

State of New Hampshire
Office of Professional Licensure & Certification
NH Real Estate Commission
Concord, New Hampshire

In the Matter of:

NHREC v. JOHN TRUMBULL

Docket No. 2018-007

License No: 049181

(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

This is a Final Decision and Order issued by New Hampshire Office of Professional Licensure & Certification, New Hampshire Real Estate Commission (“Commission”) following an adjudicatory/disciplinary proceeding in the Matter of NHREC v. John Trumbull (“Respondent”) in Docket Number 2018-007 held on September 18, 2018.

BACKGROUND INFORMATION

This matter was heard by the New Hampshire Real Estate Commission on September 18, 2018. The Notice of Hearing was properly issued to the Respondent dated August 8, 2018 by the New Hampshire Real Estate Commission (“Commission”). Notice was provided to the Respondent that a hearing was scheduled to determine whether Respondent, a licensed New Hampshire Principal Broker was in violation of statutory law and rules governing Real Estate salespersons in the State of New Hampshire as follows: statutory requirements as set forth in NH RSA 331-A; whether the Respondent engaged in Unprofessional Conduct as cited in NH RSA 331-A: 26-

Prohibited Conduct, XXIX: Unprofessional conduct defined in RSA 331-A:2, XV resulting in him being subjected to sanctions and disciplinary action pursuant to NH RSA 331-A:28, 331-A:29, RSA 331-A:30 and RSA 331-A:34 and New Hampshire Code of Administrative Rules Chapter Rea 200.

More specifically, the Notice of Hearing scheduled and conducted before the Commission on September 18, 2018 was to determine:

- I. Whether Respondent engaged in Unprofessional Conduct when he refused to honor the fully executed release of exclusive listing, duly authorized by an agent in his employ at the time of signing and;
- II. Whether Respondent engaged in Unprofessional Conduct when Respondent informed another agent in his employ to not do any work on the re-activated listing for nearly four (4) months because a complaint was filed with the New Hampshire Real Estate Commission (“NHREC”) in violation of NH RSA 331-A: 26, XXIX as defined in NH RSA 331-A:2, XV.

Testimony was received at the hearing from Jerry and Carolanne Jordan (original complainants), Erin Poirier, Roland “Chip” Labrecque, John Trumbull (respondent), and Kathy Trumbull.

The case was prosecuted by Michael Porter, Investigator, New Hampshire Real Estate Commission, Office of Professional Licensure and Certification. Respondent was represented by Attorney Rodney Stark.

During the proceedings the following Commission members present who participated in this hearing were:¹

Daniel Jones, Presiding Officer/Chair;

Richard Hinch, Commissioner;

Susan Doyle, Commissioner

John Cronin, Esquire, Commissioner (Recused/Evaluator)

Paul Lipnick, Commissioner, Absent

COMPLAINANT'S EXHIBITS:

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

1. Complaint submitted by Jerry and Carolanne Jordan
2. Exclusive Listing Agreement
3. Change of Terms and Conditions dated September 19, 2017
4. Change of Terms and Conditions dated February 6, 2018
5. E-Mail Exchange between Kathy Trumbull and Roland Labrecque dated February 22, 2018 Text Message Exchange between John Trumbull and Roland Labrecque dated February 24, 2018
6. E-Mail Exchange between Carolanne Jordan and Roland Labrecque dated February 24, 2018
7. Change of Terms and Conditions (Release from Exclusive Right to Sell) dated February 24, 2018

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

8. Communication from John Trumbull to Mr. and Mrs. Jordan dated February 28, 2018
9. Copy of Advertisement dated February 29, 2018
10. Response from Roland Labrecque dated April 27, 2018
11. Response from John Trumbull dated May 1, 2018
12. Change of Terms and Conditions dated June 6, 2018
13. Additional Statements received from John Trumbull on August 5, 2018
14. Property History Detail

RESPONDENT'S EXHIBITS.

