

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

In The Matter Of: **Docket No.: 2014-030**
New Hampshire Real Estate Commission v. G. Brandt Atkins
License No.: 011504
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of G. Brandt Atkins ("Respondent" or "Mr. Atkins") in Docket Number 2014-030.

Background Information:

Respondent's broker renewal application was received at the Commission office on January 10, 2003, and he answered "No" to question #6 on his application, "Have you, since your last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?", and failed to provide information regarding his September 5, 2001 Habitual Offender Class B Misdemeanor Offense, and Respondent's broker renewal application was received at the Commission office on January 31, 2007, and he answered "No" to question #6 on his application, "Have you, since you last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?", and failed to provide information regarding his April 29, 2005 Driving Under the Influence Class B Misdemeanor Offense. On April 18, 2014, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2014-030 against Respondent, and May 22, 2014, initiated an Amended Complaint File No. 2014-030. 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 12:42 p.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Calley M. Milne, Commissioner
Paul A. Lipnick, Commissioner

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

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

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2014-030: pages 1-40.

- 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 February 27, 1987. At the time of the allegations, Respondent was licensed as a real estate broker, license #011504.

2. Respondent submitted his New Hampshire real estate broker license renewal application to the Commission which was received at the Commission office on January 10, 2003, and he answered "No" to question #6, "Have you, since your last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?"

(Ex. 1, pg. 8)

3. Respondent had been convicted on September 5, 2001 at Strafford County Superior Court for Habitual Offender a Class B Misdemeanor Offense and received a \$1,200 (\$200 suspended) fine. (Ex. 1, pg. 30)

4. Respondent submitted his NH real estate broker license renewal application to the Commission which was received at the Commission office on January 31, 2007, and answered "No" to question #6, "Have you, since your last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?" (Ex. 1, pg. 12)

5. Respondent had been convicted on April 29, 2005 at Portsmouth District Court for Driving Under the Influence a Class B Misdemeanor Offense and received a \$500 fine. (Ex. 1, pg. 30)

6. The Commission Investigator Ann Flanagan contacted Respondent to have Respondent arrange to have his criminal history sent to the Commission which was received on April 15, 2014, and revealed that there was also a conviction on March 18, 2014 at Portsmouth District Court for Simple Assault, a Class Misdemeanor Offense for which Respondent received a 30 day suspended sentence, drug counseling, batterers program, no victim contact, domestic violence program, with a requirement for proof and follow up with the court. (Ex. 1, pg. 29)

7. Respondent's NH Criminal History Record was received on April 15, 2014 at the Commission at which time the Commission Investigator discussed the Simple Assault conviction with Respondent on the phone and told Respondent to include the details in his reply to the original complaint which was received on May 22, 2014.

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

9. Respondent stated in his response to Complaint File 2014-030 and at the hearing that he had a driver's license for a long time and had it locked in his mind that the convictions for Habitual Offender Class B Misdemeanor Offense in 2001 and the Driving Under the Influence Class B Misdemeanor Offense in 2005, were both traffic related offenses and were not criminal convictions.

10. Respondent testified that between the years 1995 through 2005 he was driving approximately 75,000-90,000 miles a year and was convicted of the Habitual Offender Offense, because he received 12 speeding tickets within a 5 year period of time, and that the Driving Under the Influence Offense occurred during a traffic stop, and felt it was traffic related.

11. Mr. Atkins explained at the hearing that he also has a broker license in the State of Maine, and that the Maine Real Estate Commission has a 10 day reporting requirement for certain criminal convictions, which he did disclose to the Maine Real Estate Commission the March 18, 2014 conviction for Simple Assault within the 10 day reporting requirement, and was preparing to disclose this conviction to NH as well.

12. In Respondent's reply to Complaint File 2014-030, he explained he received a letter from the Maine Real Estate Commission on March 19, 2014, informing him that they had received information indicating that he had a DWI conviction in 2005, that was not disclosed on his 2006 designated broker license renewal application, and several days after this letter he had a telephone conversation with the Maine Real Estate Commission regarding his written response to this conviction, and during the phone conversation, he mentioned his March 18, 2014 Simple Assault conviction, and submitted his written notification of this conviction to Maine on March 27, 2014 within the 10 day reporting requirement.

13. Mr. Atkins explained that it came as no surprise when he received a telephone call from Investigator Flanagan in the later part of March 2014 informing him that an anonymous letter was received at the Commission regarding his 2005 DUI conviction, and during his phone conversation with Investigator Flanagan, she asked him if he would agree to have his NH Criminal History Record submitted to the Commission. Mr. Atkins stated that he did not inform Investigator Flanagan of the March 18, 2014 Simple Assault conviction during their telephone conversation, but felt that he complied with the NH 30 day disclosure requirement, because the conviction was on his Criminal History Record received at the Commission office on April 15, 2014.

