

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

Paul McCoy
License No.: 001940
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-003

FINAL DECISION AND ORDER

Before the New Hampshire Office of Professional Licensure & Certification, (the “OPLC”), New Hampshire Real Estate Commission (the “Commission”), came The Matter of Paul McCoy (“Respondent” or “Mr. McCoy”), an adjudicatory/disciplinary proceeding Docketed as Number 2018-003.

BACKGROUND INFORMATION

This proceeding was commenced by a Notice of Hearing, dated December 5, 2018, by the Commission, on April 16, 2019, to determine whether Mr. McCoy, a licensed New Hampshire Real Estate Broker committed certain violations of statutory law and rules governing his practice, being so licensed in the State of New Hampshire as follows:

- A. Whether as a licensee engaged by a seller or landlord he failed to comply with the provisions of RSA 331-A:25-b,I(b)(1), in that he failed to “promote the interests of the seller or landlord including: Seeking a sale, lease, rent, or exchange at the price and terms stated in the brokerage agreement or a price and terms acceptable to the seller or landlord except that the licensee is not obligated to seek additional offers to purchase the real estate while the real estate is subject to a contract of sale unless the brokerage agreement so provides; and

- B. Whether as a facilitator he failed to comply with the provisions of RSA 331-A:25-f, VI, in that he failed to treat all prospective sellers or landlords and buyers or tenants honestly; and
- C. Whether in the performance of his actions in the matter he knowingly committed, or was a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relied upon his word, representation or conduct in violation of RSA 331-A:26, V; and
- D. Whether he converted any money, contract, deed, note, mortgage, abstract or other evidence of title, to the his own use, to the use of his principal, or of any other person, when delivered to him in trust or on condition, in violation of the trust or before the happening of the condition, and whether he otherwise failed 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, the same being prima facie evidence of such conversion in violation of RSA 331-A:26, VII; and
- E. Whether he failed to promptly place trust funds in a proper trust account, or failed to reconcile records monthly in violation of RSA 331-A:26, VIII; and
- F. Whether he Failed to disclose: (1) In writing to an owner, the his intention or true position if the he directly, or indirectly through a third party, purchases or leases for himself, or acquires or intends to acquire any interest in or any option to purchase or lease the property in violation of RSA 331-A:26, XXII (a)(1); and
- G. Whether he Failed to disclose: (2) In writing to a potential buyer or lessee, a his ownership interest, direct or indirect, in property offered for sale or lease by him in violation of RSA 331-A:26, XXII; (a)(2)l and;

- H. Whether he advertised the availability of real estate or his services as a licensee in a false, misleading or deceptive manner in violation of RSA 331-A:26, XXVI; and
- I. Whether he violated the provisions of RSA 331-A:26, XXXI, by offering real estate for sale or lease without the knowledge and written consent of the owner or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent; and ;
- J. Whether he demonstrated untrustworthiness or incompetency to act as a broker or salesperson in violation of RSA 331-A:26, XXXVI; and
- K. Whether he obtained or attempted to obtain a license by means of fraud, misrepresentation, or concealment in violation of RSA 331-A:26, I; and
- L. He submitted a property owner's name to any electronic database or multiple listing service that may be accessed by any other person other than the property owner's broker without the express written permission of the property owner in violation of RSA 331-A, XXVIII; and
- M. Whether he undertook any act considered to be unprofessional conduct defined in RSA 331-A:2, XV in violation of RSA 331-A: XXIX.

The matter aforesaid was prosecuted by Michael W. Porter, Esq., for the OPLC-Real Estate Commission. Respondent was represented by Attorney Matthew R. Johnson, Esq. Testimony was received at the Hearing from the Respondent (Paul McCoy), and Mrs. Naffah.

The following Commissioners were present at the Hearing¹

¹ The same Commissioners, with the exclusion of Commissioner Doyle who served in the capacity of Reviewing Commissioner, also deliberated and voted on this Final Decision and Order.

