

State of New Hampshire
Real Estate Commission
Concord, New Hampshire

In the Matter of:

Docket No. 2019-065

V. Robert Wichland

License #047414

(Adjudicatory Proceedings)

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 541-A:30, III authorizes professional licensing boards, including the New Hampshire Real Estate Commission ("Commission") to suspend a license pending completion of an adjudicatory proceeding, in cases involving "public health, safety or welfare". In such cases, the Commission must commence a hearing not later than ten (10) working days after the date of the emergency order. If the Commission does not commence the hearing within ten (10) working days, the suspension order shall be automatically Vacated. *See*, RSA 541-A:30, III. The Commission may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 541-A:30, III. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Commission's final decision. *See*, RSA 541-A:30, III.

2. V. Robert Wichland ("Respondent") holds a New Hampshire broker license (number 047414). At the time of the conduct at issue, he was the managing broker of Bayside Realty, LLC, 604 Main Street, Laconia, NH.

3. The Commission has received information indicating that the continued licensure of Respondent poses a threat to public health, safety or welfare, which warrants the temporary suspension of Respondent's license pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. A preliminary investigation was conducted and a Report of Preliminary Investigation was provided to the Commission.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Commission alleges the following facts:

- A. Respondent is a member of Bayside Realty, LLC, a Domestic Liability Company, registered with the New Hampshire Secretary of State's Office, with an address of Daniel Webster Highway, Meredith, NH 03253.
- B. Respondent is also a member of Bayside Rentals, LLC, a Domestic Liability Company registered with the New Hampshire Secretary of State's office, with an address of 208 Daniel Webster Highway, Meredith, NH 03253.
- C. Respondent is the manager of Bayside Referrals, LLC, a Domestic Liability Company registered with the New Hampshire Secretary of State's Office, with an address of Daniel Webster Highway, Meredith, NH 03253.
- D. Respondent was a licensed, active, real estate broker in the State of New Hampshire since March 22, 2010.
- E. At all relevant times Respondent had access and control over escrow accounts held at Meredith Valley Savings Bank on behalf of RE/MAX Bayside Realty, LLC and Bayside Rentals, LLC.
- F. At all relevant times, Christopher Kelly was licensed as the principal broker for RE/MAX Bayside Realty LLC and Bayside Rentals LLC.
- G. Christopher Kelly is the manager for Bayside Realty, LLC and Bayside Rentals, LLC.
- H. On an unspecified dates between October 1, 2019 and November 7, 2019, Respondent wrongfully misappropriated escrow funds from RE/MAX Bayside Realty LLC ("Bayside Realty"), and Bayside Rentals, LLC ("Bayside Rentals").
- I. Bayside Realty and Bayside Rentals maintained escrow accounts for customer deposits pursuant to NH RSA 331-A, at the Meredith Village Savings Bank.
- J. As of November 7, 2019, the escrow balance held at Meredith

- Village Savings Bank for Bayside Realty reflects \$1,036.29.
- K. Between November 8, 2019 and December 20, 2019, there are thirty-three (33) closings scheduled with an estimated \$132,750.00 due and owing for contracts closing between November 8, 2019 and December 20, 2019.
- L. These funds were entrusted to Bayside Realty to be held in an escrow account at Meredith Village Savings Bank.
- M. The **estimated shortfall** in the **Bayside Realty** escrow account held at Meredith Village Savings Bank as of November 7, 2019 is \$131,713.71.
- N. Bayside Rentals maintained an escrow account at Meredith Village Savings Bank.
- O. As of November 7, 2019, the escrow balance held in the Bayside Rentals escrow account reflects \$80,663.82.
- P. Based on the statement of Walker Harman Sr., a third partner in Bayside Realty and Bayside Rentals, the estimated amount required to be in the Bayside Rentals escrow account should be approximately \$85,675.39 (Short-Term vacation rentals) and \$65,978.48 (Long-Term rentals) for a total of \$151,653.87.
- Q. This leaves an **estimated shortfall** in the **Bayside Rentals** escrow account to be \$70,990.05.
- R. The **combined estimated escrow shortfall** for Bayside Realty and Bayside Rentals is \$202,703.76.
- S. On or about October 24, 2019, Christopher Kelly (“Kelly”), Principal Broker of Bayside Realty and Bayside Rentals noted a draw down on the company’s line of credit in the amount of \$55,000.
- T. Kelly contacted Respondent via telephone to inquire as to the withdrawal of funds from the line of credit.
- U. When Kelly asked Respondent why he (Respondent) withdrew funds

from the line of credit, Respondent said they would discuss the matter when Kelly returned to New Hampshire from Florida.

