

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

**In The Matter Of:** **Docket No.: 2015-051**  
**New Hampshire Real Estate Commission v. Robert J. DuFour**  
**Re: Complaint of Donna Blake**

License No.: 002529  
(Adjudicatory/Disciplinary Proceeding)

**FINAL DECISION AND ORDER**

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Robert J. DuFour ("Respondent" or "Mr. DuFour") in Docket Number 2015-051.

**Background Information:**

The Commission received a complaint on October 1, 2015 from Donna Blake ("Complainant") against Robert DuFour. Complainant Donna Blake and her ex-husband Gary Blake signed a listing agreement with B&B Associates Realty, LLC on August 15, 2014 as their Designated Seller's Agent. During a showing of the property on October 16, 2014, mold was discovered in the master bedroom. Shortly after the mold was discovered Respondent inspected the attic with the Complainant and found the mold was expansive in the attic space. Donna and Gary Blake had ServiceMaster assess the mold damage for insurance purposes and was provided with a verbal estimate of \$5,000-\$7,000. On November 11, 2014, Respondent met with Gary Blake and advised him that the house could not be shown or sold until the mold was taken care of. Respondent informed the Blakes that he had a contractor who could do the job in less than 2 days for \$2,200, much less than the quote provided by ServiceMaster. Respondent informed the Blakes that he would need the \$2,200 upfront to give to the contractor to cover the cost of the materials. \$2,200 in cash was provided to Mr. DuFour on November 18, 2014 and the work was to be completed by the contractor prior to November 27, 2014. Respondent insisted that no one was to be at the home while the contractor was completing the job. Gary Blake unexpectedly showed up while the work

was being done and found that Mr. DuFour was doing the mold removal himself. Mr. DuFour only worked a half day on the day that Gary Blake showed up at the home and never return to the finish the job. Complainant met with Respondent on May31, 2015, and asked about getting back the unused materials that were purchased with the \$2,200 or provide her with a refund. Respondent stated that he would return the unused materials the following week, but there was no money to return. Complainant stated that she picked up a half-filled gallon container and an unopened five gallon container, containing what looked to be a clear liquid. Neither had contents listed or any label on how to use or apply, or any handling precautions. Complainant stated that in June 2015, arrangements were made for another contractor to come to the house and finish the mold removal work, at a cost of nearly \$1,000. A last effort by Complainant to get money back from Respondent was made on July 13, 2015. Complainant felt that Mr. DuFour, as their seller's agent, was not working in their best interests and felt that Respondent was just seeking the opportunity for financial gain and set out to take money from the Blakes under false pretenses and saw no moral or ethical obligation of Mr. DuFour to make things right, alleging violations of RSA 331-A:25-a, I; and RSA 331-A:26, IV, V, VII, XIII, XXVIII, XXIX, and XXXVI. Respondent stated in his reply to the complaint that on upon discovery of the mold issue, Mr. DuFour terminated the active listing on the MLS on October 20, 2014 and terminated the listing agreement for 271 Youngs Hill Road, Loudon, NH. The Conditional Release from Exclusive Listing Agreement paperwork was completed and sent to Gary and Donna Blake for signature, but the paperwork was never returned to Mr. DuFour. Mr. DuFour stated that due to the fact that the listing was agreement was canceled on October 20, 2014, there was no client contractual obligation to Gary and Donna Blake, therefore any claims of prohibited conduct under RSA 331-A:26 were unwarranted. Subsequent to an investigation, on March 31, 2016, the Commission issued a Notice of Hearing for a hearing scheduled for April 19, 2016. Upon a Request for Continuance submitted by Robert DuFour, the Commission granted a continuance on April 12, 2016, and issued an Amended Notice of Hearing for a hearing scheduled for June 21,

2016. On Tuesday, June 21, 2016, at 10:10 a.m., the Commission commenced the adjudicatory/disciplinary hearing in the above captioned matter. Commission members present<sup>1</sup> were:

Daniel S. Jones, Commissioner, Presiding Officer  
John G. Cronin, Commissioner  
William E. Barry, Commissioner  
Paul A. Lipnick, Commissioner

The prosecution was conducted by Kinsman Corthell, the Commission's Investigator. Mr. DuFour was Pro Se.

