

BEFORE THE  
NEW HAMPSHIRE REAL ESTATE COMMISSION  
CONCORD NH 03301

In the Matter of:

File No. 2014-047      Moira Ryan v. Francine M. Carney

Allegations:            RSA 331-A:25-a, I; RSA 331-A:25-c, I, b, 2; RSA 331-A:26,  
XXV, and Rea 404.03 (as amended)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission (“Commission”) and Francine M. Carney (“the Licensee” or “the Respondent”), a real estate salesperson currently licensed by the Commission until June 13, 2015, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent Carney received the executed purchase and sales agreement (“P&S”) on May 6, 2013 via email attachment and Respondent immediately forwarded the executed P&S to Complainant’s lender in order to obtain a pre-approval letter requested by the builder, but failed to forward it to Complainant until May 12, 2013. The Commission investigator on 10/3/14 spoke to Carol Shaw (employee of builder/seller)

who acknowledged that even though the P&S was executed by the builder on May 2, 2013, Carol Shaw did not send it to Respondent Carney until May 6, 2013 which only left one day of the 5 day right of rescission for Complainant to back out of the agreement. But by the time Complainant got the executed P&S from Respondent Carney on May 12<sup>th</sup> the 5 day right of rescission had lapsed; although Complainant had received it from her lender on May 8, 2013 the 5 day right of rescission had already lapsed. Respondent Carney had been continuing to show properties to Complainant after May 2<sup>nd</sup> and during this time, and advised Complainant of her right of rescission. Although Complainant indicated to the Commission investigator that if she had an interest in another property but found out that the right of rescission had lapsed that Complainant felt obligated to the P&S, there was no evidence that Complainant ever asked about rescission at any time prior to closing on the new construction. Respondent Carney made a mistake when she forwarded the signed P&S to Complainant's lender on May 6<sup>th</sup> when she received it but not to Complainant.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Contracts (this continuing education course is to be completed by

classroom delivery method only and is not to be counted towards Respondent's continuing education requirements) within ninety (90) days of the effective date of this Settlement Agreement. Failure to comply with this disciplinary Settlement Agreement by Respondent will result in the suspension of Respondent's real estate license until the course is completed.

4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
7. Respondent understands that her action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
8. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be

null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced her right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.

10. Respondent certifies that she has read this document titled Settlement Agreement.

Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this Agreement, she waives these rights as they pertain to the misconduct described herein.

11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

I, Francine M. Carney, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated: 11-19-, 2014

Francine M. Carney  
Francine M. Carney  
Respondent

On this 19<sup>th</sup> day of November A.D. 2014  
personally appeared the person who subscribe to the following instrument and acknowledged the same as her voluntary act and deed before me.

Karen Doyle  
Justice of the Peace/Notary Public

My commission expires:  
KAREN DOYLE  
Justice of the Peace - New Hampshire  
My Commission Expires February 28, 2019

For the Commission

Dated: December 16, 2014

Beth A. Edes  
Beth A. Edes  
Executive Director  
of the NH Real Estate Commission