

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

In the Matter of:

NHREC v. CRAIG LANCEY

Docket No. 2018-022/042

License No: 002262

(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. Craig Lancey (“Respondent”) in Docket Number 2018-022 & 2018-042 held on December 18, 2018.

BACKGROUND INFORMATION

This matter was heard by the New Hampshire Real Estate Commission on December 18, 2018. The Notice of Hearing was properly issued to the Respondent dated November 19, 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: 25-a, Licensee, Scope of Agency, RSA 331-A: 26, IV-Prohibited Conduct, RSA 331-A:26. V (2 Counts) Prohibited Conduct, RSA 331-A:26, XXVI, Prohibited Conduct, RSA 331-A:26, XXIX: Unprofessional conduct defined in RSA 331-A;2, XV, and RSA 331-A:26, XXXVI, Prohibited Conduct 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 December 18, 2018 was to determine:

- I. Whether Respondent engaged in Prohibited Conduct (RSA 331-A:26, IV, V (x2), XXVI, XXIX, XXXVI) when he improperly listed and advertised his clients' property on MLS, misrepresented legal conclusions relating to the transaction, misled the New Hampshire Real Estate Commission in his response to the complaint filed against him, demonstrated unprofessional conduct, and demonstrated untrustworthiness or incompetency to act as a broker or salesperson.
- II. Whether Respondent breached fiduciary duties under RSA 331-A:25-a, owed to his clients, Kathy Ravagno and Susan Ayles, when through email correspondence with his clients and the opposing buyer's agent, Respondent violated his duty of obedience, loyalty, confidentiality, reasonable care, or accounting when Respondent demeaned and denigrated his clients to the buyer's agent while negotiations were ongoing leading to dissention between the parties, and creating an environment of distrust between the parties, ultimately resulting in what complainants believe to be a loss of proceeds for personal property not properly negotiated by Respondent.

Testimony was received at the hearing from Kathleen Ravagno, James Ravagno, Craig Lancey, and Kathy Lancey.

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

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

Daniel Jones, Presiding Officer/Chair;

Paul Lipnick, Commissioner

Richard Hinch, Commissioner

Susan Doyle, Commissioner

John Cronin, Esquire, Commissioner (Recused/Evaluator)

COMPLAINANT'S EXHIBITS:

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

1. Complaint 2018-022 submitted by Ravagno and Ayles	. . . . .	1
2. Response from Craig Lancey received May 25, 2018	. . . . .	69
3. Complaint 2018-042 submitted by NHREC on October 18, 2018.	. . . . .	265
4. Response from Craig Lancey received November 7, 2018	. . . . .	285
5. Exclusive Listing Agreement PNS Enclosing Docs.	. . . . .	308
6. Original MLS Listing 4667317	. . . . .	324

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

7. Respondent Provided MLS Listing Sheet for 4667317	328
8. Respondent Response (2018-022) Page 9 of 12 relating to MLS Listing sheet 4667317	332
9. Respondent Attestation for Response to Docket 2018-022	334
10. Jim Ravagno November 27, 2017 email to Respondent	348
11. Respondent Reply to Jim Ravagno November 27, 2017 email	350
12. Respondent Letter to Susan Ayles, Kathleen Ravagno and James Ravagno Dated November 28, 2017	354
13. Jim Rivagno Email to Respondent February 21, 2018	359
14. Respondent Response to Jim Ravagno February 21, 2018 email	361
15. Kathy Ravagno email to Respondent February 21, 2018	363
16. Respondent email March 2, 2018 “Jam a few statutes down her throat...”	365
17. Susan Ayles email March 15, 2018 to Respondent (Correct Listing Sheet)	367
18. NEREN Verification Respondent Changed Listing Sheet March 15, 2018	369
19. Spawn of Satan	371
20. Respondent Provides Witten Legal Opinion March 17, 2018 email	373
21. Respondent emails Jim Ravagno, Susan Ayles and Kathy Ravagno March 19, 2018 Legal Rep 100% Success	375
22. Jim and Kathy Ravagno Response to Respondents March 19, 2018 email	377
23. Respondent Legal Threats to Ayles and Ravagnos’	379
24. Respondent Continued Legal Threats to Ayles and Ravagnos	381

RESPONDENT’S EXHIBITS.

