

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

In The Matter Of: **Docket No.: 2013-035**
New Hampshire Real Estate Commission v. George N. Sanders, Jr.
dba: Absolute Realty
License No.: 047614
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of George N. Sanders, Jr. ("Respondent" or "Mr. Sanders") in Docket Number 2013-035.

Background Information:

Respondent was the listing agent for 3 New Hampshire property listings which were posted on the Northern New England Real Estate Network ("NNEREN") and Absolute Realty websites during the time the Respondent's real estate broker license was expired. On September 10, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-035 and initiated an Amended Complaint File No. 2013-035 on January 8, 2014 against Respondent. Subsequent to an investigation, on October 24, 2014, the Commission issued a Notice of Hearing for a hearing scheduled for November 18, 2014.

On Tuesday, November 18, 2014, at 9:36 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Sanders was pro se.

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

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

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 – Documents from Complaint File 2013-035, pages 1-113.

- The Respondent's exhibits introduced:
Exhibit A – Documents from Complaint File No. 2013-035, pages A-OZ.

The following witnesses were present and testified at the hearing:

- Daniel S. Jones, Evaluating Commissioner, NH Real Estate Commission

Findings of Fact:

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

1. Respondent was first granted a license as a real estate salesperson by the Commission on February 13, 1996 and a real estate broker license on August 26, 1999, license #047614. Respondent has been doing business as Absolute Realty since September 13, 2002. Respondent is currently licensed with a license period of August 29, 2013– August 26, 2015.
2. Respondent's New Hampshire real estate broker license expired on August 26, 2013 and was expired until August 29, 2013. Respondent's NH broker license renewal application and fee of \$110.00 was received at the Commission office by US mail on August 28, 2013, and Respondent came to the Commission office on August 29, 2013 to pay the required license late fee due of \$60.00. Respondent's license was issued on August 29, 2013. (Ex. A, page NK-OC)
3. Respondent testified at the hearing that he mailed his broker renewal application on August 26, 2013, the date his license expired. Respondent stated at the hearing that he should have delivered his renewal application to the Commission office on August 26, 2013 instead of placing the renewal application in the mail on August 26, 2013.

4. Respondent came to the Commission office to pay a \$60 late fee to renew his license on August 29, 2013 after being notified earlier in the day by Investigator Flanagan that Respondent had active listings while his license was expired.

5. Respondent agreed at the hearing that on August 29, 2013, Respondent was the listing agent for 3 New Hampshire property listings posted on Northern New England Real Estate Network (NNEREN) and Absolute Realty websites for 501 Old Claremont Road, Charlestown, NH, Multiple Listing Service (MLS) #4258090, 29 Grove, Claremont, NH, MLS #4259178, and 51 NH Route 4A, Enfield, NH MLS #4247824 with an expired NH broker's license that expired on August 26, 2103. (Ex. 1, pages 4-13)

6. Documents requested by Investigator Flanagan after receiving Respondent's reply to the original complaint indicated Respondent was posting a \$200 co-broke commission on NNEREN for 501 Old Claremont Road, Charlestown, NH, MLS #4258090 and 29 Grove, Claremont, NH MLS #4259178; however the Exclusive Listing Agreements provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators.

7. When Respondent had initially replied (email 11/15/13 and 11/8/13) to Investigator Flanagan request for this listing information (email 11/7/13), Respondent omitted the information regarding the co-broke amount posted by only providing a partial printout.

8. Respondent testified that it was requested that he submit to the Commission a listing history and when he submitted the listings that are available for customer display version that did not display the co-broke commission he felt it was a miscommunication and he was complying with the request. Respondent later submitted the full display version listings showing co-broke commission.

9. Respondent entered into an Exclusive Listing Agreement with sellers Robert L. & Kathryn W. King for 501 Old Claremont Road, Charlestown, NH on June 19, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS on July 30, 2013. On July 30, 2013, Respondent entered the listing in the MLS with a co-broke commission of \$200, but failed to obtain written permission from the sellers to allow the Respondent the sole discretion to change the

co-broke commission within the listing until September 16, 2013. (Exhibit 1, pages 22-23, 39-40, 97-98)

10. Respondent testified at the hearing that he had an oral agreement with the sellers and when Investigator Flanagan requested the documentation for the listings, he had the sellers sign the addendum to the listing agreement on September 16, 2013, because he could not physically provide an oral agreement. (Ex. 1, page 40)

