

NEW HAMPSHIRE REAL ESTATE COMMISSION
ORDER
FILE NO. 2009-022

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DEC 08 2011
NH REAL ESTATE COMMISSION

NEW HAMPSHIRE REAL ESTATE COMMISSION
V
PAUL A. CONSOLI
RE: COMPLAINT OF HEATHER & BRIAN VIGEANT

This matter comes before the Real Estate Commission on the complaint of Heather & Brian Vigeant, alleging violations of NH RSA 331-A:26, IV, V, and Rea 701.02, by Paul A. Consoli. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Paul A. Consoli (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate broker on 12/20/88, and was so licensed and the principal broker of Ben Consoli Real Estate Agency at the time of the alleged violations.
2. Heather & Brian Vigeant (hereinafter referred to as Complainants) allege that Respondent as the listing agent of the property they purchased failed to disclose water problems and land restrictions.
3. Complainants' buyer-agent, Daniel O'Connell, testified that he was present at the showings and that no one including the seller/developer or Respondent or Respondent's licensed assistant Nicholas Sullivan ever disclosed the water problems or land restrictions of the property.
4. Respondent testified that as the listing agent that all offers and contracts go through him.

5. Respondent testified and submitted statements that he knew about a water problem at the property because a previous buyer backed out of a transaction because of water in the basement (Complainant's Exhibit #1, p. 01).
6. Respondent testified and submitted statements that he felt no need to disclose the prior water problem to Complainants because the seller/developer installed a sump pump and Respondent felt that anyone could see the sump pump and assume it was a remedy for an existing water problem (Complainant's Exhibit #1, p. 01).
7. Complainant Heather Vigant testified that Respondent's licensed assistant Nicholas Sullivan was present at a showing when Complainants inquired about why the driveway had been altered, and the seller/developer Russell Ahern indicated that he changed the configuration of the driveway because the neighbors complained about water draining into their property, but that the buyers could do whatever they wanted after they purchased the property.
8. Respondent indicates that he had no knowledge about land restrictions and listed the property based on the documentation provided by the builder/seller.
9. Respondent's attorney provided a statement from the seller/developer that listing documents were provided by the seller to Respondent.
10. Respondent was a dual agent (Complainant's Exhibit #1, p. 021) in a previous P&S where the plot plan C-15862 that Respondent claimed he never saw and did not provide to Complainants which illustrated the grading restrictions was specifically referenced in the addendum provisions of that prior P&S (Complainant's Exhibit #1, p. 026; 095).

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11. Another offer to purchase referenced an addendum provision regarding the pooling of water drainage on the outside of the property (Complainant's Exhibit #1, p. 054).
12. Complainants testified and submitted photographs showing that Respondent moved his real estate sign on the property to accommodate the altered driveway and the standing water on the property (Complainant's Exhibit #1, p. 015 – 018; Complainant's Exhibit #2).
13. Complainants testified that they continue to have severe flooding in their yard which cannot be corrected because of the grading restrictions (Complainant's Exhibit #2).

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent's statements that he did not know about the land restrictions is not credible because the offers and agreements previous to Complainants' P&S indicating water drainage problems and grading restrictions went through Respondent as the listing agent and principal broker of his real estate office and this constituted actual knowledge. Respondent's assumption that any buyer seeing a sump pump would assume previous water problems is an evasive and inadequate excuse for not specifically disclosing the prior water problems and demonstrates Respondent's dishonesty. When specifically asked about the alteration of the driveway configuration, Respondent's licensed assistant Nicholas Sullivan did nothing to correct the false statements of the seller/developer who had indicated to the buyers that they could do what ever they wanted after they purchased

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the property despite the town's restrictions about the grading of the property. Respondent and his licensed assistant permitted false statements and descriptions about the driveway alterations and Respondent misrepresented and concealed knowledge of previous on-site water problems at the property, and considering that the previous offers and agreements referenced the plot plan indicating grading restrictions, Respondent failed to take reasonable care to provide to the buyers the plot plan referencing the town's regulatory land restrictions. Therefore, the Commission rules that Respondent did violate NH RSA 331-A:26, IV, V, and Rea 701.02.

In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent shall pay a disciplinary fine in the amount of two-thousand dollars (\$2,000) for each violation, totaling six-thousand dollars (\$6,000) 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; and that Respondent and his licensed assistant, Nicholas J. Sullivan, shall each show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Ethics and a 3-hour continuing education course about Property Disclosure (these continuing education courses are to be completed by classroom delivery method only and are not to be counted towards their continuing education requirements) 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 and the courses are completed.

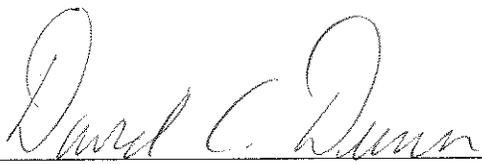
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Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The Respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

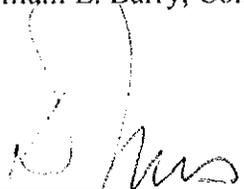
Commissioner James R. Therrien evaluated this case and did not take part in the hearing or decision.



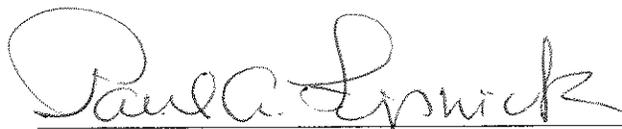
David C. Dunn, Presiding Officer 11/30/2011
DATE



William E. Barry, Commissioner 11/30/2011
DATE



Daniel S. Jones, Commissioner 12/8/11
DATE



Paul A. Lipnick, Commissioner 11/30/2011
DATE

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