A. Same as Complainant

LIST OF WITNESSES:

Kathleen Ravagno

James Ravagno

Craig Lancey

Kathy Lancey

FINDING OF FACTS

1. An original complaint was received by the Commission office on May 16, 2018. The complaint alleges that Respondent violated NH RSA: 331-A: 25-b, I, 5, II-(a), 331-A:25-c, II (a), 331-A: 26, IV, XXVI.
2. A parallel complaint was filed by the New Hampshire Real Estate Commission (“NHREC”) on October 18, 2018 alleging Respondent violated NH RSA 331-A:25-a (x 5), and 331-A: 26, XXIX.
3. Respondent is a licensed real estate salesperson and was so licensed at the time of the filing of this complaint. No previous disciplinary action.
4. On 10/31/2017 Kathleen Ravagno and her sister, Susan Ayles (“Complainants”) entered into an Exclusive Agency Agreement with Craig Lancey (“Respondent”), Principal Broker for RW Real Estate, LLC for the listing and sale of a second home located at 377 Bolan Road, Milton, NH.
5. Respondent conducted a market analysis for the above referenced property. Based on the Exclusive Listing Agreement, the agreed upon sale price was listed at \$249,900.

6. On 11/7/2017 Subject property listed on MLS, per listing sheet provided by Respondent.
7. On 11/16/2017 There is email communication questioning how Respondent arrived at the sales price, specifically, which comps he used. It appears the information was emailed to Complainant Ayles by Jessica.rwrealty@gmail.com.
8. On 11/27/2018 the husband of Complainant Ravagno emailed Respondent. In this email he questions the veracity of the list price for the sale of 377 Bolan Road (“Property”).
9. On 11/27/2018 Respondent responds to husband’s email. In this response, Respondent explains the appraisal methodology.
10. On 11/28/2017 Respondent mails Complainants a letter outlining the comps used to set the sales price.
11. The Exclusive Listing Agreement for this Property was executed 10/31/2017 by all parties. The agreed upon listing price was \$249,900. The Exclusive Agency agreement was also signed this same day.
12. On 2/5/2018 Complainants enter into a P&S with Lisa and James Brown (“buyers”). The P&S was in the amount of \$249,900 with transfer of title on or before April 13, 2018. On Line 11: Property Included details the specific property included in the P&S. The items are: Refrigerator, Gas Range, Dishwasher, Washer, Dryer, Microwave. No additional items were listed on the P&S.
13. Under the section Additional Provisions of the P&S, it was written, “*Parties are in agreement that on or before May 15, 2018, Seller can take all of the belongings OUTSIDE OF THE HOME, e.g.: get the boat, snowmobile trailers, a regular trailer,*

the lawn mower and other tools in the shed of seller can't get any of it out in the snow. If items are left on the property after May 15, the seller shall pay the buyer \$50 per day in storage."

14. On 2/7/2018 Respondent emails Complainant Ravagno to advise the extension has been approved to May 15, 2018 for Complainants to remove exterior items.

15. On 2/21/2018 1:23 PM Complainant Ravagno's husband emailed Respondent to inquire about a change in the closing date, specifically writing *We understand the buyer is not asking for any change, but we are. With the Winter being unpredictable and mud season upon us I think it would be beneficial to all concerned to move the date."*

16. On 2/21/2018 3:03 PM Respondent replies with a detailed email however, Respondent provides a legal determination with regard to the dock on the property. Specifically, Respondent makes a legal conclusion as to whether the dock, which was a roller dock, runs with the property because at the time the property was listed, the dock was photographed in the water therefore the buyers would believe the dock was part of the listing.

17. On 2/21/2018 4:18 PM Complainant Ravagno emails Respondent to request an extension of the closing date again. In this email; Complainant Ravagno also reports the dock is not a permanent fixture as it is on wheels. Complainant Ravagno writes that every email she sends Respondent comes back with a response that makes her feel like she should not ask questions. Complainant Ravagno writes, *"We seem to have a very condescending relationship that is not very pleasant."*

18. On 2/21/2018 6:39 PM Respondent emails Complainant Ravagno to explain there are no issues between them. He sums it up to "Broker" speak.

