

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

In The Matter Of: **Docket No.: 2014-021**
New Hampshire Real Estate Commission v. Bevin Fraser Korth
License No.: 058730
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Bevin Fraser Korth ("Respondent" or "Ms. Korth") in Docket Number 2014-021.

Background Information:

Respondent's salesperson renewal application was received at the Commission office on February 8, 2012. Respondent on her renewal application answered no to question #6, "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 issued against her real estate associate broker license with the Maine Real Estate Commission on November 18, 2010. On February 7, 2014, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2014-021 against Respondent. Subsequent to an investigation, on December 31, 2014, the Commission issued a Notice of Hearing for a hearing scheduled for January 20, 2015.

On Tuesday, January 20, 2015, at 10:55 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned¹ matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Paul A. Lipnick, Commissioner
Calley M. Milne, 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. Ms. Korth was pro se.

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

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2014-021: pages 1-15.

- The Respondent's exhibits introduced:
Exhibit A – Page 4 of the Commission Order on File No. 2013-034 NH Real Estate Commission v. Melissa Ann Lesniak & Nathan W. Dickey

The following witnesses were present and testified at the hearing:

- William E. Barry, Evaluating 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 salesperson from the Commission since February 18, 2004. At the time of the allegations, Respondent was licensed as a real estate salesperson, license #058730. Respondent is currently licensed with a license period of February 18, 2014– February 18, 2016.

2. Respondent submitted her New Hampshire real estate salesperson license renewal application to the Commission which was received at the Commission office on February 8, 2012, and she answered "No" to question #6, "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 9-10)

3. Respondent had a disciplinary Decision & Order issued against her by the Maine Real Estate Commission on November 18, 2010, and Respondent was required to pay a \$500

disciplinary fine for falsely certifying continuing education requirements for renewal of her Maine real estate associate broker license. (Ex. 1, pages 4-8)

4. In her response to the complaint, Respondent stated that she answered no to question #6 on her salesperson renewal application because she interpreted the question as asking "Have any of her NH licenses ever been subject to disciplinary action in or by any other state?" (Ex. 1, pg. 15)

5. Respondent testified at the hearing that she understood question #6 on her salesperson renewal form to ask whether her NH licenses had ever been subject to disciplinary action in other states since her last original or renewal application, and she answered "no", since her NH real estate license had not been subject to disciplinary action.

6. Respondent felt that the words, "in any state", is open to interpretation, and that the language in question #6 is ambiguous.

7. Respondent testified that because she was renewing her NH real estate salesperson license she felt that question #6 on the renewal application was only asking about disciplinary actions against her NH real estate license.

8. Respondent stated that she was not the only licensee to be confused by question #6 and submitted an Exhibit A which was the fourth page of the Commission Order for File No.2013-034 NH Real Estate Commission v. Melissa Ann Lesniak & Nathan W. Dickey, with paragraph 9 highlighted which states, "Respondent Lesniak testified at the hearing that she answered "No" to question #6 on her NH salesperson renewal application because she thought that the question only related to NH licenses not about a Maine license". However, Respondent Lesniak did not testify that she was confused by the question, but testified that she must have overlooked where question #6 refers to licenses that have been subject to disciplinary action in any state. (Exhibit A)

9. Respondent stated that if question #6 read, "Have any licenses you held in any state been subject to disciplinary action?" she would have answered "yes" to this question.

10. Witness Commissioner Barry testified at the hearing that he was the NH Real Estate Commissioner that evaluated Complaint File No. 2014-021.

11. Commissioner Barry testified that he has evaluated around 25-27 complaints that involved licensees who have had a disciplinary action in another state but answered no to the question, "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?" Commissioner Barry felt that his recommendation on this complaint was in line with other recommendations he has made on similar cases.

12. Commissioner Barry stated that in all of the cases that he has evaluated he considered the response of the respondents, the Decision and Order issued by the other state, and finding of facts, and in this case he did not find her response to the complaint logical or credible because he could not see how she could interpret the words "in any state" to mean just NH and if the question only related to her NH license, the NH Real Estate Commission would not be asking the question on the renewal form because the Commission would know if a disciplinary action was issued by the Commission to its own licensee.

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.

(b) Applicants for renewal of a salesperson's license shall use Form 7-RE and provide the following:

(15) 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 Commission did not find Respondent's explanation credible that she interpreted question #6 to refer to only her NH real estate license, and that she felt the question was asking her whether her NH license has been subject to disciplinary action in any other state, since she was

completing a NH salesperson renewal application. The Commission found that the Respondent attempted to obtain a NH license by means of misrepresentation by answering "No" to question #6, "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 her NH real estate salesperson's license renewal application that was received at the Commission office on February 8, 2012, 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 her by the Maine Real Estate Commission on November 18, 2010 with her NH real estate salesperson renewal application received at the Commission office on February 8, 2012, in violation of Rea 401.01(b)(1). (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) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) 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

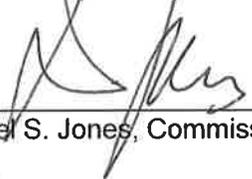
denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

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.



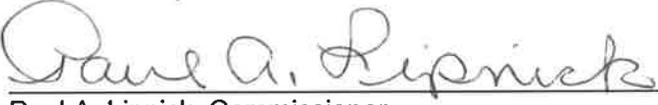
David C. Dunn, Presiding Officer

3/5/2015
Date



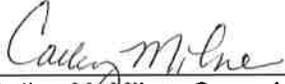
Daniel S. Jones, Commissioner

3/5/15
Date



Paul A. Lipnick, Commissioner

3-5-15
Date



Calley M. Milne, Commissioner

3/5/2015
Date

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