

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

DECEMBER 15, 2015

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, December 15, 2015 at 8:30 a.m. in the Wing B Conference Room, 121 South Fruit Street, Concord, New Hampshire 03301.

- I. Meeting was called to order at 8:37 a.m. by Chairman Daniel Jones.
Present: Commissioners Daniel Jones, John Cronin, William Barry, Calley Milne, and Paul Lipnick.
- II. On motion by Commissioner Barry, seconded by Commissioner Milne, the Commission approved the Minutes of the Commission meeting held on November 17, 2015.
- III. **APPOINTMENTS**
 - 8:38 a.m. Show Cause Hearing – LUIS GRULLON appeared before the Commission for a show cause hearing regarding his criminal history record submitted with his application for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Cronin, seconded by Commissioner Milne, decided to table its decision for 90 days to allow the Commission Investigator Kinsman Corthell to obtain the court records for the criminal offenses listed on Mr. Grullon's criminal history record and to contact the three character references included on his original salesperson's application and requested that Mr. Grullon submit to the Commission, an Arrest & Conviction form, along with his narrative of what happened for each conviction.
 - 8:58 a.m. Show Cause Hearing – ELISHA MILLEN appeared before the Commission, along with Pamela Hughes, the principal broker she intends to be licensed under, for a show cause hearing regarding her criminal history record submitted with her application for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Barry, seconded by Commissioner Cronin, decided to allow Ms. Millen to apply for her original salesperson's license.
 - 9:10 a.m. ROBERT CRUESS appeared before the Commission to discuss his concerns regarding a transaction he was involved in. Mr. Cruess explained to the Commission that he was recently the seller in a transaction, and closed on a house and was provided with a trustee check in the amount \$225,000. Mr. Cruess deposited the funds into his bank account, only to find out that a trustee check has a 10 business day hold on the funds, and during the time that these funds are not available to him, the buyer is living on the property and has a mortgage on the property, and it is irrevocable that he could go back against the buyer. Mr. Cruess stated that he discussed this issue regarding trustee check with title companies and various brokers and educators and most did not have any knowledge of the 10 business day hold on trustee checks. Mr. Cruess explained that wired funds and bank certified checks are available immediately. Mr. Cruess feels that there should be some type of disclosure required to the seller that funds may not be available for up to two weeks, and suggested that this issue be covered under the Commission accredited "core" courses. The Commission suggested to Mr. Cruess to send his concerns to the title companies and to copy the

Banking Commission on the letters.

IV. **PROPOSED RULEMAKING**

The Commission discussed proposed changes to Administrative Rule Rea 301.03 Filing Requirements. After review and discussion, the Commission requested Beth Edes, the Real Estate Commission Executive Director to set up a meeting with instructors that expressed interested to review the proposed changes and present suggested changes to the Commission for consideration.

V. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the January meeting:

January 19, 2015 at 8:30 a.m.

2. ORDERS

DOCKET NO. 2015-002 NEW HAMPSHIRE REAL ESTATE COMMISSION VS
MICHAEL P. RODRIGUEZ

VI. **NON-PUBLIC MEETING**

On motion by Commission Cronin, seconded by Commissioner Barry, the Commission, by roll call vote, voted unanimously to conduct a non-public session for the purpose of evaluating complaints against licensees, accredited individuals, institutions, or organizations, or persons charged with practicing unlawful brokerage activity, and noting that such a non-public session is authorized by RSA 91-A:3, II(c), RSA 91-A:5, IV, Lodge v. Knowlton, 11 N.H. 574 (1978), and the Commission's executive and deliberative privileges. Each member recorded his or her vote on the motion, which passed by the unanimous vote of all members present. On motion by Commissioner Cronin, seconded by Commissioner Barry, the Commission adjourned the non-public meeting at 11:30 a.m.

VII. **PUBLIC MEETING RECONVENED**

On motion by Commissioner Cronin, seconded by Commissioner Barry, the Commission reconvened the public meeting at 11:30 a.m.

VIII. **NON-PUBLIC MINUTES SEALED**

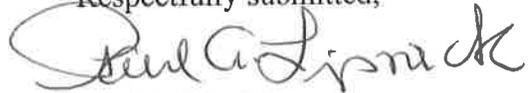
On motion by Commissioner Cronin, seconded by Commissioner Barry, the Commission, by roll call vote, voted to seal the Minutes of the non-public meeting from public disclosure pursuant to RSA 91-A:3, III, on the grounds that public disclosure would likely affect adversely the reputation of licensees, accredited individuals, institutions, or organizations, or persons charged with practicing unlawful brokerage activity. Each member recorded his or her vote on the motion, which passed by the unanimous vote of all members present.