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

- Complainant Investigator Corthell's Exhibits:
  - Exhibit #1 – Documents from Complaint File 2015-051, pages 1-40.
  - Exhibit #2 – NH Brokerage Relationship Disclosure Form signed by the Donna and Gary Blake on 11/19/14.
  - Exhibit #3 – NH Brokerage Relationship Disclosure Form signed by Donna and Gary Blake on 8/15/14.
  
- Respondent DuFour's exhibits introduced:
  - None

The following witnesses were present and testified at the hearing:

- Donna Blake, Complainant in Complaint File No. 2015-051.
- Shane LaBonte, Boyfriend of Complainant in Complaint File No. 2015-051.
- Robert DuFour, Respondent in Complaint File No. 2015-051.

#### **Hearing Testimony:**

Complainant Donna Blake testified at the hearing to the following:

---

<sup>1</sup> These same Commission members also deliberated and voted on this Final Decision and Order.

- Donna Blake and her ex-husband Gary Blake placed the property located at 271 Youngs Hill Road in Loudon, NH, on the market on October 9, 2013 with a Realtor at Century 21 and then entered into an Exclusive Listing Agreement with B & B Associates Realty, LLC on August 13, 2014.
- Ms. Blake stated that she knew Mr. DuFour on a personal basis and he encouraged her to use his services. Ms. Blake signed an Exclusive Listing Agreement with B & B Associates and forwarded it to her ex-husband for signature. Mr. Blake signed the listing agreement and returned the form to the Respondent.
- Ms. Blake stated that a Brokerage Relationship Disclosure Form was presented to her and Gary Blake from the Respondent on August 15, 2014 and again on November 19, 2014 (Exhibits 2 & 3).
- After a few showings it became apparent the property was overpriced, so the Blakes signed a Change of Terms and Conditions to lower the price from \$195,000 to \$190,000.
- One of Respondent's sales associates showed the property, and at this showing mold was discovered in the attic.
- Mr. DuFour recommended that the Blakes have someone come to look in the attic where there were ventilation issues. Ms. Blake stated that John Hopkins Home Service, LLC installed vents and the Blakes paid cash for the work done.
- Ms. Blake stated that they wanted to have the actual wall removed in the attic area and had ServiceMaster come to give them an estimate and received a quote that was about \$5,000.
- Mr. DuFour told the Blakes that the quote from ServiceMaster was very expensive and he had someone who could do it at a cheaper price. Mr. DuFour got back to Ms. Blake and stated that his guy could do the job for \$2,200, and said that they needed to do the work before winter and he was provided with \$2,200 in cash. Mr. DuFour stated that he didn't want anybody at the home during the mold removal. Ms. Blake stated that Gary Blake unexpectedly went to the home and found out that the person who was actually doing the mold removal was Mr. DuFour. Ms. Blake stated that there must have been a discussion

between Mr. DuFour and Mr. Blake, because Mr. DuFour left without his equipment and never returned.

- Ms. Blake stated that that she had discussions with Mr. DuFour regarding a refund for the materials where he never finished the job. She finally received the materials and they were not labeled and she didn't know what the chemicals were and how to apply them, so she hired a contractor to have the work done which cost an additional \$1,000. Ms. Blake didn't believe that the contractor used the chemicals that were left at the home.
- Ms. Blake testified that she never recalled being presented with a Conditional Release for Exclusive Listing Agreement by Respondent. She first saw this Agreement in Mr. DuFour's reply to her complaint. Ms. Blake stated that there was a discussion about not being able to sell the house with the mold, but she considered herself still under contract through the expiration date of the listing.
- Ms. Blake stated that Mr. DuFour didn't provide any explanation as to why he was doing the work and why he didn't finish the job.