Steven Hyde, Esq., Presiding Commissioner;
Paul Lipnick, Commissioner;
Richard Hinch, Commissioner;
Daniel Jones, Commissioner, Chairperson; and
Susan Doyle, Commissioner

PETITIONER'S EXHIBITS:

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

1. Exclusive listing agreement 9/7/17;
2. Quit Claim Deed dated 4/27/17 and filed 11/3/2017;
3. Eviction Notice;
4. Attorney Kuhn communication with McCoy, Motion, Order;
5. Facilitator Agreement between Wayne Naffah and McCoy, P&S between Wayne Naffah ("Naffah" or "Mr. Naffah") and Douglas Naffah;
6. McCoy Response to complaint;
7. Foreclosure Deed dated 12/9/2016;
8. Broker Renewal form, Annual Report Reminder due 4/1/2017, Secretary of State Certificate (Standing), Annual Report filing 8/21/2018;
9. Mortgage between Naffah and TPJP –Invest, LLC, Managed by McCoy, Mortgage Application signature page, Quit Claim Deed signed 4/27/2017;
10. Quit Claim Deed executed between U.S. Bank National Association and Naffah;
11. P&S 9/11/2017 between Naffah and Shane Brady;
12. 11/9/2017 Exclusive Listing Agreement between TPJP-Invest, LLC and McCoy Professionals, LLC. P&S between Shane Brady and TPJP-Invest, LLC;
13. Full copy of complaint/response and attachments from both Parties; and
14. Order on Ex Parte Relief on Issue of Proceeds of Sale of Former Marital Home.

RESPONDENT'S EXHIBIT'S.

- A. Form Residential Loan Application;
- B. Phone Records; and
- C. Affidavit of Sean McCown.

LIST OF WITNESSES:

- A. Mrs. Naffah (Testified)
- B. Katherine Stearns, Esq. (Did Not Testify)
- C. Sandra A. Kuhn, Esq. (Did Not Testify)
- D. Paul McCoy (Testified)

FINDINGS OF FACT

1. The Respondent was first issued a license as a New Hampshire Real Estate Broker by the Commission on July 29, 1982.
2. Respondent is a licensed Broker and holds license number 001940, and his resident address on his license is Brookline, New Hampshire.
3. At all times relevant to the issues presented in the instant matter the Respondent was a licensed Real Estate Broker and was so licensed at the time of the filing of this complaint.
4. Respondent is the principal owner of McCoy Professionals LLC, ("McCoy Professionals"), P.O. Box 924, Raymond, New Hampshire 03077.
5. Respondent undertook brokerage activities in relation to a certain piece of real property within the State of New Hampshire, located at and known and numbered as 43 John Street, Raymond, New Hampshire, (the "Property").
6. Prior to the acts alleged in the instant matter, the Property had been owned by Mr. Naffah,

7. In November 2016, U.S. Bank National (“The Bank”), foreclosed on Naffah’s mortgage encumbering the Property.
8. The Bank retained the property and recorded the Foreclosure Deed with the Rockingham County Registry of Deeds December 9, 2016.
9. Sometime after the foreclosure, Naffah’s brother Douglas Naffah, (“Douglas”), introduced the Respondent to Naffah.
10. Douglas had been doing work for the Respondent and through their dealings Douglas told Respondent that Naffah had been experiencing financial troubles.
11. On December 26, 2016, Respondent facilitated a Purchase and Sale Agreement, (the “P&S”), between Naffah and Douglas by which Douglas would purchase Naffah’s property. The agreed upon purchase price was \$110,000.
12. On the same date, (December 26, 2016), that the Purchase and Sale Agreement was executed, Respondent went home and researched the deed for 43 Johns Street, Raymond, New Hampshire.
13. Respondent learned through research that Naffah was no longer the legal owner of the Property.
14. Respondent became aware the Bank recorded a foreclosure deed on December 9, 2016.
15. Respondent provided a printout of this foreclosure deed in his written response to the original complaint.
16. At some point, Respondent contacted the bank and the law firm that handled the foreclosure.
17. At no time did Respondent receive permission from the bank to sell the Property.

18. The Bank, not Naffah, was the legal owner of the real property at the time that the Respondent produced the P&S and had the same executed by the Seller and Buyer.
19. The Respondent never undertook to revoke or otherwise cancel the P&S he facilitated between Naffah and Douglas.
20. In April 2017, Naffah, with the assistance of the Respondent reached an agreement with the Bank, by which Naffah was able to reacquire the Property for \$26,000.
21. At the time that Naffah reacquired the Property, he lacked sufficient funds with which to close on the reacquisition.
22. Naffah, at the suggestion of the Respondent, borrowed the reacquisition funds from TPJP Invest, LLC, ("TPJP"), a New Hampshire Limited Liability Company owned and operated by Respondent.
23. At or about the same time as the reacquisition by Naffah, TPJP provided a loan to Naffah in the amount of \$26,000, in exchange for a Promissory Note secured by a Mortgage encumbering the title to the Property.
24. TPJP is identified as a "private financing company," and "hard-money" lender, owned by the Respondent.
25. The Respondent is the sole managing member of TPJP.
26. As part of the financing provided by the Respondent to Naffah in April 2017, Respondent required that Naffah execute a Quit Claim Deed granting Quit Claim covenants to TPJP.
27. Upon the Bank receiving the funds from the loan made to Naffah, the Bank was delayed in sending a new deed to Naffah.

