

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

In The Matter Of: **Docket No.: 2014-018**
New Hampshire Real Estate Commission v. Anthony W. Caner
License No.: 061543
(Adjudicatory/Disciplinary Proceeding)

AMENDED FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Anthony W. Caner ("Respondent" or "Mr. Caner") in Docket Number 2014-018.

Background Information:

Respondent's broker renewal application was received at the Commission office on August 15, 2011. Respondent on his renewal application answered no to question #8, "Have any licenses which you have held to sell real estate been subject to disciplinary action in any state since you last original or renewal application." However, Respondent had a disciplinary action against his designated broker license with the Maine Real Estate Commission on November 18, 2010. On February 6, 2014, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2014-018 against Respondent. Subsequent to an investigation, on June 23, 2014, the Commission issued a Notice of Hearing for a hearing scheduled for July 15, 2014.

On Tuesday, July 15, 2014, at 9:35 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
Paul A. Lipnick, Commissioner
James R. Therrien, Commissioner

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

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

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

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2014-018: pages 1-20.

- The Respondent's exhibits: none were introduced.

The following witnesses were present and testified at the hearing:

- William E. Barry, Commissioner, NH Real Estate Commission

Findings of Fact:

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

1. Respondent has held a license as a real estate broker from the Commission since August 22, 2005. At the time of the allegations, Respondent was licensed as a real estate broker, license #061543, in active status with a license period of August 22, 2011 – August 22, 2013.
2. Respondent submitted his New Hampshire real estate broker license renewal application to the Commission which was received at the Commission office on August 15, 2011, and he answered "No" to question #8, "Have any licenses which you have held to sell real estate been subject to disciplinary action in any state since your last original or renewal application. (Ex. 1, pages 10-11)
3. Respondent had a disciplinary Decision & Order issued against him by the Maine Real Estate Commission on November 18, 2010, and Respondent was required to pay a \$600 disciplinary fine for falsely certifying continuing education requirements for renewal of his Maine real estate designated broker license, even though he had completed the required 21 clock hours of approved continuing education, he had not taken the required core course for renewal "What I Am and Why It Is Important". (Ex. 1, pages 4-9)

4. Respondent testified at the hearing that he has licenses in 4 states, in Rhode Island, New Hampshire, Maine, and Connecticut, and does all of his continuing education for all states on-line through course provider McKissock. Respondent stated that he contacts McKissock and relies on the course provider to sign him up for the courses he needs for renewal in each state.

5. Mr. Caner explained that his continuing education for the renewal of his Maine license was audited and he submitted proof of courses completed and found that he didn't complete the core course, he then took the core course and submitted proof of completion of the required course 13 days after his license expired.

6. Respondent testified that one year after the Maine Decision & Order was issued, he submitted his NH broker renewal and answered "No" to question #8 on the renewal application, because he didn't think of the Maine action as a disciplinary action.

7. Respondent did not dispute any of the facts of this case.

8. Witness William Barry testified at the hearing that he was the NH Real Estate Commission evaluator of Complaint File No. 2014-018, and made the determination to the Commission that the matter should be scheduled for a hearing. Mr. Barry testified that he made the determination that a hearing should be held on the matter because the Respondent answered "no" to question #8 on his NH broker renewal applications in 2011 and 2013, and that does not take responsibility for his renewal requirements and relies on a third party, course provider McKissock to comply with his renewal requirements in the states that he is licensed, and that he certified to the Maine Real Estate Commission that he met all the requirements of renewal of his real estate license, including the core course, when he had not completed the course.

Relevant Law:

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:

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

Rea 401.01 Renewal of License.

(a) Applicants for renewal of a broker's license shall use Form 6-RE and provide the following:

(21) Any real estate licenses that have been subject to disciplinary actions in any state since the licensee's last original or renewal application.

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 answering "No" to question #8, "Have any licenses which you have held to sell real estate been subject to disciplinary action in any state since your last original or renewal application" on his NH real estate broker license renewal application that was received at the Commission office on August 15, 2011, in violation of RSA 331-A:26, I. (Notice of Hearing, paragraph 5A)

2. The Respondent failed to provide to the Commission information regarding the disciplinary Decision & Order issued against him by the Maine Real Estate Commission on November 18, 2010 with his NH real estate broker renewal received at the Commission office on August 15, 2011, in violation of Rea 401.01(a)(21). (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-hundred fifty dollars (\$250) for each violation for a total amount of five hundred dollars (\$500) 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.



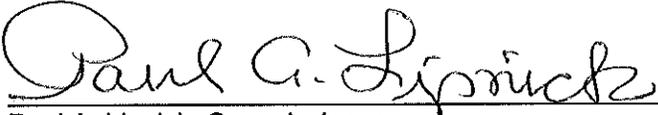
David C. Dunn, Presiding Officer

10/21/2014
Date



Daniel S. Jones, Commissioner

10/21/14
Date



Paul A. Lipnick, Commissioner

Oct 21, 2014
Date

*\ William E. Barry, Commission member, (case evaluator) recused.