

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

In The Matter Of: Docket No.: 2013-046  
New Hampshire Real Estate Commission v. Robert MacDonald & BMB Home  
Inspections, LLC dba: OmniSpect  
Accreditation No.: 058673  
(Adjudicatory/Disciplinary Proceeding)

**FINAL DECISION AND ORDER**

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Robert MacDonald ("Respondent MacDonald" or "Mr. MacDonald") and BMB Homes Inspections, LLC dba: OmniSpect ("Respondent OmniSpect"), in Docket Number 2013-046.

**Background Information:**

Respondent MacDonald of OmniSpect taught Commission accredited course #E975, "Chimneys & Fireplaces" at the RE/MAX Legacy Office in Dover NH on October 16, 2013, and provided an affidavit of completion for this course to a New Hampshire real estate salesperson, Joseph Amarno, who had not attended or completed the course. On December 4, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-046 against Respondents. 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 12:23 p.m., the Commission commenced the adjudicatory/disciplinary hearing on Complaint File No. 2013-046. Commission members present<sup>1</sup> were:

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

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<sup>1</sup> 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.  
Respondents MacDonald and OmniSpect were pro se.

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

- Complainant Investigator Flanagan's Exhibits:
  - Exhibit #1 - Complaint File 2013-046: pages 1-36.
  - Exhibit #2 – E-mail from Patti Kemen on April 3, 2014.
- Respondent MacDonald's & Respondent OmniSpect's Exhibits: None.

Witnesses: Frances M. West  
Joseph Armano

#### Findings of Fact:

1. On October 31, 2013, Joseph Armano 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 Mr. Armano's New Hampshire real estate salesperson's license, which was due to expire on October 31, 2013. (Ex. 1, pages 16-17)
2. The continuing education credit affidavit was not accepted by the Commission because it was a copy and difficult to read, so Joseph Armano was asked by the Commission's Licensing Coordinator Laurel Untiet to submit the original education credit affidavit.
3. Joseph Armano 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.

4. The "Chimneys & Fireplaces" course was taught at the RE/MAX Legacy office located at 601 Central Avenue in Dover, NH on October 16, 2013, and the managing broker, Patricia Kemen, of that office was present at the course.

5. The Commission Investigator Ann Flanagan contacted Patricia Kemen by telephone to find out if Joseph Armano 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 Mr. Armano 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 Mr. Armano 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 Mr. Armano. (Ex. 1, pages 20-29)

6. Investigator Flanagan spoke to Respondent 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.

7. The Commission's Education Program Assistant Frances West testified that the education affidavit for Course #E975, "Chimneys & Fireplaces" taught by Respondent MacDonald of OmniSpect on October 16, 2013 was submitted in conjunction with Joseph Armano's renewal paperwork and because there had been another issue with an affidavit from that same company, Ms. West called Respondent MacDonald to confirm that he indeed taught this course and Mr. Armano was in attendance in the course.

8. Ms. West testified that she requested an attendance list from Respondent MacDonald for Course #E975 taught on October 16, 2013 and Respondent MacDonald did not have an attendance list.

9. Investigator Flanagan spoke to Joseph Armano on November 14, 2013, and Mr. Armano stated that he was at the course at RE/MAX Legacy Office on October 16, 2013, and when

Mr. Armano was informed by Investigator Flanagan that there was a list of agents who attended the course and he was not on the list, Mr. Armano 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.

10. When Investigator Flanagan told Joseph Armano 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.

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

12. On November 15, 2013, Investigator Flanagan spoke to Joseph Armano 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 completed on October 27, 2011 from OmniSpect 4 days before his original license was effective, and Mr. Armano 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 Mr. Armano stated that the man said it was just a technicality and sent Mr. Armano an affidavit for the "Chimneys & Fireplaces" course held on October 16, 2013. (Ex. 1, pages 30-31)

13. On November 15, 2013, Investigator Flanagan spoke to Fran LeSaffre at Coco Early and Associates where Joseph Armano worked at the time and she stated that Mr. Armano 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 Mr. Armano

to take another course; 2 weeks later Mr. Armano told Ms. LeSaffre that he had forgotten that he had previously taken the "Chimneys & Fireplaces" course that he could use for his license renewal.

14. 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.

15. 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.