19. On 2/21/2018 6:59 PM Respondent emails Complainants and reports Buyers will not move the closing date.
20. On 3/2/2018 12:16 PM buyer's agent emails Respondent. The email reads, "*Jess and Craig, I hope you told them that if it's attached it needs to remain there because if we find any holes from where it was the buyers are going to flip. Never mind the fact that they could sue them in small claims court over it so I hope you let your sellers know this. They seem to want to sabotage the sale in any way they can.*" Referring to a free standing bar in the home and comments made by Complainant's they were contemplating not closing on the transaction.
21. On 3/2/2018 7:03 PM In response to the buyer's agents email relating to the bar and potential to sue in small claims court Respondent writes "*I have no idea whether it's attached or not. There was so much stuff in the house I didn't even remember that they had a bar there. Unfortunately, I can't react to supposition or perception, only fact. And the fact is the Buyer doesn't know any more than I know or than you know for fact if what's there is anchored or floating. **However, the fact that I've already had to jam a few Statutes down their throat to keep them on track, doesn't invoke trust. Almost done.***"
22. On 3/14/2018 at 11:02 AM Complainant Ravagno emails Respondent. "*Attached is the purchase and sale agreement the bar is not included. Not sure why a piece of furniture is an issue it's free standing not attached. Like a couch and chair. The room is called "the bar".*"
23. On 3/15/2018 9:00 AM Buyers agent responds to Respondents email from 3/14/2018. She tells Respondent he is rude and her clients have backed off the bar.
24. On 3/15/2018 1:53 PM Complainants email Respondent to request an extension for the closing from April 13th to April 30th due to snowstorms in the area. This is the 3rd written request to Respondent asking him to negotiate an extension of the closing.

25. On 3/15/2018 at 7:56 AM Complainant Ayles emails Respondent. Subject: 377 Bolan Road. *Please remove the following from MLS. Features: Boat Launch, we don't have a boat launch. Docks, we don't have "Dock's" we have a Dock. Bar, bar is not being sold with the house. Cathedral Ceilings, we don't have cathedral ceilings. Fees Include: Association Amenities, Landscaping. There is no Association, no landscaping included.*
26. In his response to the complaint, page 9 line 27, Respondent **denies listing cathedral ceilings on the listing sheet**. He went on to write the Town provides a boat launch to residents, and then writes landscaping was mentioned under "lot Description in MLS." Respondent fails to mention the listing sheet he provided in his answer to the Commission reflects information AFTER 3/15/2018, the date he changed the listing sheet information. The original listing sheet listed cathedral ceilings and also listed landscaping under Association Amenities, not "lot description" as Respondent attests to in his response.
27. Investigator Porter received a printout from NEREN for the subject Property and the listing **DID** in fact verify through NEREN and through the buyer's agent that Complainant Ayles assertion regarding the features were incorrectly listed. The above descriptions were removed from NEREN, by "Craig Lancey" on 3/15/2018 at 9:36 AM, after Complainant Ayles emailed Respondent and requested the change.
28. On 3/16/2018 at 11:42 AM buyer's agent writes Respondent an email explaining her displeasure of dealing with Respondent and his clients. The last paragraph of the email reads, *"Your sellers would of course, I would imagine, find them very much open to a law suit if they chose to not show up to a closing that was contractually agreed upon. But I'm sure you have already advised them about that."*
- The buyer's agent also explains she will have to wait until March 17, 2018 at 11:00 AM to look at the property and then advise her clients as to whether they should agree to extend the closing beyond April 13, 2018. The agent continues by writing the sellers have been *"insensitive, rude, and sarcastic to these wonderful buyers."*

29. On 3/16/2018 at 3:20 PM Respondent replies to Buyers agent: *“Susan, one seller is also a very nice person. Unfortunately, her sister and sister’s husband are Spawns of Satan.”* This statement was made while negotiations for a delayed closing and other issues were still ongoing.

30. Over the course of the 2 days, between 3/17/2018 and 3/19/2018, Respondent sends five emails to Complainants’ detailing legal theories and damages they could be liable for and engages in unprofessional conduct as well as breaching fiduciary duties owed to his clients.