11. Respondent entered into an Exclusive Listing Agreement with Seller Stella J. Hoskiewicz for 29 Grove Street, Claremont, NH on July 12, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS and an Addendum to the Exclusive Listing Agreement allowing the Respondent the sole discretion to change the co-broke commission on August 2, 2013. Respondent entered the listing into the MLS with a \$200 co-broke commission on August 2, 2013. (Exhibit 1, pages 42-43, 57-58, 99-100)

12. Respondent entered into an Exclusive Listing Agreement with Seller Sherry A. Jones for 51 NH Route 4A in Enfield, NH on April 25, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS on June 24, 2013; however Respondent entered the listing into MLS with a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators prior to the signed authorization to submit the listing to MLS on June 20, 2013. (Exhibit 1, pages 62-63, 79, 102-103)

13. Respondent testified at the hearing that Seller Sherry Jones was out of town and instructed Respondent by telephone to place the listing on the MLS on June 20, 2013 and Ms. Jones signed the authorization to submit the listing to MLS on June 24, 2013.

14. Respondent testified that the \$200 co-broke commission is an incentive to the buyer agent and promotes cooperation and communication. Respondent stated that a qualified buyer agent would not care that the commission is only a \$200 co-broke, and that the \$200 co-broke is to entice qualified agents who will have qualified buyers.

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:2, XV. "Unprofessional conduct" means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

RSA 331-A:3 Prohibition. It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or real estate salesperson without a license and otherwise complying with the provisions of this chapter.

RSA 331-A:18, IV. The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under an expired or lapsed license.

RSA 331-A:25-b Seller Agent; Duties.

I. A licensee engaged by a seller or landlord shall:

(a) Perform the terms of the written brokerage agreement made with the seller or landlord.

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:

XXVI. Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXVIII. Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction.

XXIX. Unprofessional conduct defined in RSA 331-A:2, XV.

XXXV. Failure to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying.

XXXVI. Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

RSA 331-A:34 Penalty. Any person acting as a real estate broker or real estate salesperson, without a license, shall be guilty of a class A misdemeanor if a natural person, or guilty of a felony if any other person.

Rulings of Law:

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

1. On August 29, 2013, Respondent was the listing agent for 3 New Hampshire property listings posted on Northern New England Real Estate Network (NNEREN) and Absolute Realty websites for 501 Old Claremont Road, Charlestown, NH, Multiple Listing Service (MLS) #4258090, 29 Grove,

Claremont, NH, MLS #4259178, and 51 NH Route 4A, Enfield, NH MLS #4247824 with an expired NH broker's license that expired on August 26, 2103, and is found in violation of RSA 331-A:18, IV and RSA 331-A:3. (Notice of Hearing, paragraph 5A and 5B)

2. The Commission found that Respondent entered into an Exclusive Listing Agreement with sellers Robert L. & Kathryn W. King for 501 Old Claremont Road, Charlestown, NH on June 19, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, but entered the listing in the MLS with a co-broke commission of \$200 on July 30, 2013 without obtaining written permission from the sellers to change the co-broke commission, and found that the Respondent advertised the availability of real estate or services of a licensee in a false, misleading or deceptive manner in violation of RSA 331-A:26, XXVI; breached a fiduciary duty owed by the Respondent to the principal in the real estate transaction, in violation of RSA 331-A:26, XXVIII; engaged in professional conduct in violation of RSA 331-A:26, XXIX; Respondent demonstrated untrustworthiness to act as a broker in violation of RSA 331-A:26, XXXVI; and Respondent failed to perform the terms of the written brokerage agreement made with the sellers, in violation of RSA 331-A:25-b, I (a). (Notice of Hearing, paragraph 5D, 5E, 5F, 5G, and 5H)

3. The Commission found that the Respondent was not intently acting as a real estate broker without a license and did not violate RSA 331-A:34 (Notice of Hearing, paragraph 5C)

4. The Commission found that the Respondent didn't fail to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying when he submitted the customer display version of the MLS listing instead of the full display version, and did not violate RSA 331-A:26, XXXV. (Notice of Hearing, paragraph 5I)

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 three thousand dollars (\$3,000) 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 Respondent shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Ethics by submitting to the Commission an affidavit for the completed course (this continuing education course is to be completed by classroom delivery method only and are not to be counted towards the Respondent's continuing education requirements for renewal of license) 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 NH real estate license until the fine is paid and the course is completed.

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



Date

Wm. E. Barry
William E. Barry, Commissioner

04/21/2015
Date

Paul A. Lipnick
Paul A. Lipnick, Commissioner

April 21, 2015
Date

*\ Daniel S. Jones, Commission member, (case evaluator) recused.