

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

In The Matter Of: **Docket No.: 2015-006**
New Hampshire Real Estate Commission v. Marlene Minemier

License Nos.: 055806
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission (“Commission”) is an adjudicatory/disciplinary proceeding In the Matter of Marlene Minemier (“Respondent Minemier” or “Ms. Minemier”) in Docket Number 2015-006.

Background Information:

The Commission received an anonymous complaint on February 9, 2015 regarding advertisements by Marlene Minemier advertising her services on her Facebook web page as a real estate licensee using the firm name of K.M. Minemier & Associates Real Estate Services which was not registered with the NH Secretary of State’s office or licensed with the Commission and on her website at <http://amdelite.com> with printouts of both website pages dated February 5, 2015. On March 6, 2015, Sheila Haines, the Commission’s Administrative Assistant initiated Complaint File No. 2015-006 against Marlene Minemier, alleging violations of RSA 331-A:16. IV. Subsequent to an investigation, on March 14, 2016, the Commission issued a Notice of Hearing for a hearing scheduled for April 19, 2016. Upon a Request for Continuance submitted by Marlene Minemier’s Attorney, Eugene F. Sullivan, III, the Commission granted a continuance on March 31, 2016, and issued a Notice of Hearing for a hearing scheduled for May 17, 2016. On Tuesday, May 17, 2016, at 9:40 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

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

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

The prosecution was conducted by Kinsman Corthell, the Commission's Investigator. Ms. Minemier was represented by Attorney Eugene F. Sullivan, III.

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

- Complainant Investigator Corthell's Exhibits:
 - Exhibit #1 – Documents from Complaint File 2015-006, pages 1-21.
 - Exhibit #2 – Facebook pages relating to K. M. Minemier & Associates, LLC dated 12/9/2015, pages 1-7.

- Respondent Minemier's exhibits introduced:
 - Exhibit A – Original Complaint Form 11 File No. 2015-006
 - Exhibit B – Specific Issues for Hearing on Docket No. 2015-006 – RSA 331-A:16, IV
 - Exhibit C – RSA 331-A:16, IV
 - Exhibit D – RSA 331-A:26, X
 - Exhibit E – Administrative Rule Rea 404.05
 - Exhibit F – Facebook pages for Asset Management Division on 2/5/2015 displaying ads from K.M. Minemier & Associates
 - Exhibit G – Add on referrals@citysidecorp.com
 - Exhibit H – Warranty Deed for 74 Maurice Street, Manchester, NH
 - Exhibit I – Facebook pages for Asset Management Division with ads for K.M. Minemier & Associates, LLC, dated 5/10/2016
 - Exhibit J – Advertisements for Christine Tatro
 - Exhibit K – Advertisements on LinkedIn page for Christine Tatro
 - Exhibit L – amdelite.com with featured listing for K.M. Minemier & Associates dated 2/5/2015
 - Exhibit M – Email regarding outstanding commission from Marlene Minemier to

Attorney Sullivan dated 12/10/2014

Exhibit N – Letter from Attorney Sullivan on behalf of Marlene Minemier to Jill Lemons of Allison James Estates and Homes titled Refusal to Forward Commission Checks dated 1/15/2015

Exhibit O – Email from Jill Lemons to Attorney Eugene Sullivan dated 1//28/2015

Exhibit P – Email from Attorney Eugene Sullivan to Jill Lemons and Matthew Crumbaugh dated 2/12/2015

Exhibit Q – Email from Attorney Eugene Sullivan to Matthew Crumbaugh dated 3/6/2015

Exhibit R – Allison James Estates & Homes Elite Realtor Associate Agreement between Gene Fennelly, Allison James of Massachusetts and New Hampshire, Inc. and Marlene D. Minemier dated 9/24/2012

Exhibit S – NH Secretary of State Corporate Division website business name search for Gene Fennelly Realty, Gene Fennelly Realty, LLC, Allison James Estates & Homes Elite, and Allison James Estates & Homes Gene Fennelly & Associates, dated 5/11/2016