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

17. On November 26, 2013, Joseph Armano forwarded to the Commission the email that he had received from Respondent, which contained an incomplete "Chimneys & Fireplaces" education credit affidavit; Investigator Flanagan again spoke to Respondent who continued to deny that he sent Mr. Armano an education credit affidavit for the "Chimneys & Fireplaces" course, so Investigator Flanagan forwarded the email to Respondent. (Ex. 1, pages 30-31)

18. On December 3, 2013, Investigator Flanagan again spoke to Respondent who admitted that he did email the education credit affidavit for the "Chimneys & Fireplaces" course held on October 16, 2013 to Joseph Armano and forwarded the original email to the Commission, and when questioned why he supplied the affidavit by Investigator Flanagan, Respondent said that it was stupid thing to do, but he felt sorry for the guy and that he should have just told him to take another course. (Ex. 1, pages 32-33)

19. Investigator Flanagan made attempts to get Respondents to reply to Complaint File Number 2013-046 as required by NH Administrative Rule Rea 204.04, and although Respondent MacDonald stated he would do so, Respondents did not reply to the complaint.

20. Joseph Armano testified at the hearing that Respondent sent him an affidavit with the course information for Course #E975 and Mr. Armano filled in his personal information on the education affidavit.

21. Respondent MacDonald admitted to the factual allegations of Complaint File Number 2013-046 at the hearing that he denied to Investigator Flanagan that he sent Joseph Armano an education affidavit for Course #975, "Chimneys & Fireplaces" held on October 16, 2013 during his telephone conversations with Investigator Flanagan held on November 25, 2013 and on November 26, 2013.

22. Respondent MacDonald admitted at the hearing that he did email the education credit affidavit for Course #E975, "Chimneys & Fireplaces" held on October 16, 2013 to Joseph Armano even though he knew he did not complete the course but sent him the affidavit because he felt sorry for Mr. Armano.

23. Respondent MacDonald testified that he did not reply to Complaint File Number 2013-046, because he was really busy with five kids at home.

24. Respondent MacDonald stated at the hearing that he would not blame the Commission if the Commission revokes his accreditation.

**Relevant Law:**

**RSA 331-A:20 Programs of Study; Preparatory Education; Continuing Education.**

V. Any individual, institution, or organization offering a preparatory or continuing education program who commits any of the following acts, conduct, or practices shall, after a hearing under RSA 331-A:30, be subject to disciplinary action as provided in RSA 331-A:28:

(g) Providing an affidavit of completion of an accredited course to a licensee or a potential licensee who has not completed the required hours of such course

(k) Demonstrating unprofessional conduct as defined by RSA 331-A:2, XV, or, when presenting a course to licensees or potential licensees, engaging in inappropriate conduct.

(n) Failing to preserve, for at least 3 years from the beginning date of an accredited course, attendance records, documentation, and materials relating to the course.

**Rulings of Law:**

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

1. Respondent MacDonald of OmniSpect provided an affidavit of completion of an accredited course to a licensee who had not completed the required hours of such course, in violation of RSA

331-A:20, V (g), when he provided an affidavit to Joseph Armano, a NH real estate salesperson for Course #E975, "Chimneys & Fireplaces" which Respondent MacDonald taught on October 16, 2013 at the RE/MAX Legacy office in Dover, NH. (Notice of Hearing, paragraph 5A)

2. Respondent MacDonald of OmniSpect, a NH Real Estate Commission accredited instructor demonstrated unprofessional conduct when he offered Joseph Armano an education affidavit for a course that Respondent MacDonald knew Mr. Armano did not complete, and denied to Investigator Flanagan that he provided Joseph Armano the education affidavit, in violation of RSA 331-A:20, V (k). (Notice of Hearing, paragraph 5B)

3. Respondent MacDonald of OmniSpect did not have an attendance list for Course #E975, "Chimneys & Fireplaces" which was taught by Respondent MacDonald on October 16, 2013 at the RE/MAX Legacy office in Dover, NH, in violation of RSA 331-A:20, V (n).

**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 Respondent MacDonald's and Respondent OmniSpect's accreditation be hereby revoked.

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:20, V, (k) 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.

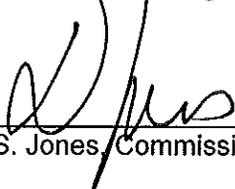
IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court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

after the filing of the commission's decision...") If the decision is not appealed within thirty (30) days, this order will become final.

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.

  
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David C. Dunn, Presiding Officer

6/17/2014  
Date

  
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Daniel S. Jones, Commissioner

6/17/14  
Date

  
\_\_\_\_\_  
William E. Barry, Commissioner

06/17/2014  
Date

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