- A. EXIT Realty Trailblazer's MLS Listing
- B. MLS Activity Report on EXIT Realty Trailblazer's listing
- C. EXIT Realty Trailblazer's policy excerpt.
- D. ReMax Northern Edge Realty's MLS listing.
- E. On line listings of property
- F. Notification to Danoski from NEREN re: non-compliance.
- G. Email from Trumbull to Danoski March 2, 2018 indicating Labrecque not authorized to terminate listing.

LIST OF WITNESSES:

Jerry Jordan

Carolanne Jordan

Erin Poirier

Roland “Chip” Labrecque

John Trumbull

Kathy Trumbull

FINDING OF FACTS

1. Respondent was first issued a license as a New Hampshire real estate broker by the New Hampshire Real Estate Commission on March 7, 2000 with no disciplinary history. Respondent is currently a New Hampshire licensed Associate Broker in good standing.
2. An original complaint was received by the Commission office on March 27, 2018 from Complainants Jerry and Carolanne Jordan. The complaint alleges Respondent violated NH RSA NH RSA 331-A: 26, XXVI, XXIX, and XXXVI.
3. On or about July 19, 2017, Jerry and Carolanne Jordan entered into an Exclusive Listing Agreement with Exit Realty Trailblazer’s for the sale, lease, or exchange of property located at 199 Collins Street, Berlin, NH in the amount of \$119,000.
4. Respondent is the principal broker for Exit Realty Trailblazers.
5. Roland “Chip” Labrecque (“Labrecque”) was a licensed real estate salesperson working with Exit Realty Trailblazers under Respondent.

6. Labrecque signed the Jordans to the Exclusive Listing Agreement for the sale, lease or exchange of property located at 199 Collins Street, Berlin, NH.
7. On September 19, 2017, the Jordans executed a Change of Terms and Conditions/Status Update form reducing the sale price of their home from \$119,000 to \$115,000.
8. The Jordans report since they signed the Exclusive Listing Agreement with Labrecque, there was no activity on their home.
9. On February 6, 2018 the Jordans executed another Change of Terms and Conditions / Status Update form reducing the sale price of their home from \$115,000 to \$107,000.
10. The Jordans report there had been little to no advertising or marketing of their home between July 19, 2017 and February 6, 2018.
11. On or about February 22, 2018 the Jordans and Labrecque reached an agreement to run an advertisement for Complainants property in the local newspaper that weekend.
12. On February 22, 2018 Labrecque submitted an advertising proof to Kathy Trumbull, Owner/Manager of Exit Realty Trailblazers. This proof was reviewed by Kathy and she appropriately requested edits to conform to the manner in which Exit Realty Trailblazers advertises.
13. On February 22, 2018 there were several text messages exchanged between Labrecque and Kathy in which Labrecque was not interested in the edits recommended by Kathy. At no time during the text messages did Kathy refuse to allow Labrecque to run the ad, she merely made recommendations for edits.
14. Labrecque informed the Jordans the advertisement would not run in the local paper as originally promised by Labrecque.

15. On February 22, 2018 Labrecque text messaged the Jordans to advise them the ad would not run. During this text message string, on February 24, 2018 at 12:13 PM the Jordans requested Labrecque take their home off the market. Labrecque responded by texting, *“Ok, I will let my broker know that’s what you want because he has to be the one that does it. “Chip”*. At 1:07 PM, same day, Labrecque texted the Jordans: *“I just tried to call you, in order to release your listing I need both of you to sign a paper. I would like to do this today if possible.”*
16. At no time does Labrecque inform the Jordans his broker refused to allow them to be released. Instead, nearly one hour after informing the Jordans his broker needs to do this, Labrecque texts the Jordans and explains they need to sign the paperwork today.
17. On February 24, 2018 Labrecque informs the Jordans if he terminates them they can go elsewhere. Labrecque then writes, *“And I terminated it.”*
18. On February 24, 2018, Labrecque brought a Change of Terms and Conditions / Status Update to the Jordans for their signature. The Jordans checked the box reading, *“Seller is hereby released from the Exclusive Right to Sell Listing Agreement.”* The Jordans and Labrecque signed the form.
19. On February 24, 2018, prior to the execution of the release, Labrecque sent a text message to Respondent informing Respondent of Complainants desires to be released from their contract.
20. During this text exchange, Respondent wrote, *“Why do they want to do that? They don’t have an automatic right to terminate their listing agreement.”* Labrecque responded *“Because I promised them an ad in the paper this week and now that is not happening.”*