Exhibit T – Secretary of the Commonwealth of Massachusetts Corporations Division website business search related to businesses starting with Gene

Exhibit V – Email from Marlene Minemier to Attorney Sullivan, dated 2/16/2015

Exhibit W – Attorney Eugene Sullivan's Agreement for Legal Services to Marlene Minemier, dated 1/30/2015

Exhibit X – Letter from Attorney Sullivan to Attorney James Boffetti regarding a consumer complaint by Donald Hebert and Holly Fazzino, dated 2/24/2015

Exhibit Y – Timeline for business that Marlene Minemier was associated with in September 2014

Exhibit Z – Firm information for Sullivan Law Office

The following witnesses were present and testified at the hearing:

- Marlene Minemier, Respondent in Complaint File No. 2015-006.
- Eugene F. Sullivan, III, Attorney for Respondent Minemier.
- Sheila Haines, Real Estate Commission Administrative Assistant

Hearing Testimony:

Respondent Minemier testified at the hearing to the following:

- That she currently has two real estate companies that are registered in New Hampshire. K.M. Minemier & Associates, LLC which is an asset management company for the government, and LKM Realty Group, LLC, which is a holding company for her personal assets. Ms. Minemier stated that she does not currently conduct brokerage activity in NH under K.M. Minemier & Associates, LLC.
- Respondent Minemier testified that she was not familiar with the website <http://amdelite.com>, but later recognized this website. Ms. Minemier stated that she worked for Allison James Homes & Estates as an associate broker under the team name Asset Management Division (AMD). Ms. Minemier stated that the team included herself and two field runners. Respondent Minemier stated she hired a real estate social media company RLS 2000 to create the webpage amdelite.com. (Ex. 1, pages 5-7)
- On webpages for amdelite.com dated 2/5/2015 was the following header, "Marlene Minemier (MA/NH) – Franchisee/Brok", shown on the top of each page. Ms. Minemier testified that she was a franchisee, but not at the time of amdelite.com. She was a franchisee when she owned Exit 1st Realty. Exit 1st Realty was rebranded and renamed to amdelite and the header was part of Exit 1st Realty and wasn't removed by RLS 2000.
- Ms. Minemier stated that she left Coco Early & Associates in September 2014 and went to work for Cityside Real Estate Services and she started her webpage for Cityside from scratch because she didn't want incorrect information left on the site from previous sites.

- On the Facebook pages that were complained about and printed on February 5, 2015 for the Asset Management Division was an advertisement dated October 6, 2014 by K.M. Minemier & Associates for the following: Single Family – 74 Maurice St Manchester, NH 03103 now has a new price of \$198,900! Ms. Minemier stated that this was a listing of Allison James Estates & Homes, and that she did not post this on Facebook, it was a feed from RLS 2000 to MLS, and she did not have control over it and did not feel this was advertising. Ms. Minemier explained that RLS 2000 just took this information from an MLS change for 74 Maurice Street and posted it. She stated that she tried to shut down the feeds to this IDX feed with RLS 2000 to start new with Cityside Real Estate Services. Ms. Minemier stated that RLS 2000 had all administrative control of Facebook. In April 2015, when she responded to the Commission complaint she fired RLS and gained administrative control over her Facebook pages. She stated that she didn't even know that the Asset Management Division Facebook page existed.
- On a printout of a Facebook page for K.M. Minemier & Associates, LLC, dated 5/10/2016, there are real estate advertisements by Exit 1st Realty dating back as far as June 8, 2011. Ms. Minemier does not feel this is a violation where this Facebook page is showing advertisements from back in 2011 because you can change your profile picture, but your posts stay the same. Ms. Minemier pointed out that there is a difference between the name of the Facebook page and the branding of the page. (Ex. I, pages 1-3)
- Ms. Minemier testified that she currently maintains three Facebook pages. The Facebook pages she has now have nothing to do with real estate in NH, just asset management in North Carolina and South Carolina. Ms. Minemier stated that amdelite.com no longer exists.
- Ms. Minemier testified that when she left Allison James Estates and Homes to work for Cityside Real Estate Service, the departure from Allison James was not on friendly terms. She received correspondence dated January 29, 2015 from Matthew Crumbaugh, the owner and CEO of Allison James to remove any branding of Allison James Estates & Homes from any of her social media links.