31. Some of the statements contained in these legal emails are:

- Threats of specific legal theories, conclusions, and damages which went above and beyond the duties of a NH licensed real estate broker;
- 3/19/2018 email Threatening and intimidating statements made by Respondent: *“FYI, I’ve done legal for my office for 25 years, not for clients but for my office, and have 100% success rate. I eat & sleep this stuff.”*
- 3/19/2018 email from Respondent threatening James Ravagnos pension, income, and social security as damages in a suit. *However, as soon as Jim hit the send button on that first email, he put up for collateral all of his income/pension/SSI against his input and actions;*
- 3/19/2018 email from Respondent threatening potential criminal liability: *So too can a buyer name such an individual independently or collectively with the property owner in any suit related to damages, losses or may be named as having culpability in any criminal act.*
- 3/19/2018 email from Respondent threatening the Complainants, *“You guys could get financially wiped out if you don’t just pick up and go and close this. Again, you are advised to seek legal counsel regarding the circumstances.”*

32. On 4/13/2018 Closing/ transfer of title occurred.

33. May 16, 2018 the New Hampshire Real Estate Commission receives the complaint from Complainants' Ravagno and Ayles.

DISCUSSION

The Complainants' entered into an exclusive listing agreement with Craig Lancey and RW Real Estate on October 31, 2017. The agreed upon listing price was \$249,900. Contained in the Exclusive Listing Agreement, which was signed by all parties, is paragraph 3, page 1, which reads: Duties of Firm. Firm owes SELLER the fiduciary duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. This is codified under NH RSA 331-A:25-a, I.

The property in question went under agreement on February 5, 2018 with a transfer of title to be on or before April 13, 2018. A lot of time was spent discussing what items remain with the property and which items did not remain. The P&S spelled out the items that remain with the property, specifically, all fixtures, refrigerator, gas range, dishwasher, dryer, and microwave. Any items not considered fixtures are negotiable between the parties. The dock in question was on wheels. Testimony was presented when Respondent photographed the dock it was in the water. The dock remained in the water because, as Mr. Ravagno testifies, he had two bad knees and no way to get the dock out of the water. Respondent testified because he photographed the dock while it was in the water, it would be reasonable to assume the dock ran with the property. It was also pointed out in February the dock was still in the water, however it was likely covered in snow, so whether or not the buyers saw the dock in the water or in photographs is not relevant. What is relevant is whether the dock, described to be on wheels, was a permanent fixture or not.

Testimony was received the dock was routinely removed from the water at the end of each season so we can reasonably conclude the dock did not run with the property.

The next issue was whether the bar was a fixture in the home. By all accounts the bar was not a fixture in the home therefore negotiable in the price. There was testimony relating to Respondent misrepresenting the features of the property on MLS. While we agree the features were improperly listed which could lead to a misrepresentation as to the description of the property, this appears to be harmless error which is exclaimed on MLS. It does not appear there as an intent to mislead or misrepresent the features of the property. Respondent and Kathy Lancey both testified Respondent personally visited the property but it was Kathy who input the information into MLS. While this may be the case, Respondent, as Principal Broker, has an obligation to supervise any associate brokers or agents of his office, which Kathy is an associate broker, therefore regardless of who entered the information, Respondent is responsible for the accuracy of the information entered.

It is agreed on March 15, 2018 Complainant Ayles did email Respondent and request the misinformation be removed from MLS. From paperwork received from NEREN, the name Craig Lancey appears as the one who removed the erroneous information as requested. Testimony from Respondent and Kathy Lancey revealed it was not Respondent who received the email or made the correction on MLS. It was Kathy Lancey who, using Respondent's sign-in information, made the corrections. Regardless of who made the correction, the correction was made and had no impact on the sale of the home. Respondent should be more careful in the supervision of his brokers and agents, the Commission does not believe there was any intent to misrepresent the features.