Shane LaBonte testified at the hearing to the following:

- Mr. LaBonte stated that Donna Blake is his girlfriend.
- Robert DuFour was a friend of Mr. LaBonte's. He stated that he met Mr. DuFour at the Makris Lobster Restaurant. Mr. LaBonte stated that he gave the \$2,200 in cash to Mr. DuFour because they became good friends and Mr. DuFour stated that he wanted to try to help them out with the mold issue. There were no discussions that he knew of regarding the cancelation of the listing contract with Ms. Blake. As far as he knew the listing was taken off the MLS until the mold issue was taken care of. Mr. LaBonte testified that when he gave the \$2,200 it was for Mr. DuFour to purchase the materials to do mold remediation himself, because Mr. DuFour told him that he didn't anyone in the house while he went in the home to do the mold removal. Mr. LaBonte stated that he didn't check Mr. DuFour's credentials for performing mold remediation and there were no emails or anything defining the scope of work that Mr. DuFour would be performing.

Robert DuFour testified at the hearing to the following:

- He is the owner of Bob & Boss Realty, LLC dba: B & B Realty of Concord and has been the owner of the company for 8 years.
- An Exclusive Listing Agreement was signed by Gary and Donna Blake on August 15, 2014 which was effective from August 13, 2014 through February 13, 2015 and Bernard Riopel was the Designated Seller's Agent for property located at 271 Youngs Hill Road in Loudon, NH. The listing was placed on the MLS on August 14, 2014. Mr. DuFour stated that the date that the listing was placed on the MLS must have been an error and should have been August 15, 2014, because he would never place a listing on the MLS prior to the listing agreement being signed by the parties.
- Mr. DuFour stated that Bernard Riopel was showing the house with another Realtor when the other Realtor noticed a dark spot in a closet, and Mr. DuFour went to the house and went up in the attic with Donna Blake and found the mold. Mr. DuFour testified that he told Ms. Blake that he would need to remove the listing from the MLS and cancel the listing agreement due to the mold issue. He prepared the Conditional Release from Exclusive Listing Agreement and mailed it out to Gary Blake, because Gary knew about the Conditional Release. Mr. DuFour stated that he never received the Conditional Release back and never asked Gary Blake whether he signed the release. Mr. DuFour believed that the listing agreement was cancelled where he prepared and signed the conditional release and only required his signature to be binding.
- Mr. DuFour testified that he was at the house for 2 days doing the mold remediation and had the work half done, but didn't finish the work because the chemicals were affecting his lungs. He said that he had done this work before, but he is older and couldn't do the work anymore. The Blakes were his friends and he was just trying to help them out. The \$2,200 was the cost for the chemicals and he never charged the Blakes for labor because he never finished the job. Mr. DuFour testified that the Blakes requested a refund of the money, but he didn't give them a refund because he used the money on the chemicals for the mold remediation.

- Mr. DuFour stated that he was unaware what the chemicals were, but he used them before and they worked on removing mold. Mr. DuFour stated that he bought the chemicals from a distributor who gave him a good deal on the price. He testified that he has no prior education or training on mold remediation.
- Mr. DuFour stated that Shane LaBonte was the one that wanted him to do the mold remediation.

### **Findings of Fact:**

#### **Licensure Facts:**

Respondent was first granted a real estate salesperson's license by the Commission on March 13, 1986, and granted a real estate broker's license on February 28, 1992. Respondent has been the principal broker for Bob & Boss Realty, LLC since February 8, 2010. At the time of the allegations, Respondent was licensed as a real estate broker, license #002529 and was the principal broker for Bob & Boss Realty, LLC.

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

1. The original complaint was made by Donna Blake on October 1, 2015 against Respondent. (Ex. 1, pages 1-26)
2. Bernard Riopel completed an Exclusive Listing Agreement on August 15, 2014 with Donna & Gary Blake through February 13, 2015 as a designated seller's agent for 271 Youngs Hill Road, Loudon, NH. (Ex. 1, pages 11-12).
3. Bernard Riopel worked for Bob & Boss Realty, LLC from June 6, 2013 to February 19, 2015.
4. During a showing of 271 Youngs Hill Road in October 2014, potential mold was discovered at the property.
5. Respondent indicated that the house could not be shown until the mold was cleaned up and recommended John Hopkins Home Services to install attic vents and offered to have

someone clean up the mold for \$2,200. Respondent was aware that ServiceMaster had quoted \$5,000.