- Sheila Haines, the Administrative Assistant for the Commission, stated that there was no Commission Investigator at the time the anonymous complaint against Respondent Minemier was received, so to assist with the investigations, she initiated the complaint against Ms. Minemier. The complaint which was initiated by Ms. Haines had the name of the former Commission Investigator Ann Flanagan preprinted on the complaint form in error. The complaint had a notarized signature by Ms. Haines dated March 6, 2015.
- Ms. Haines testified that prior to initiating the complaint against Ms. Minemier, she verified that the Facebook pages submitted to the Commission anonymously still existed by viewing the Facebook pages online.

Findings of Fact:

Licensure Facts:

Respondent Minemier was first granted a real estate salesperson's license by the Commission on August 22, 2002, and granted a real estate broker's license on October 21, 2003, license #055806. Through a Settlement Agreement Respondent agreed to a disciplinary suspension of her broker license and was downgraded to a salesperson's license #068386 on April 5, 2013 through October 8, 2013 and received a broker's license #055806 on October 9, 2013. At the time of the allegations, Respondent Minemier was licensed as a real estate broker, license #055806.

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

Social Media Facts:

1. The original complaint was initiated by the New Hampshire Real Estate Commission through Administrative Assistant Sheila Haines on March 6, 2015 against Respondent Minemier.

(Ex. 1, pages 2-3)

2. Respondent Minemier advertised her services as a real estate agent on Facebook using the name K.M. Minemier & Associates Real Estate Services on 2/5/2015. (Ex. 1, pages 14-16).

3. K.M. Minemier & Associates Real Estate Services has never been licensed with the Commission or the New Hampshire Secretary of State.

4. Respondent Minemier advertised as a real estate licensee via a website called amdelite.com on 2/5/2015 using the name K.M. Minemier & Associates.

Relevant Law:

RSA 331-A:1 Purpose.

It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

RSA 331-A:16 Supervision of Real Estate Offices; Branch Offices.

IV. (a) All advertisements by a broker or salesperson shall include the broker's or salesperson's legal name or reasonable derivative thereof and the regular business name of the firm or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable. This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

Rulings of Law:

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

1. The Commission found that there was no evidence to prove Respondent Minemier was inappropriately advertising listings on the Asset Management Division Facebook page dated February 5, 2015, where there was no snapshot in time on the post date of the advertisement dated October 6, 2014 for property at 74 Maurice Street, Manchester, NH. Respondent Minemier was advertising as a real estate licensee via a website called amdelite.com on February 5, 2015 using the name K.M. Minemier & Associates almost five months after she left Allison James Estates & Homes and went to Cityside Real Estate Services, and was advertising as K.M. Minemier & Associates and not as Cityside Real Estate Services. Therefore the Commission found Respondent Minemier in violation of RSA 331-A:16, IV. (Notice of Hearing, paragraph 5A).

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission finds that the Respondents' actions indicate that they failed to "meet and maintain the minimum standards which promote public understanding and confidence in the business of real estate brokerage" (RSA 331-A:1 Purpose) and has voted to order the following:

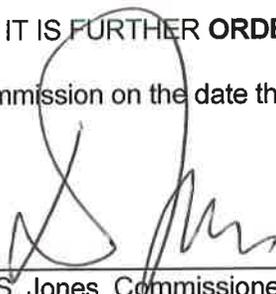
It IS **ORDERED** that Respondent pay a disciplinary fine of two hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) days of the effective date of this Order. Failure to comply with this Disciplinary Order will result in the suspension of Respondent's real estate broker's 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 Respondents.

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 thirty (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, Commissioner, Presiding Officer

9/20/16

Date



Calley M. Milne, Commissioner

9/20/2016

Date

Paul A. Lipnick
Paul A. Lipnick, Commissioner

9-20-2016
Date

*\ William E. Barry, Commission member, recused.