

NEW HAMPSHIRE REAL ESTATE COMMISSION
MEETING MINUTES
April 16, 2019

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, April 16, 2019 at 8:30 a.m. at 121 South Fruit Street, Room #B119, Concord, New Hampshire 03301.

Present: Commissioners: Chair Daniel Jones, Paul Lipnick, Richard Hinch, Steven Hyde, Esq. and Susan Doyle.

Also present from OPLC: Division Director Joe Shoemaker, Investigator Michael Porter, Administrator Rick Wisler, and Staff member Bobbie Carter.

I. CALL TO ORDER –

The meeting was called to order at 8:29 a.m. by Commissioner Jones.

II. READING AND APPROVAL OF THE MINUTES –

Commissioner Lipnick moved to approve the March 19, 2019 meeting minutes, Commissioner Doyle seconded. The motion passed 3-0, Commissioner Hinch abstained.

III. NEW BUSINESS –

Appointments:

- A. Mike Keeler and Chip Stella – Request to manage two offices. Mr. Keeler is requesting for Mr. Stella to manage the Bedford and Amherst offices which are 4 miles and approximately 15 minutes apart. There are 80 agents between the two offices. Mr. Stella is a non-competing Broker and does work out of both offices on a daily basis. Commissioner Hinch made a motion to approve the request to allow Chip Stella to manage both the Amherst and Bedford offices, seconded by Commissioner Hyde. Motion passed unanimously

- B. James McCann – Request to Renew Lapsed Salesperson License. Mr. McCann stated that this was a simple miscalculation of dates. Commissioner Hinch stated that he was concerned by the fact that he was sent 3 notices prior to his renewal date. Mr. McCann responded that he received 1 but had moved around and had not received the additional notices. Commissioner Hyde asked if he felt this was Good Cause to let a license lapse, Mr. McCann responded no. Commissioner Hinch made a motion to approve Mr. McCann's request to renew his license noting that the next time the Commission will not be lenient, Commissioner Lipnick seconded. The motion passed 3-2

- C. Laura Lopes - Request to Renew Lapsed Salesperson License. Ms. Lopes stated she was ill and heavily medicated so she forgot to renew. She currently works as an administrator in a Real Estate office but does not do any salesperson work. The Commissioners asked numerous

questions regarding how she remains current on real estate education and how her current work is relevant to current transactional practice. Commissioner Hyde made a motion to deny Ms. Lopes request to renew her license due to length of lapse, Commissioner Hinch seconded. The motion passed 3-1

- D. Mark Allen - Request to Renew Lapsed Broker License. Mr. Allen allowed his broker license to lapse in 2013 in order to pursue another business venture. He missed the real estate business and is now in a position to return. He is currently enrolled in the salesperson course. He asked the Commission, should he be denied, could they waive the one year sales experience and allow him to apply for his broker's license early. Commissioner Hinch replied that would have to be determined at another time as approvals are made on a case by case basis and that Mr. Allen could petition the Commission when he felt he was ready. Commissioner Hinch made a motion to deny Mr. Allen's request to renew his license due to length of lapse, Commissioner Hyde seconded. The motion passed unanimously.
- E. Deb Bryce - Request to Renew Lapsed Salesperson License. Ms. Bryce called the Commission office and cancelled her appearance due to a work conflict. Staff will contact her to reschedule.
- F. Laura Fitzgerald – Request to Renew Lapsed Broker License. Licensed as a broker in Massachusetts. Wants to come back to New Hampshire. When asked, she could not provide any additional cause for renewal of lapsed license. Commissioner Hinch moved to deny renewal of licensure due to lack of good cause, seconded by Commissioner Hyde. Motion passed unanimously.
- G. Jason Weiner – Request to Renew Lapsed Salesperson License. Mr. Weiner informed the Commission that his missed renewal was just an oversight on his part. The Commissioners then asked about prior expired licenses, he replied that he did not practice real estate during any of the times he was previously expired. Mr. Weiner informed the Commission that his broker's office does not issue renewal reminders, and he does not personally have any set up. He stated he was not practicing during his expired time, but may have upcoming sales with past clients. Mr. Weiner asked for one more opportunity to renew and will set up a process to ensure future timely renewals. Commissioner Hyde moved to deny renewal of licensure due to his repeated history of being late, Commissioner Doyle seconded. Motion 3-1.
- H. Stacy Gerson – Request for Equivalency. Ms. Gerson joined the meeting by conference call from Colorado. The Commission questioned why she wanted a broker's license. Ms. Gerson replied that a company had approached her about possibly expanding into NH and they wanted her to do market analysis work. Commissioner Hinch asked about Ms. Gerson's plans to supervise. Ms. Gerson has no plans to supervise. Commissioner Doyle asked why the company is requesting Ms. Gerson obtain a broker's license when a license is not required to do market analysis. After consideration, Ms. Gerson withdrew her request to allow an opportunity to obtain

additional information about what the entity, Veterans United Realty, is and what they ultimately intend her to do.