Chip.” Respondent replied, “*That is your choice. No one is preventing you from running an ad.*”

21. At no point in this text string provided by Respondent did Respondent write Labrecque was not allowed to release the Jordans from the Exclusive Listing Agreement. He merely said the Jordans don’t have an automatic right to terminate their listing agreement.
22. On February 24, 2018 the Jordans believed Labrecque had the right to terminate the listing agreement as they had met in person with Labrecque to sign the release. At no time did Respondent reach out to the Jordans, being aware of the ongoing situation, to resolve the matter or inform the Jordans he would not authorize Labrecque to release them from the Exclusive Listing Agreement.
23. On February 24, 2018 at 5:45 PM, Labrecque terminated the listing from MLS.
24. On February 25, 2018 Labrecque resigned his employment with Exit Realty Trailblazers.
25. On February 25, 2018 at 4:59 PM, Respondent returned the listing to active, and never notified the Jordans on this date that he re-activated their listing.
26. On February 27, 2018 when Respondent was reviewing the Jordan’s file, he discovered the signed termination of listing form executed by Labrecque and the Jordans.
27. On February 28, 2018, four days after Labrecque terminated the listing in writing and on MLS Respondent drafted and mailed a letter to Jordans informing them Labrecque was no longer associated with Exit Realty Trailblazers.
28. Respondent informed the Jordans their listing is still “active” with his company until July 20, 2018. He further wrote, “*I understand Roland represented to you that he was to terminate your listing last weekend; however, he did not have authority to do so.*”

29. Immediately upon being released, the Jordans re-listed their property with another real estate firm in Berlin, NH.
30. When the Jordans signed with the new agency they agreed to a 6% commission with that new firm.
31. In the February 28, 2018 letter to the Jordans, Respondent informed them he was assigning a new salesperson, Erin Poirier, to the listing.
32. As of June 5, 2018, Erin Poirier, had made no contact with Complainants about the status of their home.
33. Erin Poirier ("Poirier") reported she was advised by her boss, Respondent, not to work on the Jordan's listing as a complaint had been filed with the Real Estate Commission.
34. Respondent admits he never communicated to the Jordans the fact that Labrecque had no authority to release them until AFTER the Jordans executed the release from the listing.
35. Respondent admits he was aware of the situation unfolding as he communicated with Labrecque on February 24, 2018 and was informed of the Jordans desire to be released from the Exclusive Listing Agreement.
36. June 6, 2018 Respondent agreed to release the Jordans from the Exclusive Listing Agreement.
37. Respondent admits he should have called Complainants but he did draft a letter on February 28, 2018.
38. Respondent believes it was also incumbent on the Jordans to call him if they had any issues.
39. The Jordans filed their complaint with the Real Estate Commission which was received on March 27, 2018, almost one month after they executed the original release.

40. During the time frame of 3/1/2018 and 6/9/2018, the Jordans were afraid to actively market their house out of fear of paying two commissions amounting to approximately 13% (7 % to Exit Realty Trailblazers and 6% to RE/MAX Northern Edge Realty).

The evidence and testimony established that the Respondent violated the following statutes in this regard: NH RSA 331-A: 26, XXIX- Unprofessional Conduct as defined in NH RSA 331-A:2, XV.

DISCUSSION

At the time of the complaint, Respondent was the Principal Broker for EXIT Realty Trailblazers.

Roland “Chip” Labrecque was a New Hampshire real estate salesperson in good standing, working under Respondent.

Erin Poirier is also a licensed New Hampshire real estate salesperson who, at the time of the complaint, was working under Respondent.

The Jordans listed their home with EXIT Realty Trailblazers on or about July 19, 2017. Between July 19, 2017 and February 24, 2018, the home located at 199 Collins Street, Berlin, NH was continuously listed on MLS. There appears to have been some activity via on-line resources, but no showings occurred during this time frame.