14. Witness William Barry testified at the hearing that he was the NH Real Estate Commission Evaluator of Complaint File No. 2014-030, 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 #6 on his NH broker renewal applications in 2003 and 2007 and failed to provide his criminal conviction information with his renewals, and felt that if Investigator Flanagan did not call him regarding his criminal convictions from 2001 and 2005 that he did not disclose to the Commission, that he would not have disclosed his March 18, 2014 criminal conviction for Simple Assault within the 30 day reporting requirement to the Commission, if Investigator Flanagan hadn't requested Respondent to submit his NH Criminal History Record to the Commission.

15. Respondent explained the details of his March 18, 2014 Simple Assault conviction that occurred when he found his former live-in girlfriend and life partner sitting at a bar in a restaurant with his best friend leaning over in a very close and intimate fashion talking with his best friend. Respondent stated that when he approached them that he swore in a loud voice and asked them what was going on, at which point his girlfriend immediately turned away, so he used her ponytail to turn her head in his direction, and told her not to bother to come home and then left the restaurant, and was arrested for Simple Assault for pulling his girlfriend's ponytail on September 30, 2013. Mr. Atkins stated in his reply to the complaint that he has had no contact with his former girlfriend, and since early October 2013 he resumed seeing a counselor on a weekly basis and submitted himself to a voluntary Anger and LADAC Evaluation, and in early December 2013, he voluntarily enrolled in a 36 week batterers and DV program called "Ending the Violence", and had completed 29 of the 36 weeks as of September 12, 2014 when he filed his reply.

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.

III. – Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, sexual crimes, drug distribution, arson, physical violence, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.

XXXVII. – Failing to inform the commission in writing within 30 days of being convicted in a court of competent jurisdiction of this or any other state or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or an offense or offenses involving sexual crimes, drug distribution, arson, or physical violence; provided that, for the purpose of this paragraph, being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended. This paragraph applies only when the conviction has not first been annulled by a court pursuant to RSA 651:5.

Rea 401.01 Renewal of License.

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

(19) All criminal convictions for misdemeanor or felony offenses 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 #6, "Have you, since your last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?" on his NH real estate broker license renewal application that was received at the Commission office on January 10, 2003, and was convicted on September 5, 2001 for Habitual Offender Class B Misdemeanor Offense, and answered "No" to question #6, "Have you, since your last original or renewal application, been convicted of any offense that has not been annulled by the court other than a traffic violation?" on his broker license renewal application that was received at the Commission office on January 31, 2007, and was convicted on April 29, 2005 for Driving Under the Influence, a Class B Misdemeanor Offense, in violation of RSA 331-A:26, I. (Notice of Hearing, paragraph 5A)

2. Respondent was convicted of Simple Assault on March 18, 2014 in Portsmouth, NH District Court, a Class A Misdemeanor Offense, in violation of RSA 331-A:26, III. (Notice of hearing, paragraph 5B)

3. The Respondent failed to provide to the Commission information regarding his conviction on September 5, 2001 for Habitual Offender Class B Misdemeanor Offense on his NH real estate broker renewal received at the Commission office on January 10, 2003, and failed to provide to the Commission information regarding his conviction on April 29, 2005 for Driving Under the Influence Class B Misdemeanor Offense on his NH real estate broker renewal received at the Commission office on January 31, 2007, in violation of Rea 401.01(a)(19). (Notice of Hearing, paragraph 5D).

4. The Commission did not find Respondent in violation of RSA 331-A:26, XXXVII where Respondent did fulfill the 30 day reporting requirement when he submitted his criminal history record to the Commission, which was received at the Commission Office on April 15, 2014, that included his March 18, 2014 conviction for Simple Assault, a Class A Misdemeanor Offense. (Notice of Hearing, paragraph 5C).

Disciplinary Action:

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

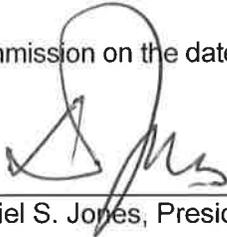
IT IS **ORDERED** that the Respondent pay a disciplinary fine in the amount of one thousand two-hundred and fifty dollars (\$1,250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order. Failure to comply 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.



Daniel S. Jones, Presiding Officer



Date



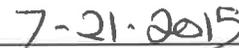
Calley M. Milne, Commissioner



Date



Paul A. Lipnick, Commissioner



Date

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