The Commission heard extensive testimony from Complainant Ravagno, Jim Ravagno, and Respondent relative to the email exchanges on February 21, 2018. These emails can best be summed up as various requests from the Complainant Ravagno to extend the closing date for the property beyond April 13, 2018. It appears, based on testimony, while Respondent ultimately relayed the information to the buyer's agent, it was done so in a manner by which Complainant Ravagno testified she felt every time she asked a question Respondent answered in a condescending manner. This made Complainant Ravagno uncomfortable, as if Respondent was not working in the best interest of her and her sister.

As the transaction continued on, there were rumblings from Complainants about refusing to close. This led to various email exchanges between Respondent and the Buyer's agent. The emails grew contentious whereby at one point the buyer's agent mentioned the possibility of the case going to small claims court should the Complainants refuse to close. This led to Respondent admitting during testimony, he sent an email claiming he had **"Jammed a few statutes down her throat"** referring to Complainant Ravagno. This was an email conversation between Respondent and the buyer's agent, during a time when Complainant Ravagno was not aware of this statement, but she was beginning to feel Respondent was not working in her or her sisters best interest. This email response by Respondent vindicates the feeling Complainant Ravagno was feeling.

As the email exchanges grow more untoward it was apparent through testimony, Respondent and James Ravagno did not get along. It appears the relationship between Respondent and James Ravagno was contentious at best with testimony detailing the contentious nature between both

parties. While it is understandable Respondent would be upset with Mr. Ravagno, and Mr. Ravagno being upset with Respondent, it was Respondent's duty to remain professional throughout the transaction and from testimony elicited by the witnesses, including Respondent, it appears Respondent acted in an unprofessional manner. This was no more apparent than when Respondent responded to an email from the buyer's agent where the buyer's agent felt Complainants were rude. In response to this email, Respondent wrote, **“Susan, one seller is also a very nice person. Unfortunately, her sister and sister's husband are Spawns of Satan.”** This statement was made while negotiations for a delayed closing and other issues were still ongoing. This statement, made by Respondent, who is supposed to be representing the best interest of his clients throughout the entire transaction goes well beyond unprofessional behavior, but verifies the feelings of Complainant Ravagno's testimony she felt Respondent was condescending toward her and was not representing her or her sister's best interests.

What was particularly bothersome was during cross-examination, when asked if he felt referring to his client and her husband as **“Spawns of Satan”** was unprofessional, Respondent did not believe so because the statement was not made to them, but rather, between he and the buyer's agent. This was troubling because Respondent admitted to telling the opposing agent he had already **“Jammed a few statutes down her throat”** (referring to Complainant Ravagno) and then referred to his client and her husband as **“Spawns of Satan”** to the same agent, which we have determined occurred in the midst of ongoing negotiations, undermines the concept of representing your clients best interest and breaches a duty of loyalty, obedience, disclosure, confidentiality, reasonable care, and accounting.

The next area where, through testimony and evidence it was clear Respondent acted unprofessionally and in breach of the fiduciary duty owed to his client, was the five or so emails in which admittedly, Respondent went above and beyond advising his clients to seek legal counsel on matters outside of his jurisdiction. These legal emails can best be described as not only offering legal theories and outcomes, but can be construed as threatening toward his clients forcing them to do something they may not have felt comfortable doing. It is not the role of the Commission to determine what legal causes of action the buyers may or may not have had against the Complainants nor is it the role of the Commission to determine what viable defenses, if any, Complainants may or may not have had available to them. The role of the Commission is to determine whether these legal emails drafted and sent to Complainants by Respondent amounted to prohibited conduct as well as a breach of duties owed to his client. Respondent admitted in hindsight he regrets these emails but Respondent had many opportunities to stop his behavior but felt the need to inundate his clients with specific legal theories, conclusions, and damages he was not in a position to determine.

Respondent is admittedly not a lawyer and testified he attended seminars where an attorney provided overviews of laws pertaining to contracts and other matters involving real estate. By no means does this make Respondent proficient in the law nor does it authorize Respondent to engage in what can appropriately be labeled as providing legal advice well beyond the scope of advising Complainant's to seek counsel. Respondent did advise his clients to seek legal counsel, but went well above and beyond merely advising. These legal emails were tantamount to providing legal advice, including causes of action, probability of success, legal fees, civil damages etc.

Complainant Ravagno testified these legal emails had an impact on her and her sister. James Ravagno also testified these legal emails had a major impact on them and, through testimony, led them to believe Respondent was working on behalf of the buyer and not them.