28. In August 2017, Naffah finally received the deed (which was dated in June 2017) from the Bank at which time Respondent, promptly recorded the deed from the Bank to Naffah and then recorded the mortgage Naffah granted to TPJP.
29. Respondent had not previously recorded the quitclaim deed executed by Naffah in favor of TPJP, dated April 2017.
30. Respondent instead held the deed "in escrow" with Vexxilon Group, LTD, a New Hampshire Corporation owned by Thomas U. Gage.
31. Thereafter, on or about September 7, 2017, Naffah entered into an Exclusive Listing Agreement with McCoy Professionals, for the sale of the Property (effective September 6, 2017).
32. Naffah and Respondent (As Principal Broker of McCoy Professionals) enter into a one year Exclusive Listing Agreement whereby, pursuant to paragraph 3 thereof, Respondent owes Naffah fiduciary duties including the duty of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, until the Exclusive Listing Agreement expires (September 30, 2018).
33. Effective September 13, 2017, a buyer (Shane Brady and/or assigns) entered into a Purchase and Sale agreement with Naffah to purchase the property with a transfer of title to occur on or before October 16, 2017.
34. Effective September 30, 2017, an addendum to the original P&S was executed.
35. Sometime around the end of September 2017, Mrs. Naffah, (Naffah's estranged wife), learned of Respondent's real estate sign in front of the Property. (The Property was the marital home Mrs. Naffah and Mr. Naffah shared for a number of years.)
36. Mrs. Naffah credibly testified she and Mr. Naffah were separated but remained friendly.

37. Mrs. Naffah credibly testified she spoke with Mr. Naffah when she found out the property was listed for sale. She and Mr. Naffah discussed an equitable financial arrangement but they could not agree on a number.
38. Mrs. Naffah testified that she wanted to protect her interest so she hired Attorney Sandra Kuhn to file for divorce.
39. On October 10, 2017, days after Attorney Kuhn spoke with Respondent over the telephone (October 4, 2017), to inform him she would be filing a motion with the court requesting the net proceeds be held in escrow until a final hearing, Attorney Kuhn did in fact file an ex-parte motion with the court, which was granted.
40. Evidence was submitted by the prosecution that Attorney Kuhn emailed Respondent at his email address on October 12, 2017 attaching a Court's Order stating the proceeds from the sale of the Property were to be held in escrow. Attorney Kuhn requested Respondent pass the information along to the closing agent or send Attorney Kuhn the email address of the closing agent and she would forward the Court's Order.
41. Respondent testified credibly that he did not receive the above email and, by stipulation with the prosecution, Respondent submitted a sworn affidavit of Sean McCown, a computer consultant with Perfectly Good Systems, of Exeter, New Hampshire, indicating Mr. Mc Cown searched Respondent's computer and could not locate an email sent from Attorney Kuhn and received by Respondent. Mr. Mc Cown further attested that he could not "guarantee" that the email was never received, but can represent that when he searched for the email he could not locate a copy of it in any of the email folders used by Mr. McCoy through his Comcast email account.

42. A final hearing on the ex-parte family matter was scheduled for October 30, 2017. There is no evidence to suggest Respondent was aware of the October 30, 2017 final hearing.
43. Respondent testified he initially had no idea Naffah was married.
44. Respondent testified he spoke very briefly with Attorney Kuhn over the telephone one time and cannot recall the specifics of the conversation.
45. A final hearing on the ex-parte matter was held on October 30, 2017.
46. Naffah failed to appear for the hearing and the Court ordered the net proceeds be held in escrow.
47. On November 3, 2017 at 9:44 AM, Respondent recorded the quitclaim deed conveyed to him by Naffah in April 2017.
48. At the time of recording Respondent still owed fiduciary duties to Naffah because of the exclusive listing agreement entered into between the Respondent and Naffah on or about September 7, 2017, effective September 6, 2017 through September 30, 2018.
49. On November 3, 2017, after recording the quitclaim deed Respondent drove to the Property and hand delivered an eviction notice to Naffah ordering Naffah to vacate the premises by December 3, 2017.
50. Six (6) days later, on November 9, 2017 respondent, acting on behalf of TPJP Invest LLC, entered into an exclusive listing agreement with his real estate firm, McCoy Professionals, LLC.
51. Effective November 16, 2017, Respondent, acting on behalf of his own investment company, entered into a P&S with Shane Brady and/or assigns, the same buyer as the September 2017 P&S, to sell the Property for the same sale price of \$133,600 with a closing date scheduled on or before November 30, 2017.