The Commission took a short break at 9:40 a.m.

IV. DISCIPLINARY HEARING

Complaint Docket #2018-003 New Hampshire Real Estate Commission v Paul McCoy

The original complainant, Jody Naffah, was present and not represented by counsel. Respondent, Paul McCoy was present and represented by Attorney Matt Johnson.

Commissioner Doyle was recused from the matter and did not participate. Commissioner Hyde was appointed as the Presiding Officer.

Investigator Mike Porter addressed three housekeeping issues, two of the issues in the notice of hearing are identical; counts 7 & 8 and counts 11 & 14. He also stated he will be withdrawing counts 3, 6, 9. Parties have stipulated to all exhibits. Attorney Johnson stipulated to the hearing notice.

Commissioner Hyde administered the oath to all parties and explained the hearing process. The matter then proceeded to hearing at 9:55 a.m.

Investigator Michael Porter presented testimony regarding the complaint alleging Mr. McCoy violated RSA 331 – A:25, b, I(b)(1); RSA 331-A:26, V; RSA 331-A:26, VII; RSA 331-A:26, XXII(a)(2); RSA 331-A:26, XXXI; RSA 331-A:26, XXIX; RSA 331-A:26, XXXVI; His witnesses included: Jody Naffah and Paul McCoy. No other witnesses were introduced by the respondent.

Matt Johnson distributed Respondent's Motion to Dismiss. He is not aware of any restrictions to act as both a real estate agent and lender. He also claimed there is not restriction of when a quit claim can be filed.

Investigator Porter responded that the fact finder needs to determine whether the evidence met the burden of proof. The Quit claim is not in dispute but rather was used as an avenue to obtain the property.

Commission went into Non meeting to consult with counsel 12:30 p.m.

Meeting resumed at 12:48 p.m.

Commissioner Hinch moved to approve the motion to dismiss, seconded by Commissioner Hinch. Motion tied and failed with a 2-2 vote. Commissioner Doyle was recused. A motion was made and seconded to deny the motion to dismiss. Motion again tied and failed by a 2-2 vote. Commissioner Doyle was recused. Because a prevailing motion did not pass on the Motion to Dismiss, the Commission took no action on the motion and the hearing resumed.

Attorney Johnson called McCoy as a witness.

Following testimonies and Commission member questions of both parties, Presiding Officer Hyde closed the hearing at 1:08 p.m.

IV. OTHER BUSINESS –

Review and Decision of Petition for Rule Changes – a motion was made by Commissioner Hinch to table Ms. Flanagan’s petition in order to confer with rules attorney for advisement as to whether to accept rules and then allow public input, with Commission final decision to follow or whether to accept/dismiss each petitioned rule without public comment. Seconded by Commissioner Hyde, motion passed unanimously.

Questions and Comments: None.

V. NON-PUBLIC SESSION –

At 2:00 p.m. following an appropriate motion by Commissioner Hinch and second by Commissioner Lipnick to go in to a non-public session the Commission, by roll call, voted to conduct a non-public session for the purpose of the reading and approval of the non-public minutes of the March 19, 2019 meeting, and evaluating complaints against licensees, accredited individuals, institutions, or organization, or persons charged with practicing unlawful brokerage activity, and noting that such a non-public session is authorized by RSA 91-A:3, II(c), RSA 91-A:5, IV, *Lodge v. Knowlton*, 11 N.H. 574 (1978), and the Commission’s executive and deliberative privileges. Each member recorded his or her vote on the motion, which passed by the vote of all members present.

VI. PUBLIC MEETING RECONVENED –

At 2:53 p.m. an appropriate motion was made by Commissioner Hinch and seconded by Commissioner Hyde, and the Commission unanimously voted, to reconvene the public meeting.

