

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

In The Matter Of: Docket No.: 2014-009  
New Hampshire Real Estate Commission v. James J. Fleming  
Accreditation No.: 066133  
(Adjudicatory/Disciplinary Proceeding)

**FINAL DECISION AND ORDER**

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of James J. Fleming ("Respondent Fleming" or "Mr. Fleming"), in Docket Number 2014-009.

**Background Information:**

Respondent Fleming, a New Hampshire Real Estate Commission accredited continuing education instructor taught an expired course #E1588, "Contracts: Formation, Construction, Interpretation" and issued continuing education credit affidavits to attendants at the course. On February 3, 2014, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2014-009 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 10:04 a.m., the Commission commenced the adjudicatory/disciplinary hearing on Complaint File No. 2014-009. Commission members present<sup>1</sup> were:

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

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

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

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

- Complainant Investigator Flanagan's Exhibits:  
Exhibit #1 - Complaint File 2014-009: pages 1-29.
  
- Respondent Fleming's Exhibits: None.

Witnesses: Fran M. West

### Findings of Fact:

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

1. Respondent Fleming was first accredited as a New Hampshire real estate course provider on January 13, 2010. Respondent holds accreditation number 066133.
2. On December 9, 2013, Respondent Fleming taught Course #E1588, "Contracts: Formation, Construction, Interpretation" at the The Masiello Group Limited branch office located at 436 Amherst Street, Nashua, NH, and provided continuing education credit for the course; however, the course's accreditation was not renewed with the Commission and had expired on June 19, 2013.
3. On January 21, 2014, licensee Patricia Sarcione's license renewal application and continuing education affidavits were received at the Commission office which included an affidavit for course #E1588 "Contracts: Formation, Construction, Interpretation" that was taught by Respondent on December 9, 2013. (Ex. 1, pg. 13)
4. After the continuing education credit affidavit for course #E1588 from licensee Patricia Sarcione was rejected by the Commission's licensing database, the Commission's Education Program Assistant Fran West spoke to Ms. Sarcione on January 21, 2014 and requested a copy of the course handouts which she received on December 9, 2013 from the expired course #E1588 "Contracts: Formation, Construction, Interpretation." (Ex. 1, pages 17-22)
5. Fran West spoke to Respondent on January 21, 2014 and Respondent stated that he taught course #E1588 "Contracts: Formation, Construction, Interpretation" on December 9, 2013,

and then later in the discussion stated that it had been course #E1620 "NH Standard Form Purchase and Sales Agreement" that was taught that day, and that he put the wrong course title and number on the students' affidavits, and that the content of the two courses was the same.

6. Respondent stated in his reply to the complaint that he inadvertently used the wrong handout materials from the expired course #E1588 "Contracts: Formation, Construction, Interpretation" instead of the materials from the currently approved course #E1620 "NH Standard Form Purchase and Sales Agreement", and that the course material from the two courses essentially teach the same course, but in a different format. (Ex. 1, pg. 29)

7. Commission Investigator Ann Flanagan contacted David Millett, the managing broker of the Masiello branch office in Nashua, NH, and received a copy of the email sent to Masiello agents showing the December 2013 calendar of course offerings which indicated the course offered for continuing education credit on December 9, 2013 was "P&S and Agency Review by State", which was not an accredited course with the Commission. (Ex. 1, pg. 23)

8. Respondent testified at the hearing that although he is responsible for the course, he does not do the advertising for the course, David Millett or someone else from The Masiello Group does the advertising of courses.

9. Respondent previously appeared before the Commission for teaching an expired course (Commission Meeting Minutes, November 15, 2011). (Ex. 1, pg. 11)

10. Respondent in his reply to the complaint and at the hearing, admitted to the factual allegations of the complaint. (Ex. 1, pg. 29)

11. Respondent testified and stated in his reply to the complaint that because of the administrative work that is required to properly administer the courses that are being taught by him and other instructors in Maine and New Hampshire for the benefit of The Masiello Group real estate agents, Christopher Masiello of the Masiello Group has appointed an administrator to oversee the scheduling of courses, the distribution of materials, and the maintenance of the required course documentation to avoid this error of teaching an expired course. (Ex. 1, pg. 29)

**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:

(m) Offering or providing a course for credit that has not yet been accredited or whose accreditation has expired.

**Rulings of Law:**

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

1. Respondent taught expired Course #E1588, "Contracts: Formation, Construction, Interpretation" on December 9, 2013 at The Masiello Group Limited branch office in Nashua, NH and provided continuing education credit for the course in violation of RSA 331-A:20, V (m). (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 Respondent Fleming pay a disciplinary fine in the amount of five-hundred dollars (\$500) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (30) days of the effective date of this Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent Fleming's real estate accreditation 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: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...").

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.



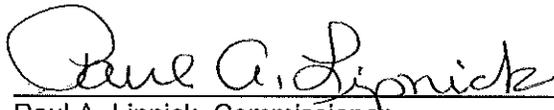
David C. Dunn, Presiding Officer

5/20/2014  
Date



William E. Barry, Commissioner

05/20/2014  
Date



Paul A. Lipnick, Commissioner

05/20/2014  
Date

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