6. Respondent was cleaning up the mold himself. Respondent left the work unfinished and promised to return to finish the job but never did.

7. The Complainant arranged for a contractor to complete the cleanup in July 2015.

8. The Respondent claims he terminated the listing agreement with Complainants on October 20, 2014 due to mold and that the Complainants never returned a signed release. (Ex. 1, pg. 38)

#### 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:25-a Licensee; Scope of Agency; Interpretation.**

I. A licensee who provides services through a brokerage agreement for a seller, landlord, buyer, or tenant is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.

**RSA 331-A:26 Prohibited Conduct.** The followings 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:

IV. Making, printing, publishing, distributing, or causing, authorizing or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonable induce any person to act, if the statements descriptions or promises purport to be made or to be performed by either the licensee or licensee's principal, and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known of the falsity of the statements, descriptions or promises.

V. Knowingly committing, or being a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or devices, whereby any other person relies upon the word, representation or conduct of the licensee.

VII. Conversion of any money, contract, deed, note, mortgage, abstract, or other evidence of title, to the licensee's own use, to the use of the licensee's principal, or of any other person, when delivered to the licensee in trust or on condition, in violation of the trust or before the happening of the condition. Failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within 30 days after the owner is entitled to and makes demand for such evidence, shall be prima facie evidence of such conversion.

XIII. Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal.

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

**Rulings of Law:**

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

1. The Respondent, through an Exclusive Listing Agreement with Donna and Gary Blake for property located at 271 Youngs Hill Road, Loudon, NH, effective August 15, 2014 through February 13, 2015, was bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. The Commission found that Respondent failed to use reasonable care, diligence, and failed to make proper disclosure when he purchased chemicals perform mold remediation at his clients' home located at 271 Youngs Hill Road, and didn't know what the chemicals consisted of and had no formal education or training on the proper procedures of mold remediation. Therefore, the Commission found Respondent in violation of RSA 331-A:25-a, I (Notice of Hearing, paragraph 5A).

2. Respondent DuFour completed and signed a Conditional Release from Exclusive Listing Agreement on October 20, 2014, but failed to have Gary and Donna Blake sign the Conditional Release. Respondent felt that with just his signature on the Conditional Release form, he terminated his listing agreement with the Blakes and had no contractual obligations to Gary and Donna Blake as clients. Respondent didn't understand that in order for the Conditional Release from Exclusive Listing Agreement form to be valid that the all parties to the Agreement needed to sign this Conditional Release. Therefore the Commission found that Respondent demonstrated untrustworthiness and incompetency to act as a broker, in violation of RSA 331-A:26, XXXVI (Notice of Hearing, paragraph 5H).

---

**Disciplinary Action:**

Based upon the Findings of Facts and Rulings of Law above, the Commission finds that the Respondent's actions indicate that he failed to "meet and maintain the minimum standards which

promote public understanding and confidence in the business of real estate brokerage” (RSA 331-A:1 Purpose) and has voted to order the following:

It IS **ORDERED** that Respondent show proof of completion of a 3 hour New Hampshire Real Estate Commission accredited continuing education course on Contracts and a 3 hour Commission accredited course on Supervision by submitting to the Commission affidavits for the completed courses by March 30, 2016 (this continuing education is to be completed by classroom delivery method only and shall not count towards the Respondent’s continuing education requirement for renewal of license). Failure to comply with this Disciplinary Order will result in the suspension of Respondent’s real estate broker’s 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 Respondents.

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 thirty (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.

  
\_\_\_\_\_  
John G. Cronin, Esq., Commissioner, Presiding Officer

11/15/16  
Date



Daniel S. Jones, Commissioner

12/20/16

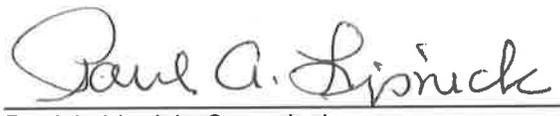
Date

Wm. E. Barry

William E. Barry, Commissioner

11/15/2016

Date



Paul A. Lipnick, Commissioner

11-15-2016

Date

\*\ Calley M. Milne, Commission member, recused.