- V. Upon returning to New Hampshire, Kelly attempted to meet with Respondent to discuss the withdrawal of \$55,000 from the line of credit.
- W. During this time period Respondent admitted to Kelly that he, Respondent, withdrew funds from the escrow accounts belonging to Bayside Realty and Bayside Rentals without authorization to do so.
- X. Respondent told Kelly he transferred the funds to the operating account for the businesses.
- Y. When Kelly asked Respondent why Respondent did this, Respondent told Kelly, "You don't want to know."
- Z. Kelly got the third partner, Walker Harman Sr. involved as this situation affected him as well.
- AA. Each partner hired individual legal representation in an attempt to remedy the financial matter relating to the misappropriation of escrow funds executed by Respondent.
- BB. On or about November 15, 2019, Respondent provided Kelly with funds to cover the escrow account for Bayside Realty so all closings scheduled between November 15, 2019 and December 20, 2019 would close.
- CC. It remains unclear whether the Bayside Rentals escrow account was replenished or a shortfall remains.

5. Based upon the above information, the Commission finds that the case involves a threat to public health, safety or welfare. Further, the Commission believes there is a reasonable basis for both immediately suspending the Respondent's license on a

temporary basis and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 541-A:30, III.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 331-A:26, XXIX, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether between October 1, 2019 and November 7, 2019, Respondent violated NH RSA 331-A: 13, I-VIII when he misappropriated over \$130,000 in escrow funds held by Bayside Realty and Bayside Rentals without any right to do so in violation of NH RSA 331-A: 13 I-VII, and/or;
- B. Whether between October 1, 2019 and November 7, 2019, Respondent committed professional misconduct by misappropriating escrow funds over \$130,000 held by Bayside Realty and Bayside Rentals without any right to do so in violation of NH RSA 331-A:26, XXIX, and/or;
- C. Whether between October 1, 2019 and November 7, 2019, Respondent Violated NH RSA 331-A: 26, V when he misappropriated over \$130,000 in escrow funds held by Bayside Realty and Bayside Rentals, without any right to do so, in violation of NH RSA 331-A: 26, V, and/or;
- D. Whether between October 1, 2019 and November 7, 2019, Respondent

breached his fiduciary duties owed by a licensee to the principal in a real estate transaction when he misappropriated over \$130,000 in escrow funds held by Bayside Realty and Bayside Rentals, without any right to do so, in violation of NH RSA 331-A:25-a, I and RSA 331-A: 26, XXVIII, and/or;

- E. Whether between October 1, 2019 and November 7, 2019, Respondent demonstrated untrustworthiness or incompetency to act as a broker or salesperson in violation of NH RSA 331-A: 26, XXXVI when he misappropriated over \$130,000 in escrow funds held by Bayside Realty and Bayside Rentals, without any right to do so, and/or;
- F. If the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 331-A: 28.

7. The Commission intends to complete this adjudicative proceeding within the ten (10) working days time period provided by RSA 541-A: 30, III. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Commission's final decision in this matter. *See* RSA 541-A:30, III.

8. While RSA 331-A:30, I requires that the Board furnish Respondent at least 14 days' notice of allegations of professional misconduct and the date, time and

place of an adjudicatory hearing, RSA 541-A:30, III and requires the Board to commence an adjudicatory hearing within ten (10) working days after the date of an immediate, temporary license suspension order.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license is **IMMEDIATELY SUSPENDED** until further order of the Commission; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 541-A:30, III. To the extent that this order or the Commission's rules do not address an issue of procedure, the Commission shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Respondent shall appear before the Commission on **Tuesday, December 3, 2019 at 10:00 AM** at the Commission's office located at 121 South Fruit St., Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 331-A: 28; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Richard W. Hinch, Chairperson, or any other person whom he may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Commission, in the form of an original and seven (7), and with an additional copy mailed to any party to the proceeding, and to Attorney Jill Perlow,

Counsel to the Commission, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Commission no later than five (5) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark his exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings shall be made by a certified shorthand court reporter provided by the agency and,

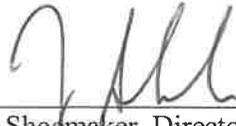
IT IS FURTHER ORDERED that all documents shall be filed with the Commission by mailing or delivering them to Rick Wisler, Board Administrator, N.H. Real Estate Commission, 121 South Fruit St., Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Rick Wisler, Board Administrator, N.H. Real Estate Commission, at (603) 271-2219, but that all other communications with the Commission shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Commission's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application and to his attorney if Respondent notifies the Commission that he will be represented. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE Commission/*

Dated: 11/20/19



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

/* Recused Board Members(s):