

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2013-047 Paul Gabriel v. Kathryn B. Stearns
Allegations: RSA 331-A:25-b, I, b; RSA 331-A:26, IV, RSA 331-A:V

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission (“Commission”) and Kathryn B. Stearns (“the Licensee” or “the Respondent”), a real estate salesperson currently licensed by the Commission until May 7, 2015, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Complainant and his wife (sellers) entered into a Purchase & Sales Agreement (“P&S”) with buyers on April 3, 2013. They had previously signed a Purchase and Sales Agreement with the same buyers but had backed out of that transaction. When the sellers reached out to Respondent to explore whether the buyers remained interested in the property, Respondent was able to obtain another offer from the buyers (who were represented by a buyer agent), which was the same as the

previous offer the sellers had agreed to but then backed out of. The sellers backed out of the April 3 P&S again and subsequently agreed with the buyers to return the buyers' deposit and pay \$2,500 damages to the buyers (April 22, 2013 Release Agreement). The corporate office of Respondent's real estate agency decided to sue Complainant for its commission which it also had to split with the buyer-agent's real estate office. Complainant alleges that Respondent discouraged them from seeking legal advice prior to signing the P&S. The Complainant's wife wrote an email to Respondent on April 2, prior to signing the P&S, indicating that they did not want to incur any further expenses following the inspection, they would not lower the price, and they wanted to sell the property "as is," and also indicated "I am also concerned that we should have the offer reviewed by an attorney as in most states do". Respondent, who was in Florida on vacation, sought guidance from her managing broker Peter Schwartz and based on that guidance she responded by email April 3 indicating that the Gabriels could consult counsel if they wanted and giving them practical advice on how to handle the inspection concern. Based on prior communications with the Gabriels about the standard form, she wrote "I have been in this business a long time and no buyer, even purchasing a 1.7M home I have EVER worked with has had an attorney look over an offer. Attorneys of the State of NH prepared our offer forms but you may spend your money however you see fit." The State of New Hampshire does not prepare the Association of Realtors forms Respondent

is referencing. There was no communication about the possibility of a “suitable housing” contingency. Complainant and his wife subsequently signed the P&S on the same day they received the email from Respondent on April 3, 2013.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall 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 ninety (90) days of the effective date of this Settlement Agreement; and show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Ethics (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 Settlement Agreement. Failure to comply with this disciplinary Settlement Agreement by Respondent will result in the suspension of Respondent’s real estate license until the fine is paid and the course is completed.
4. The Respondent’s failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement

may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.

6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
7. Respondent understands that her action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
8. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced her right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that she has read this document titled Settlement Agreement. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and

dimensions of these rights. Respondent understands that by signing this Agreement, she waives these rights as they pertain to the misconduct described herein.

11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

I, Kathryn B. Stearns, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated: Nov. 14, 2014

Kathryn B. Stearns
Kathryn B. Stearns
Respondent

On this 14th day of November A.D. 2014
personally appeared the person who subscribe to the following instrument and acknowledged the same as her voluntary act and deed before me.



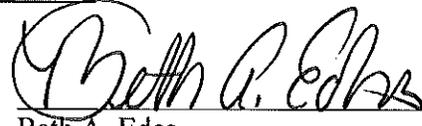
Deborah L. Wunsch
Justice of the Peace/Notary Public

My commission expires:

DEBORAH L. H. WUNSCH, Notary Public
My Commission Expires January 13, 2015

For the Commission

Dated: 11/18, 2014



Beth A. Edes
Executive Director
of the NH Real Estate Commission