In one legal email, Respondent wrote, **“FYI, I’ve done legal for my office for 25 years, not for clients but for my office, and have 100% success rate. I eat & sleep this stuff.”** This statement, in conjunction with other legal threats whereby Respondent wrote James Ravagno had put up as collateral his pension, income, and social security went beyond the scope of duties required of a New Hampshire licensed real estate broker and verified Complainant Ravagno’s testimony she did not believe Respondent was working on her or her sister’s behalf.

Complainant Ravagno testified that in her written complaint to the New Hampshire Real Estate Commission she wrote, “His lack of support during this whole ordeal made us feel like he was working for the buyers and not us.” Complainant Ravagno testified she filed this complaint before she knew about Respondent’s emails telling the opposing buyer’s agent that he **“Jammed a few statutes down her throat”** and the email referring to her and her husband as **“Spawns of Satan.”** Complainant Ravagno testified she learned of these statements when she received a copy of Respondent’s response to the Commission which led to her and her sister feelings validated that Respondent was not acting in the best interest of their wishes.

There were two counts involving advertising and publishing false information on MLS relating to the “features” in the listing. Through testimony and exhibits there was insufficient evidence to

demonstrate an intentional act. While there may have been errors, these errors once brought to the attention to Respondent were corrected immediately, on the same day. One count involved misrepresentation of facts in Respondent's response to the complaint. After listening to testimony and reviewing the exhibits, there is insufficient evidence to prove this violation by a preponderance of the evidence. We did not find any statutory violations with regard to these three counts.

CONCLUSIONS OF LAW

The burden of proof rests with the Prosecution to prove, by a preponderance of the evidence, the Respondent violated RSA 331-A: 25-a, Licensee, Scope of Agency, RSA 331-A: 26, IV- Prohibited Conduct, RSA 331-A:26. V (2 Counts) Prohibited Conduct, RSA 331-A:26, XXVI, Prohibited Conduct, RSA 331-A:26, XXIX: Unprofessional conduct defined in RSA 331-A;2, XV, and RSA 331-A:26, XXXVI.

It is the unanimous conclusion of this panel the prosecution has **NOT** met its burden of proof by a preponderance of the evidence Respondent violated the following statutes:

Count 1, Violation of RSA 331-A:26, IV relating to making, printing or publishing false statement or descriptions relating to the listing of the property;

Count 3, RSA 331-A:26, V intentional misrepresentation to the Commission;

Count 4, RSA 331-A:26, Advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner.

It is the unanimous conclusion the prosecution met its burden and **PROVED**, by a preponderance of the evidence, Respondent violated the following statutes:

Prohibited Conduct:

Count 2, 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.*

Respondent's legal threats via email amounted to providing legal advice to his clients of which they relied upon, when he is not licensed to do so. Respondent sufficiently blurred the lines between representation as a licensed real estate broker and representation as an attorney.

Respondent testified he is NOT an attorney nor has he ever been a licensed attorney. He admitted in hindsight this was improper and regrets sending these emails.

Respondent misrepresented legal causes of action, legal theories, damages, and other remedies when he provided legal conclusions which his clients ultimately relied on to close on the property, resulting in a loss of proceeds due to the failure of Respondent to adequately negotiate for items such as the dock. This resulted in a loss of proceeds to the seller's, who closed on the home without receiving financial compensation for the dock which was left with the property against the legal wishes of the Complainants.

Through documentary evidence and testimonial evidence, the prosecution has proved, by a preponderance of the evidence, Respondent violated this statute.

Count 5, RSA 331-A: 26, XXIX, *Unprofessional conduct as defined in 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.”

Respondent’s emails to the opposing buyer’s agent in which he admitted to **“Jamming a few statutes down her throat”** (referring to Complainant Ravagno) and referring to Complainant Ravagno and her husband as **“Spawns of Satan”** were unprofessional in that this action was dishonorable, unethical, and/or immoral, especially in light of the facts Respondent was bound by a duty of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.

Respondent’s legal threats to his clients, to whom he owed the above listed duties, were unlawful, dishonorable, unethical, or immoral. Respondent testified he now regrets his actions with the emails.

