

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

In The Matter Of: **Docket No.: 2013-016**
New Hampshire Real Estate Commission v. Joshua W. Piper
License No.: 055079
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Joshua W. Piper ("Respondent" or "Mr. Piper") in Docket Number 2013-016.

Background Information:

Respondent submitted his Application for Renewal of Salesperson's License and disclosed two criminal convictions at the time of renewal for a Class A misdemeanor offense of Simple Assault and a Class A misdemeanor offense of Possession/Transportation of Drugs and failed to disclose the simple assault conviction to the Commission within 30 days of the conviction. On April 29, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-016 against Respondent. Subsequent to an investigation, on September 25, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for November 19, 2013.

On Tuesday, November 19, 2013, at 11:20 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Paul A. Lipnick, Commissioner
James R. Therrien, Commissioner

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

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Piper was present.

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

- Complainant Investigator Flanagan's Exhibits:
 - Exhibit #1 - Complaint File 2013-016: pages 1-48.
 - Exhibit #2 – NH Criminal History Record dated 4/5/2013 and Joshua Piper's real estate license record, pages 1-76,
- The Respondent's exhibits: none were introduced.

There were no witnesses present at the hearing:

Findings of Fact:

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

1. Respondent was first issued a license as a real estate salesperson from the Commission on April 3, 2002, license #055079.
2. Respondent answered "yes" to question #4, "Have you, since your last original or renewal application, been convicted of a felony or misdemeanor offense that has not been annulled by a court?" on his Application for Renewal of Salesperson's License and submitted a Commission Arrest & Conviction Form, along with a copy of his NH Criminal History Record from the NH Department of Safety, Division of State Police dated February 7, 2011, to the Commission which was received at the Commission office on October 4, 2012. (Ex. 1, pages 19-32)
3. Respondent submitted an updated NH Criminal History Record from the NH Department of Safety, Division of State Police dated April 5, 2013, which was received at the Commission office on April 9, 2013. (Ex. 1, pages 34-35)
4. The NH Criminal History Record submitted by Respondent showed that he plead guilty and was convicted on June 15, 2011 of a Class A misdemeanor offense of Simple Assault with

a sentence of 60 days in the House of Corrections suspended to 14 days in the House of Corrections and \$1,000 suspended fine based upon 2 years Good Behavior and pled guilty and was convicted on June 10, 2011 of a Class A misdemeanor offense of Possession/Transportation of Drugs with a sentence of a \$500 fine. (Ex. 1, pages 34-35)

5. Respondent disclosed the Class A misdemeanor offense of Simple Assault on the Commission Arrest & Conviction Form with his renewal received at the Commission office on October 4, 2012; however, Respondent was required to disclose the Simple Assault conviction to the Commission within 30 days of the conviction. (Ex. 1, pg. 24)

6. Respondent testified at the hearing that he did not disclose his conviction of a Class A Misdemeanor offense of Simple Assault to the Commission within 30 days of the conviction.

7. Respondent testified at the hearing that it was a very dramatic and embarrassing time in his life. Respondent stated he had to take a vacation from work to serve the 14 day sentence at the Rockingham County Corrections and that he was in a management position at the time at Carey & Giampa Realtors managing five offices, responsible for hiring, training, scheduling and advertising responsibilities.

8. Respondent testified that when he had completed his 14 day sentence at the Rockingham County Corrections, he was concentrating on getting back on track with his life, but things were very unsettled in his life and it was an oversight on his part that he did not notify the Commission of his conviction of Simple Assault within the 30 day period requirement.

9. Respondent testified that he had no intention to hide the conviction from the Commission.

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:26 Prohibited Conduct.

III. Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, sexual crimes, drug distribution, arson, physical violence, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.

XXXVII. Failing to inform the commission in writing within 30 days of being convicted in a court of competent jurisdiction of this or any other state of federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or an offense or offenses involving sexual crimes, drug distribution, arson, or physical violence; provided that, for the purposes of this paragraph, being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended. This paragraph applies only when the conviction has not first been annulled by a court pursuant to RSA 651:5.

Rulings of Law:

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

1. The Respondent was convicted of a Class A misdemeanor for Simple Assault on June 15, 2011 and failed to disclose the Simple Assault conviction to the Commission within 30 days of the conviction. Therefore, the Commission found Respondent in violation of RSA 331-A:26, III and XXXVII. (Notice of Hearing, paragraph 5A and 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 two-hundred fifty dollars (\$250) for each violation with a total 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 one-hundred twenty (120) days of the effective date of this Order.

IT IS **FURTHER ORDERED** that 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.

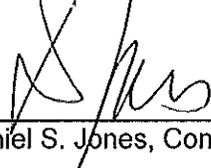
IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court 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.



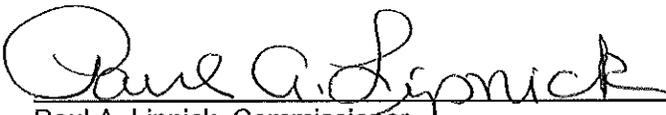
David C. Dunn, Presiding Officer

1/21/2014
Date



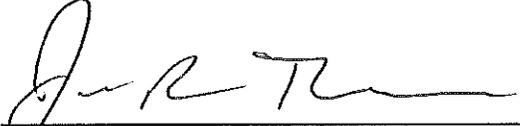
Daniel S. Jones, Commissioner

1/21/14
Date



Paul A. Lipnick, Commissioner

Jan. 21, 2014
Date



James R. Therrien, Commissioner

01/21/2014
Date

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