The evidence demonstrates Labrecque promised the Jordans an advertisement in the local paper for a specific time frame. That advertisement didn't run. Kathy Trumbull, the manager of EXIT Realty Trailblazer's Realty did not believe the advertisement conformed to the standards set by EXIT. Labrecque on the other hand did not agree and felt the advertisement should run. While Kathy Trumbull never forbid Labrecque from running the ad, Labrecque felt he couldn't because the paper wouldn't run it without Kathy's approval.

On February 24, 2018 Labrecque informed the Jordans their home would not appear in the local newspaper advertisement. The Jordans demanded they be released from their contract as they were fed up with the inactivity on their home. Labrecque appropriately informed the Jordans his broker would have to release them.

The evidence shows Labrecque did inform Respondent of the Jordans wishes. Respondent replied to the text message from Labrecque and at no time made it clear Labrecque could NOT release the Jordans. Instead, Respondent replied, *"Why do they want to do that? They don't have an automatic right to terminate their listing agreement."* Labrecque responded, *"Because I promised them an ad in the paper this week and now that is not happening."* Respondent replied, *"That is your choice. No one is preventing you from running an ad."*

Approximately 52 minutes after Labrecque told the Jordans he would have to inform the Broker, Labrecque texts the Jordans, *"I just tried to call you. In order to release your listing I need for both of you to sign a paper. I would like to do this today."*

Late in the afternoon on February 24, 2018 Labrecque and the Jordans signed the Release of Exclusive listing agreement. Labrecque then informed the Jordans they are free to sign with another firm.

On February 24, 2018 at 5:45 PM, Labrecque admits he terminated the Jordan's listing on MLS.

On February 25, 2018, Respondent admits he saw the listing was terminated and created an active listing for the Jordans.

It wasn't until 4 days after the Jordans believed they were rightfully released from their contract, Respondent drafted a letter and reports he mailed the letter out on February 28, 2018.

The Jordans report they did not receive the letter until the following Saturday March 3, 2018 and had already signed on with RE/MAX on March 2, 2018, the day before the Jordans testified they received Respondent's February 28, 2018 letter.

The evidence demonstrates the first recorded entry to MLS with the new firm was on March 2, 2018 at 1:12 PM by RE/MAX Northern Edge Realty, LLC.

The evidence also shows Respondent did not notify RE/MAX until after the property was listed by RE/MAX. Specifically, the evidence demonstrates Respondent emailed Mark Danoski at RE/MAX on March 2, 2018 at 2:43 PM to inform Mark EXIT Realty Trailblazers still had an active listing. Mark then responded and included a copy of the release they executed with Labrecque. Respondent, at 4:03 PM responds, "*Chip is not authorized to terminate a listing. I have informed the sellers of this.*"

On March 2, 2018 Mark Danoski received a message from NEREN informing him that the listing for 199 Collins Street is not in compliance with NEREN's NAR rules.

As of March 3, 2018 the Jordans were caught in the middle, between Respondent and the new listing agency, RE/MAX. It is fact the listing was terminated on February 24, 2018 by Labrecque. Respondent became aware of this on February 25, 2018 and took it upon himself to re-activate the listing, knowing the Jordans wanted out. Respondent made no effort to communicate with the Jordans until drafting his letter on February 28, 2018; a letter the Jordans testified they received March 3, 2018.

During this time frame, and in the letter drafted by Respondent, a new agent, Erin Poirier, was assigned to the case by Respondent.

Poirier testified she found out she was assigned to the case when she reviewed her case list. She

further testified Respondent never told her she was assigned the case. When Poirier realized she had the case she had a discussion with Respondent. She testified during this conversation she was told by Respondent not to do anything with the case because there is an ongoing investigation due to a complaint filed by the Jordans. Poirier testified she did as she was instructed by Respondent.

Poirier testified she left the employ of EXIT Realty Trailblazer's Realty around the end of June, 2018..