52. On December 3, 2017, Respondent went to the Property to check on Naffah's progress of moving out of the home as per the eviction notice served on November 3, 2017.
53. On December 3, 2017, the Respondent discovered Naffah deceased of an apparent suicide inside the Property.
54. Respondent contacted emergency personnel and waited for their arrival.
55. On or about December 18, 2017 Respondent, acting on behalf of his investment company, transferred title of the Property to 117 Milville Circle, LLC (assignee).
56. At some point after the transfer of title, Respondent contacted Mrs. Naffah through Thomas Gage, on behalf of the Respondent.
57. During the foregoing contact, Mrs. Naffah was offered \$15,000 from the net proceeds of the sale of the home for her interest in the same, which amount Mrs. Naffah refused.
58. Mrs. Naffah thereafter filed suit against the Respondent in relation to the activities undertaken by the Respondent and a settlement was reached in that matter which is not a subject to these proceedings.

CONCLUSIONS OF LAW

The burden of proof rests on the prosecution to prove, by a preponderance of the evidence, Respondent's actions constitute a violation of statute or rule as set forth in this matter. Evidence in this matter has established; by a preponderance of the evidence, that Respondent's actions constitute and that he has committed statutory violations governing licensed Real Estate Brokers in the State of New Hampshire as follows:

- A. The Respondent is found to be **in violation** of **RSA 331 – A:25, b, I(b)(1)**: *A licensee engaged by a seller or landlord shall: Promote the interests of the seller or landlord including: Seeking a sale, lease, rent, or exchange at the price and terms stated in the*

brokerage agreement or a price and terms acceptable to the seller or landlord except that the licensee is not obligated to seek additional offers to purchase the real estate while the real estate is subject to a contract of sale unless the brokerage agreement so provides **WHEN:**

On November 3, 2017, Respondent recorded the Quitclaim Deed (dated April 27, 2017) conveying from his client, Mr. Naffah, to TPJP Invest, LLC, Respondent's wholly-owned investment company, ownership of the Property while owing Mr. Naffah fiduciary duties as spelled out in paragraph 3 of the Exclusive Listing Agreement, signed by Mr. Naffah September 7, 2017, effective September 6, 2017, which Exclusive Listing Agreement ran from September 6, 2017 through September 30, 2018. **(See Exhibit 1, at p. 1).**

Respondent's actions in recording the Quitclaim Deed transferred the Property from his client to Respondent's own interest by transferring it to Respondent's wholly-owned investment company, enabling the Respondent to sell the Property to a buyer and realize a benefit from such sale in violation of the fiduciary duties the Respondent owed to Mr. Naffah pursuant to the Exclusive Listing Agreement signed by Mr. Naffah September 7, 2017, effective September 6, 2017.

Exhibits submitted to the Commission and stipulated to by the prosecution and the Respondent, including testimony presented at the hearing support this violation by a preponderance of the evidence.

- B. The Respondent is found to be **in violation of RSA 331-A:26, V: *Knowingly committing, or being a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relies upon the word, representation or conduct of the licensee*** **WHEN:**

Respondent misrepresented facts to Douglas and Mr. Naffah about Mr. Naffah's ability to sell the 43 John Street Property to Douglas. Respondent testified non-credibly as to when he became aware the bank foreclosed on the home. Respondent answered the initial complaint stating he became aware the property was foreclosed upon after he facilitated the P&S agreement on December 26, 2016. Respondent provided evidence in the form of a printout "printed from internet" "Foreclosure deed" which reflects the bank recorded a Foreclosure Deed on December 9, 2016 at 10:53 AM (see **Exhibit 13, at p. 133**). HOWEVER, Respondent also submitted a type written response where he admits meeting Mr. Naffah and Douglas on December 26, 2016. (see **Exhibit 13, page 113, paragraph 3**). In the following paragraph of the same **Exhibit 13**, Respondent writes, "*When I got back to my office I looked up information on 43 John Street and found the property had already been foreclosed on and the deed recorded.*"

