission to renew his license.

20. On November 22, 2013 Investigator Flanagan spoke to Denise at OmniSpect and she stated that the only person who provides education credit affidavits to the students would be the instructor, Robert MacDonald.

21. Investigator Flanagan also spoke to Karen from OmniSpect, but she had not worked at OmniSpect since September 2013 and had no knowledge of the sign-in list or education credit affidavits for the course "Chimneys & Fireplaces" held on October 16, 2013.

22. On November 25, 2013, Investigator Flanagan again spoke to Instructor Robert MacDonald and he still denied that he sent Respondent the education credit affidavit for Course #E975, "Chimneys & Fireplaces", held on October 16, 2013.

23. On November 26, 2013, Respondent forwarded to the Commission the email that he had received from Instructor Robert MacDonald, which contained an incomplete "Chimneys & Fireplaces" education credit affidavit; Investigator Flanagan again spoke to Instructor Robert MacDonald who continued to deny that he sent Respondent an education credit affidavit for the

"Chimneys & Fireplaces" course, so Investigator Flanagan forwarded the email to Instructor Robert MacDonald. (Ex. 1, pages 43-45)

24. On December 3, 2013, Investigator Flanagan again spoke to Instructor Robert MacDonald who admitted that he did email the education credit affidavit for the "Chimneys & Fireplaces" course held on October 16, 2013 to Respondent (Instructor Flanagan told Robert MacDonald to forward the original email to the Commission), and when questioned to why by Investigator Flanagan, Instructor Robert MacDonald said that it was stupid thing to do, be he felt sorry for the guy and that he should have just told him to take another course. (Ex. 1, pages 46-47)

25. Respondent testified at the hearing that he didn't think of the significance of what he had done until Investigator Flanagan informed him that what he had done was fraud. Respondent stated that he didn't want his license to go inactive, because he couldn't afford to have an inactive license, and it was at the last hour for his renewal, and he was grasping at anything.

Relevant Law:

RSA 331-A:2, XV. – "Unprofessional conduct" means any action by a licensee which is unlawful, dishonorable, unethical, or immoral.

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:

I. – Obtaining or attempting to obtain a license by means of fraud, misrepresentation or concealment.

XXIX. – Unprofessional conduct defined in RSA 331-A:2, XV.

Rulings of Law:

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

1. The Respondent attempted to obtain a license by means of misrepresentation by submitting a falsified Education Credit Affidavit for Course #E975, titled "Chimneys & Fireplaces", taught by Instructor Robert MacDonald from OmniSpect for 2 credit hours, and submitting the falsified

continuing education affidavit for renewal of his salesperson's license in violation of RSA 331-A:26, I. (Notice of Hearing, paragraph 5A)

2. The Respondent committed unprofessional conduct by acting dishonorably and unethically when he submitted a falsified Continuing Education Course Affidavit for Course #E975, "Chimneys & Fireplaces" for 2 credit hours for renewal of his salesperson's license in violation of RSA 331-A:26, XXIX. (Notice of Hearing, paragraph 5B).

Disciplinary Action:

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

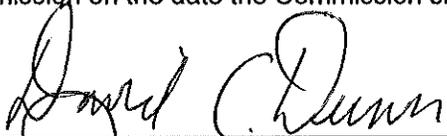
IT IS **ORDERED** that the Respondent pay a disciplinary fine in the amount of two-thousand dollars (\$2,000) for each violation for a total amount of four-thousand dollars (\$4,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent's real estate license until the fine is paid.

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.

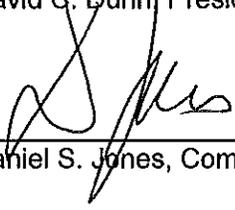
IT IS **FURTHER ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior 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

6/17/2014
Date



Daniel S. Jones, Commissioner

6/17/14
Date



William E. Barry, Commissioner

6/17/2014
Date



James R. Therrien, Commissioner

6/17/2014
Date

*\ Paul A. Lipnick, Commission member, (case evaluator) recused.