Respondent denied Poirier's testimony. The Commission finds Poirier's testimony to be credible based on the fact she told the NHREC Investigator on June 5, 2018 similar information, at a time she was still employed by Respondent.

Respondent testified he never authorized Labrecque to release the Jordans from the exclusive listing agreement. We believe this to be true. Labrecque admits he was not told he could or couldn't release the Jordans. Labrecque points back to the statement he told the Jordans his broker would need to release them. He further points to the text message he sent Respondent. Respondent could have said no, but he didn't. Therefore, Labrecque believes he was given the authority to release the Jordans.

Regardless, it is clear at no time were the Jordans ever made aware Respondent was opposed to releasing them nor did Respondent actually object to the release to either Labrecque or the Jordans until four days after the release had been executed. As a result, when Labrecque was representing EXIT Realty Trailblazer's and he executed the release of exclusive listing agreement, under either apparent or actual authority, the Jordans had no way of knowing this release was not authorized. In fact Respondent was aware of the Jordans desires, and

Respondent's silence on the matter to the Jordans would indicate either actual or apparent authority. Under both theories, the Jordans believed they were released from their exclusive listing contract and went out and retained a new real estate firm.

By all accounts, the Jordans believed they were released from their contract and based on all the evidence and testimony, it can be stated as fact the exclusive listing agreement was terminated effective February 24, 2018.

It is further found Erin Poirier was assigned to the listing by Respondent and was further instructed by Respondent not to do any work on the listing.

CONCLUSIONS OF LAW

The burden of proof rests with the Prosecution to prove, by a preponderance of the evidence, the Respondent violated NH RSA 331-A: 26, XXIX as defined in RSA 331-A: 2, XV. It is the conclusion of this panel the prosecution has met its burden of proof by a preponderance of the evidence through documentary and testimonial evidence.

The evidence in this matter has established that the Respondent has committed statutory violations governing licensed real estate brokers and/or real estate salespersons in the State of New Hampshire as follows:

The Respondent, a licensed real estate broker in the State of New Hampshire, engaged in unprofessional conduct pursuant to NH RSA 331-A: 26, XXIX as defined in NH RSA 331-A:2, XV when he refused to honor the release of the exclusive listing contract, executed by an agent who was acting under actual and/or apparent authority, thereby failing to treat the Jordans in an honorable and ethical manner.

The Commission further finds Respondent engaged in unprofessional conduct pursuant to NH RSA 331-A:26, XXIX as defined in NH RSA 331-A: 2, XV when Respondent informed the Jordans he assigned Erin Poirier to be their new salesperson on the listing and she would be in contact with them; yet Respondent advised Ms. Poirier not to do any work on the listing, which instructions Ms. Poirier followed, thereby failing to treat the Jordans in an honorable and ethical manner.

WHEREFORE, pursuant to the authority of this Commission under NH RSA 331-A: 28 it is hereby Ordered, by a unanimous vote of the Commissioners of the New Hampshire Real Estate Commission of 3 - 0, who participated in the deliberations in this matter, that:

The Respondent is **ORDERED to pay a fine in the amount of \$2,000**, to be paid within thirty (30) days of the effective date of this Order, made payable to the Treasurer, State of New Hampshire.

IT IS FURTHER ORDERED that the Respondent is **ORDERED** to meaningfully participate in **two 3-hour commission approved continuing education classes**. Specifically one 3-hour continuing education class in **Ethics**; and one 3-hour continuing education class in **Agency relationships**. All continuing education classes must be taken in a classroom setting and are in addition to the hours required by the commission for renewal of licensure and shall be completed **within sixty (60) days** from the effective date of this order. **Within fifteen (15) days of completing these hours**, Respondent shall notify the Commission and provide the original certificate of completion.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Order shall constitute unprofessional conduct pursuant to RSA

331-A: 26, XXIX and constitute 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.

IT IS FURTHER ORDERED that the effective date of this Final Decision of the Commission is the date the Commission signs this Order as set forth below.

So Ordered.



Daniel Jones, Chairman
Real Estate Commission



Date