VII. NON-PUBLIC MINUTES SEALED –

On an appropriate motion by Commissioner Hinch and second by Commissioner Hyde the Commission, by roll call, voted to seal the minutes of the non-public session from public disclosure pursuant to RSA 91-A:3, III(c), on the grounds that public disclosure would likely affect adversely the reputation of licensees, accredited individuals, institutions, or organizations, or persons charged with practicing unlawful brokerage activity. RSA 91-A:5, IV, *Lodge v.*

Knowlton, 11 N.H. 574 (1978), and the Commission's executive and deliberative privileges. Each member recorded his or her vote on the motion.

VIII. DELIBERATIONS

Complaint Docket #2018-003 New Hampshire Real Estate Commission v Paul McCoy

- Count 1 – 331 – A:25, b, I(b)(1) – Commissioner Hinch made a motion to dismiss, seconded by Commissioner Lipnick. Motion passed 2-1. After a review of Robert's rules it was determined that Commissioner Jones could vote. Commissioner Hinch made a motion to dismiss seconded by Commissioner Lipnick the motion failed 2 – 2. A brief discussion was held. Commissioner Hinch made a motion to approve, seconded by Commissioner Hyde. Motion passed 3-1. Commissioner Doyle was recused.
- Count 2 – Withdrawn.
- Count 3 – Withdrawn.
- Count 4 – 331-A:26, V - Commissioner Hinch made a motion to dismiss, seconded by Commissioner Lipnick. Motion failed 1-3, therefore count 4 stands. Commissioner Doyle was recused.
- Count 5 – 331-A:26, VII – Commissioner Hinch made a motion to dismiss, seconded by Commissioner Hyde. Motion passed 4-0. Commissioner Doyle was recused.
- Count 6 – Withdrawn.
- Count 7 – Withdrawn partially, not withdrawn was 331-A:26, XXII(a)(2) respondent failed to disclose to Shane Braley that Mr. McCoy had a partial interest in the property. Commissioner Hyde made a motion to approve, Commissioner Hinch seconded, motion passed 4-0. Commissioner Doyle was recused.
- Count 8 – Consolidated with count 7. A motion was made and seconded to separate, the motion passed unanimously. Commissioner Hyde made a motion to dismiss Count 7, Commissioner Hinch seconded. The motion passed 4-0. Commissioner Doyle was recused. Count 8 is 331-A:26, XXII(a)(2) respondent failed to disclose to Shane Braley that Mr. McCoy had a partial interest in the property. Commissioner Hyde made a motion to approve, Commissioner Hinch seconded, motion passed 4-0. Commissioner Doyle was recused.
- Count 9 – Withdrawn.
- Count 10 – 331-A:26, XXXI – Commissioner Hinch made a motion to approve, seconded by Commissioner Hyde. Motion passed 4-0. Commissioner Doyle was recused.
- Count 11 – 331-A:26, XXVIII – Commissioner Hyde made a motion to approve based on instances that occurred after the contract was executed, Commissioner Hinch seconded, motion passed 4-0. Commissioner Doyle was recused.
- Count 12 – 331-A:26, XXIX – Commissioner Hyde made a motion to approve based on ethics, Commissioner Hinch seconded, motion passed 4-0. Commissioner Doyle was recused.

- Count 13 – 331-A:26, XXXVI – Commissioner Hinch made a motion to dismiss, seconded by Commissioner Hyde. Motion passed 4-0. Commissioner Doyle was recused.
- Count 14 – Commissioner Hyde moved to combine this count with count 11, seconded by Commissioner Lipnick. Motion passed 4-0. Commissioner Doyle was recused.

Commissioner Hinch moved to assess a monetary fine of \$500 for each infraction for a total of \$3,000 to be paid within 30 days, seconded by Commissioner Hyde. Motion passed 4-0. Commissioner Doyle was recused. Commissioner Hinch made a motion to require Commission approved ethics and core courses to be taken within 60 days, in a classroom setting, in addition to all continuing education requirements not eligible to be counted on renewals. Seconded by Commissioner Hyde, motion passed 4-0. Commissioner Doyle was recused.

IX. NEXT MEETING –

The next meeting is scheduled for Thursday, May 16, 2019 at 8:30 a.m.

X. MEETING ADJOURNED –

At 4:03 p.m. an appropriate motion was made, and seconded, to adjourn the meeting. The motion was unanimously approved.

Respectfully submitted,



Bobbie Carter
Supervisor II