

NEW HAMPSHIRE REAL ESTATE COMMISSION  
ORDER  
FILE NO. 2011-022

NEW HAMPSHIRE REAL ESTATE COMMISSION  
V  
RICHARD DALE-MESAROS & GAIL E. MCCARTHY  
RE: COMPLAINT OF LESLIE HOYT

This matter comes before the Real Estate Commission on the complaint of Leslie Hoyt and the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, alleging violations of NH RSA 331-A:26, V; RSA 331-A:26, XXXVI; RSA 331-A:25-b, I, b (2); RSA 331-A:25-b, I (a); and RSA 331-A:26, XXVIII , by Richard Dale-Mesaros, and RSA 331-A:26, XXVII by Gail McCarthy. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Richard Dale-Mesaros (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 5/18/09 and was so licensed and associated with Real Estate Entrepreneur Network LLC at the time of the alleged violations.
2. Gail E. McCarthy (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 4/5/07 and as a real estate broker on 5/3/11 and was so licensed and the principal broker of Real Estate Entrepreneur Network LLC at the time of the alleged violations.
3. Leslie Hoyt (hereinafter referred to as Complainant) knew their neighbor was going to be selling their home by a short sale to avoid foreclosure, and

Complainant was waiting for it to come on the market to make an offer through her agent.

4. Respondent Richard Dale-Mesaros entered into a listing agreement with the seller but did not put a for sale sign on the property and did not put the property into the MLS within 48 hours of the listing. Instead, Respondent Dale-Mesaros brought the listing to a member of the real estate investor association (New Hampshire Real Estate Investors Association) of which both Respondent Dale-Mesaros and Respondent McCarthy were members. Against a listing price of \$99,900, the Respondents' fellow investor made an offer of \$52,000 which Respondent Dale-Mesaros recommended the sellers to accept.
5. The sellers' lender would not consider the offer because the property had not been placed in the MLS. Subsequently, Respondent Dale-Mesaros put the property into the MLS as active and then immediately changed it to contingent. The initial offer was rejected by the sellers' lender. Exposure to the MLS led to two additional offers, one for \$72,000 and one for \$77,000. Ultimately, the \$77,000 offer led to a sale at \$80,000.
6. When the property went into the MLS Complainant inquired through a facilitator but was told the property was under agreement pending short sale approval. Complainant was told their offer would be considered a back-up but the offer was never presented to the sellers to accept as a back-up offer.
7. Complainant's first offer was full asking price \$99,900 with inspection contingencies (the property was in poor condition), and their second offer

- removed the inspection contingencies but Complainant reduced the offer price to \$84,500.
8. Chip Roper testified that he was a facilitator working with Complainant and that Complainant was attempting to purchase the property as an investor and Complainant lowered the price on her second offer after removing the inspection contingencies.
  9. Chip Roper testified that Respondent Dale-Mesaros assured them that Complainant's offer would be next in line as a back up offer.
  10. The accepted offer came before both of Complainant's written offers and was \$77,000 cash no contingencies, and the final sales price was \$80,000.
  11. Respondent Dale-Mesaros states he would not present Complainant's offers because of the lender's protocol.
  12. Respondent Dale-Mesaros testified that he never contacted Complainant or Complainant's agent Chip Roper after the initial offer fell through.
  13. Respondent Dale-Mesaros stated that he knew the first buyers through Respondent's membership in the NH Real Estate Investors Association and he didn't put a sign on the property or put it on the MLS because he knew investors who might be interested in the property.
  14. Respondent Gail McCarthy is also a member of the NH Real Estate Investors Association.
  15. Respondent Dale-Mesaros failed to properly market the property pursuant to his listing agreement with the sellers and in breach of his fiduciary duties.