IX. **ADJOURNMENT**

On a motion by Commissioner Cronin, seconded by Commissioner Barry, Chairman Daniel Jones

adjourned the meeting at 11:59 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Lipnick". The signature is written in a cursive style with a large, prominent initial "P".

Paul A. Lipnick
Clerk

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

In The Matter Of:

Docket No.: 2015-002

New Hampshire Real Estate Commission v. Michael P. Rodriguez

License No.: 066900

(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Michael P. Rodriguez ("Respondent" or "Mr. Rodriguez") in Docket Number 2015-002.

Background Information:

Respondent's broker renewal application was received at the Commission office on January 6, 2015. 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 your last original or renewal application." However, Respondent had a disciplinary action against his broker license through a Consent Agreement approved by the Maine Real Estate Commission on March 21, 2013. On January 7, 2015, Commission Investigator Ann Flanagan initiated Complaint File No. 2015-002 against Respondent. Subsequent to an investigation, on September 22, 2015, the Commission issued a Notice of Hearing for a hearing scheduled for November 17, 2015.

On Tuesday, November 17, 2015, at 9:40 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

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

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

The prosecution was conducted by Kinsman Corthell, the Commission's Investigator. Mr. Rodriguez was pro se.

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

- Complainant Investigator Corthell's Exhibits:
 - Exhibit #1 – Documents from Complaint File 2015-002: pages 1-12.
 - Exhibit #2 – Investigator Corthell's Details of Events for Docket No. 2015-002 and E-mail Communication with the Maine Real Estate Commission
- The Respondent's exhibits: none were introduced.

Witnesses: Michael Rodriguez

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 December 10, 2010. Respondent is licensed as a real estate broker, license #066900, in inactive status with a license period of January 6, 2015 – December 10, 2016.
2. Respondent submitted his New Hampshire real estate broker license renewal application to the Commission which was received at the Commission office on January 6, 2015, 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 6-7)
3. Respondent had entered into a Consent Agreement with the Maine Real Estate Commission for failing to obtain and convey property disclosure information for 59 properties listed and sold by Respondent in Maine, and Respondent agreed to pay a \$10,000 disciplinary fine; this Consent Agreement was approved by the Maine Real Estate Commission on March 21, 2013. (Ex. 1, pages 4-5)

4. Respondent's reply to the complaint indicated that he felt the disciplinary fine was from 2012 and therefore thought that it didn't take place during the 2 previous years from application for renewal of his NH real estate broker license.

5. Respondent testified at the hearing that when he was completing his NH broker renewal form, which was submitted and received at the Commission on January 6, 2015, he was in a rush to complete the form and made a mistake by checking "no" instead of "yes" 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?". Respondent stated that he informed Investigator Flanagan in February 2015, that he made this mistake on the form, when Investigator Flanagan contacted him regarding Complaint File No. 2015-002.

6. Respondent admitted at the hearing that he was wrong and stated that he was willing to pay fine.

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. 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 January 6, 2015, 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 Consent Agreement he entered into with the Maine Real Estate Commission which was approved by Maine Real Estate Commission on March 21, 2013 with his NH real estate broker renewal received at the Commission office on January 6, 2015, 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:

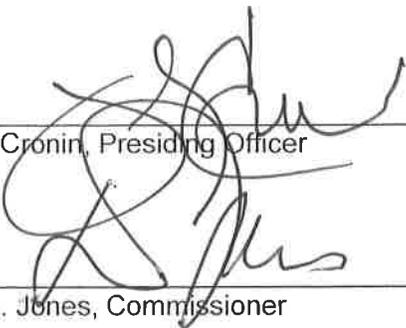
IT IS **ORDERED** that the Respondent pay a disciplinary fine in the amount of five hundred dollars (\$500) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within sixty (60) days of the effective date of this Order. Failure to comply with this disciplinary 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.



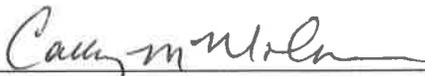
John G. Cronin, Presiding Officer

12/15/15
Date



Daniel S. Jones, Commissioner

12/15/15
Date



Calley M. Milne, Commissioner

12/15/2015
Date



Paul A. Lipnick, Commissioner

12-15-15
Date

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