Respondent testified to the same information. At issue is when Respondent first became aware of the Property's status as having been foreclosed upon, and his actions in relation to facilitating the sale of the foreclosed-upon Property with such knowledge. Based upon Respondent's own words, he was provided information regarding the foreclosure and himself believed the Property had been foreclosed upon when he left the meeting with Mr. Naffah and Douglas. Respondent thereafter verified the foreclosure when he returned home. Respondent should not have facilitated a Purchase and Sales Agreement between Douglas and Naffah when Mr. Naffah was not the record owner of the Property.

Relying on the word, representation, or conduct of the Respondent as a Real Estate Broker, Mr. Naffah believed he had the right to sell the Property and Douglas

believed he had the right to purchase the same from Mr. Naffah. Respondent misrepresented the ability of each to do so by facilitating a Purchase and Sales Agreement between the Seller and Buyer, knowing the property was no longer owned by Mr. Naffah and with the knowledge that Mr. Naffah could not sell what he did not own, leaving Douglas nothing to purchase. Douglas, in reliance on the Respondent's actions and advice, continued to seek financing for the transaction after December 26, 2016. Respondent was aware of Douglas's efforts to obtain financing even after Respondent printed the Foreclosure Deed and with the express knowledge that Mr. Naffah did not own the Property.

Exhibits submitted to the Commission and stipulated to by the prosecution and the Respondent, including testimony presented at the hearing support this violation by a preponderance of the evidence.

C. The Respondent is found to be **in violation** of **RSA 331-A:26, XXII(a)(2)**:

a) *Failing to disclose:*

(2) In writing to a potential buyer or lessee, a licensee's ownership interest, direct or indirect, in property offered for sale or lease by the licensee **WHEN:**

In the September 13, 2017 Purchase and Sales Agreement respondent failed to disclose in writing to the buyer, Shane Brady and/or assigns, that Respondent had a direct or indirect ownership interest in the Property the subject of the Purchase and Sales Agreement, 43 John Street, Raymond, New Hampshire. Such disclosures are required to be made in writing.

Exhibit 13, page 178 (Respondent's answer to the original complaint) is a Disclosure of Personal Interest form completed by Respondent and signed by Respondent on September 6, 2017 (demonstrating knowledge of his disclosure requirements). Shane

Brady and/or assigns did not sign this Disclosure of Personal Interest until November 16, 2017 (the same date Mr. Brady executed the **second** P&S for the subject property) and well after the initial September 13, 2017 Purchase and Sales Agreement. While the New Hampshire Real Estate Commission does not require a specific form to be used, Respondent provided this documentation in his response to the original Complaint. Subsequent to filing the response and before the hearing, the prosecution and defense stipulated to exhibits entered into evidence. **Exhibit 13** is one of those exhibits.

Therefore, Respondent being aware of his disclosure requirements failed to follow the statute.

Exhibits submitted to the Commission and stipulated to by the prosecution and Respondent, in conjunction with testimony presented at the hearing support this violation by a preponderance of the evidence.

D. The Respondent is found to be **in violation** of **RSA 331-A:26, XXVIII:**

Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction **WHEN:**

On September 7, 2017, Respondent entered into an Exclusive Listing Agreement with Mr. Naffah (effective September 6, 2017) for the sale of real property located at 43 John Street, Raymond, New Hampshire. Paragraph 2 of the agreement reflects the agreement is enforceable from September 6, 2017 through September 30, 2018. Paragraph 3 spells out the “FIRM owes SELLER the fiduciary duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting.”

On November 3, 2017, Respondent recorded the Quitclaim Deed (dated April 27, 2017) conveying the Property from Respondent’s client, Mr. Naffah to TPJP Invest,

LLC, Respondent's wholly-owned investment company, and Respondent thereafter served Mr. Naffah with an eviction notice on behalf of TPJP Invest, LLC requiring Mr. Naffah to vacate the Property within 30 days. Respondent violated the fiduciary duties enumerated in paragraph 3 of the September 6, 2017 exclusive listing agreement. (See **Exhibit 1, page 1**). By undertaking the foregoing actions Respondent placed his loyalties to TPJP Invest, LLC, and by virtue of his sole ownership of TPJP Invest, LLC, Respondent's personal interests ahead of the fiduciary duties owed to Respondent's client, Mr. Naffah, in violation of the statute and the express terms of the agreement signed on September 7, 2017, effective September 6, 2017.