16. Principal broker Respondent Gail McCarthy showed a lack of proper supervision in the transaction.

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

Respondent Dale-Mesaros failed to properly market the property pursuant to his listing agreement with the sellers which required Respondent Dale-Mesaros to enter the property into the MLS within 48 hours. Indeed, Respondent Dale-Mesaros did not put the property into the MLS until approximately a month and a half after taking the listing after an initial low offer was rejected by the sellers' lender because the property had not been marketed on the MLS; and when Respondent Dale-Mesaros did subsequently put the property into the MLS he entered it as active then immediately changed it to contingent based on the initial offer which was rejected. Therefore, the Commission rules that Respondent Dale-Mesaros did violate NH RSA 331-A:25-b, I (a).

Respondent Dale-Mesaros had not put the property into the MLS and was initially only marketing the property to members of the NH Real Estate Investors Association. Respondent Dale-Mesaros also marketed the property to other investors he knew personally. As an experienced investor and licensed real estate agent Respondent Dale-Mesaros would have known that exposing the property to the entire market, not merely investors he knew would have brought offers higher than the initial low offer of \$52,000 which would have more likely been accepted by the lender on a short-sale basis. Listing the property on the MLS on behalf of Respondent Dale-Mesaros's seller clients would have exposed the property to the market so that higher offers could be obtained which

would be more likely accepted by the short sale lender. Therefore, the Commission rules that Respondent Dale-Mesaros did violate NH RSA 331-A:26, XXVIII.

Respondent Dale-Mesaros was hired as a listing agent to represent the interests of the sellers yet Respondent Dale-Mesaros failed to advise his seller clients that the initial offer was low and that they should market the property to obtain higher offers, and when the initial low offer was rejected, Respondent Dale-Mesaros failed to contact Complainant or Complainant's agent to notify them that the property was available. Instead Respondent Dale-Mesaros only approached his personal investor acquaintances. Therefore, the Commission rules that Respondent Dale-Mesaros did violate NH RSA 331-A:26, V and RSA 331-A:26, XXXVI.

The Commission did not find a separate and independent violation of NH RSA 331-A:25-b, I, b (2).

Principal broker Respondent Gail McCarthy showed a lack of proper supervision in the transaction, and the Commission is concerned that both Respondent Richard Dale-Mesaros and principal broker Respondent Gail McCarthy seem to think that avoiding foreclosure justifies not fulfilling their fiduciary responsibilities to properly market the property and optimize the likelihood of an offer acceptable to the short sale lender. Therefore, the Commission rules that Respondent Gail McCarthy did violate NH RSA 331-A:26, XXVII.

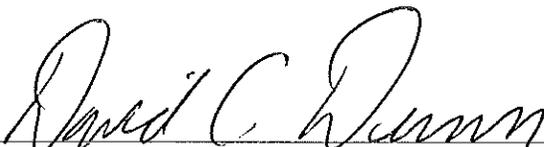
In view of the foregoing rulings of law, the Real Estate Commission hereby orders that Respondent Richard Dale-Mesaros shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) for each violation for a total amount of one-

thousand dollars (\$1,000) 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; and Respondent Richard Dale-Mesaros shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Agency (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 Order. Respondent Gail McCarthy shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) 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; and Respondent Gail McCarthy shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Agency (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 Order. Both Respondents Richard Dale-Mesaros and Gail McCarthy shall inform the Commission which specific course they intend to attend prior to taking the course. 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 course is completed.

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

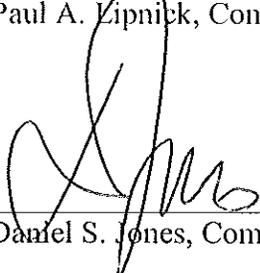
disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner William E. Barry evaluated this case and did not take part in the hearing or decision.

  
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David C. Dunn, Presiding Officer 1/17/2012  
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James R. Therrien, Commissioner 01/17/2012  
DATE

  
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Paul A. Lipnick, Commissioner 1-17-2012  
DATE

  
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Daniel S. Jones, Commissioner 1/17/12  
DATE