Respondent was repeatedly asked to reach out to the buyer’s agent to move the closing date beyond April 13, 2018. While Respondent ultimately did send emails containing these request to the buyer’s agent, he never filed an official addendum request. Additionally, it was proven by a preponderance of the evidence, even when Respondent did email the request of his clients to the agent, Respondent would disparage them in such a manner as to create a distrust between the buyers and sellers, ultimately leading to an irreparable breakdown of communication.

Through documentary evidence and testimonial evidence, the prosecution has proved, by a preponderance of the evidence, Respondent violated this statute.

Count 6, RSA 331-A:26, XXXVI: *Demonstrating an untrustworthiness or incompetency to act as a broker or salesperson.*

Admittedly referring to your client and her husband as “**Spawns of Satan**” while engaged in talks with the opposing buyer’s agent; admitting to telling the opposing agent you had to “**Jam a few statutes down your clients throat**” while actively engaged in ongoing negotiations demonstrates an untrustworthiness or in competence to acts as a broker or salesperson. Writing what are best described to be legal emails outlining legal theories, consequences, and ultimately damages, demonstrates actions well outside the scope of a broker’s responsibility, especially when the Respondent himself is not a licensed attorney authorized to dispense legal advice.

Respondent sufficiently blurred the lines of representation with his clients in this transaction to the point Complainant Ravagno testified to what she wrote in her complaint, “His lack of support during this whole ordeal made us feel like he was working for the buyers and not us.” She testified further she wasn’t aware of the derogatory statements Respondent had made about her or her husband when she filed the complaint and felt her belief on May 16, 2018 was verified by Respondent’s actions via email to the buyer’s agent.

Through documentary evidence and testimonial evidence, the prosecution has proved, by a preponderance of the evidence, Respondent violated this statute.

Breach of Fiduciary Duties

Count 7, RSA 331-A:25-a: 1: *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.*

The conclusions made for Count 2, Count 5, and Count 6 demonstrate Respondent failed to fulfill his duties owed to the seller (Complainants) when he engaged in prohibited conduct pursuant to NH RSA 331-A:26- Prohibited Conduct. Every licensed salesperson or broker owes

their client a duty of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Through testimony and evidence presented at the hearing, including Respondent's own testimony, the prosecution was able to prove by a preponderance of evidence, Respondent failed in his duties owed to his clients in this transaction.

Complainants made reasonable requests to Respondent who, while ultimately did relay their wishes to the buyer's agent, but failed to deliver these proposals via formal documentation whereby the request is reduced to writing and an addendum form, signed and dated by the parties, for the opposing party to accept or reject in writing. While Respondent did send emails to the buyer's agent, he also denigrated and demeaned his clients in the very same emails thereby undermining the character and integrity of his clients, to whom he owed duties listed in this statute.

Ultimately Complainant Ravagno and her husband testified the dock was ultimately included with the property but they received no compensation for this movable dock because it was never negotiated by Respondent.

Through documentary evidence and testimonial evidence, the prosecution has proved, by a preponderance of the evidence, Respondent violated this statute.

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 4 - 0, who participated in the deliberations in this matter, that:

The Respondent is **ORDERED** to pay a fine in the amount of :

Count 2: RSA 331-A: 26, V **\$1,250**

Count 5: RSA 331-A: 26, XXIX **\$1,250**

Count 6: RSA 331-A:26, XXXVI **\$1,250**

Count 7: RSA 331-A:25-a: I **\$1,250**

A total of \$5,000 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 **THREE 3-hour commission approved continuing education classes and One CORE class.**

The continuing education classes shall be: one 3-hour continuing education class in **Ethics**; one 3-hour continuing education class in **Agency relationships**; one 3-hour continuing education class in **Contracts**; and one CORE class. All continuing education classes and the CORE class 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.

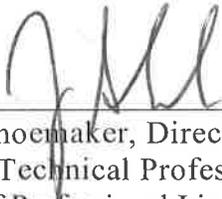
IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Order shall constitute unprofessional conduct pursuant to RSA 331-A: 26, XXIX and constitute separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

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.



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

Dated: 1/15/19, 2019