Exhibits submitted to the Commission and stipulated to by the prosecution and the Respondent, including testimony presented at the hearing support this violation by a preponderance of the evidence.

E. The Respondent is found to be **in violation of RSA 331-A:26, XXXI:**

Offering real estate for sale or lease without the knowledge and written consent of the owner or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent **WHEN:**

Respondent offered the 43 John Street, Raymond, New Hampshire Property for sale to another party before receiving permission from the legal owner, who at the time of the offered sale was the Bank, rather than Mr. Naffah. (See **Exhibit 5, page 1, Buyer Facilitator Agreement executed between Respondent and Douglas (buyer). Respondent facilitated a P&S between Mr. Naffah (seller) and Douglas (buyer); Exhibit 5 page 17-21 P&S Agreement; Exhibit 13, page 113 Respondents written response to original complaint; Exhibit 13, page 133**).

The Bank recorded a Foreclosure Deed on December 9, 2016, putting the public, including the Respondent, on notice that the Bank had regained record ownership of the Property through the foreclosure process. Through testimony and stipulated exhibits, Respondent was aware that the Bank, not Mr. Naffah, was the legal owner of the Property and Respondent failed to obtain permission from the Bank to negotiate the December 26, 2016 P&S between Douglas (buyer) and Mr. Naffah (seller) on the property. Exhibits submitted to the Commission and stipulated to by the prosecution and defense, in conjunction with testimony presented at the hearing support this violation by a preponderance of the evidence.

F. The Respondent is found to be **in violation of RSA 331-A:26, XXIX:**

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

NH RSA 331-A:2, XV: *any action by a licensee or accredited individual, institution or organization, which is unlawful, dishonorable, unethical or immoral* **WHEN:**

After a full hearing where exhibits and testimony was presented by the prosecution and defense, the Commission voted in favor of violations of NH RSA 331-A:25, I (b) 1, 331-A:26, V, 331-A: 26, XXII (a) (2), 331-A:26, XXVIII , and 331-A:26, XXXI. These are violations of statutory law supported by evidence including exhibits and testimony.

- I. Whereby respondent failed to promote the interests of the seller or landlord including: seeking a sale, lease, rent, or exchange at the price and terms stated in the brokerage agreement or a price and terms acceptable to the seller or landlord except that the licensee is not obligated to seek additional offers to purchase the real estate while the real estate is subject to a contract of sale unless the brokerage agreement so provides.

- II. Whereby Respondent knowingly committed, or was a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device (offering real estate for sale without the owners knowledge and written consent), whereby any other person (Mr. Naffah and Douglas) relies upon the word, representation or conduct of the licensee;
- III. Whereby Respondent failed to disclose his direct or indirect personal interest to Shane Brady and/or assigns during the September 2017 P&S;
- IV. Whereby Respondent Offered real estate for sale or lease without the knowledge and written consent of the owner (the Bank) or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent;
- V. Whereby Respondent breached a fiduciary duty owed by a licensee to the principal in a real estate transaction;

Exhibits submitted to the Commission and stipulated to by the prosecution and the Respondent, in conjunction with testimony presented at the hearing support this violation by a preponderance of the evidence.

- G. There was **INSUFFICIENT EVIDENCE** presented at the hearing to find, by a preponderance of the evidence, Respondent was in violation of NH RSA 331-A:26, VII, XXII (a)(1), and XXXVI.
- H. The prosecution **WITHDREW** the following alleged violations: RSA 331-A:25-f, VI; RSA 331- A:26, I; VIII, and XXVI due to insufficient evidence.

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

The Respondent is **ORDERED** to pay a fine in the amount of \$500 per violation. There are six violations for a total fine in the amount of \$3,000, 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 core course. 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.

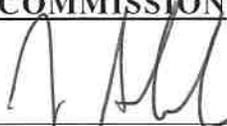
IT IS FURTHER **ORDERED** that if this decision is not appealed within 30 days of the effective date it shall become final. (See RSA 331-A:28, III).

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.

FOR THE COMMISSION

Dated: JUNE 18, 2019



Joseph G. Shoemaker, Director
Division of Technical Professions
NH Office of Professional Licensure and Certification
Authorized Representative of the NH Real Estate
Commission