

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

In the Matter of:

NHREC v. GARY VOLPE

Docket No. 2017-012 /2017-013

License No: 007318

(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. Gary Volpe (“Respondent”) in Docket Number 2017-012 & 2017-013 held on September 18, 2018.

BACKGROUND INFORMATION

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

XXXI, XXXVI and N. H. Administrative Rule Rea 404.04, alleging Respondent unlawfully listed and continued to list a certain parcel of property in Northfield, NH for sale without any valid written agreement, or with an agreement obtained through willful misrepresentations, without informed consent of all owners, resulting in him being subjected to sanctions and disciplinary action pursuant to NH RSA 331-A:28, 331-A:29, RSA 331-A:30 and RSA 331-A:34 and New Hampshire Code of Administrative Rules Chapter Rea 200.

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

- I. Whether, in violation of the Real Estate Practice Act, Respondent listed and continued to list, after being properly advised to cease and desist, property to which he was not legally authorize to list or sell in violation of NH RSA 331-A: 26, IV, V, XXVI, XXIX, XXXI, XXXVI and N. H. Administrative Rule Rea 404.04

The case was prosecuted by Michael Porter, Investigator, New Hampshire Real Estate Commission, Office of Professional Licensure and Certification. Respondent was pro se.

Testimony was received at the hearing from Michael Panebianco, Esq., David Craig, Esq. William Coulter, Tom Argue, Gary Volpe (Respondent).

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

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

John Cronin, Esq. Presiding Officer/Chair;

Richard Hinch, Commissioner;

Susan Doyle, Commissioner

Daniel Jones, Commissioner (Recused/Evaluator)

Paul Lipnick, Commissioner, Absent

COMPLAINANT'S EXHIBITS:

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

- 1) Complaint 2017-012 submitted by Michael Panebianco, Esq.
- 2) Complaint 2017-013 submitted by Michael Panebianco, Esq.
- 3) Response from Gary Volpe
- 4) 2015 Annual Report of ALV, Inc.
- 5) 2016 Annual Report of ALV, Inc.
- 6) Statement of Change of Registered Agent, ALV, Inc.
- 7) January 5, 2016 letter from Attorney David Craig to Attorney James R. Steiner.
- 8) Exclusive listing agreement dated August 3, 2009 for 3.03 Acres, Northfield, NH.
- 9) Change of Terms and Conditions MLS#2792521 3.03 Acres dated August 8, 2016.

- 10) Purchase and Sales Agreement MLS#4447550 3.03 Acres dated August 17, 2016.
- 11) August 19, 2016 letter from Attorney David Craig to Gary Volpe
- 12) September 27, 2016 Fiduciary Deed for Property located at 3 Turnpike Road, Northfield, NH.
- 13) October 13, 2016 letter from Attorney David Craig to Attorney James R. Steiner.
- 14) 3 Turnpike Road, Northfield, NH 3/03 Acres NEREN listing sheet for MLS#4447550 dated May 19, 2017 reflecting withdrawal from MLS February 9, 2017.
- 15) Warranty Deed dated January 31, 1969.
- 16) Articles of Agreement for ALV, Inc. dated February 17, 1969.
- 17) Change of Terms and Conditions for Keyser and Bean Hill Road Map 11 Lot 9: 214.97 acres Northfield, NH executed August 8, 2016.
- 18) MLS#4447547 Keyser and Bean Hill Turnpike 214.97 acres listed August 27, 2015 expiration August 8, 2017 printed May 19, 2017.
- 19) June 6, 2016 Fiduciary Deed for Proposed Lit 2 sub-division Plan of Tax Maps R11 Tax Lot 9.
- 20) MLS #4447550
- 21) MLS #4447547

RESPONDENT'S EXHIBITS.

A. Vera Buck Email

B. Clara Volpe Financials

C. State of NH elder abuse findings of Gary Volpe

D. State Police Incident Report on Linda Volpe, the trooper filed an elder abuse complaint on her.

E. Keene Police Domestic Violence report on Linda Volpe, Clara Volpe was being held against her will.

F. Keene Police Arrest Report on Samantha Volpe shoplifting when she brought Clara Volpe shopping. She was wearing an ankle bracelet for prior theft and drug offenses. She is Jeff Volpe's daughter.

G. Barnstead Police Reports of Dennis assaulting Gary Volpe at his residence.

H. Court order of my Mom's kidnapping and financial exploitation by Jeff, Linda, and Dennis Volpe.

HA: David Craig says he's running up the bill on me.

I. Court findings on my brother Dennis being removed as trustee.

J. Family thefts.

K. Arrest records of Victoria Volpe, daughter of Dennis and Jeff Volpe.

L. Town of Pittsfield tax cards.

M. Town of Northfield tax cards.

N. State of NH application for current use.

- O. Clara Volpe Trust.
- P. Town of Barnstead tax card.
- Q. Email from Tom Argue requesting Panebianco transfer property 1 to ALV.
- R. Emails between Tom Argue and myself.
- S. Emails between Craig and myself.
- T. Emails between Craig, Steiner and myself.
- U. Emails for collusion to commit fraud.
- V. Response from Jan Wickens to my complaint against her.
- W. Mom's checking when she was with me.
- X. Emails of continued and ongoing refusal to let me talk to my mom, by Craig and Panebianco.
- Y. Letter to Panebianco and email from Craig.
- Z. Flash Drive of phone recordings.

LIST OF WITNESSES:

Michael Panebianco, Esq.

David Craig, Esq.

William Couture

Thomas Argue

Gary Volpe

PRE-HEARING MOTIONS

A Motion in Limine, filed by Inv. Michael Porter, was heard before the hearing commenced. At issue was evidence received by Inv. Porter from Volpe late Friday afternoon September 14, 2018. Specifically, Volpe filed over three hundred pages of documentation most of which was not relevant to the issue before the Commission.

Inv. Porter moved to strike Respondent's exhibits A-L, (matters pertaining to 2012-2016 outside the scope of the complaint), S (involves email from 2015 outside the scope of the complaint), W-X (issues not relevant to the matters before the Commission), and Z (matters outside the scope of the Commission) on relevancy issues. Porter acceded to exhibits M-R, T-V, and Y.

Commissioner Cronin went through each exhibit individually with Respondent and Porter. After hearing oral argument from both parties, Commissioner Cronin struck the following evidence: A-H, J-L, S, W-X, and Z. Commissioner Cronin withheld ruling on Exhibit I until after testimony was received. Commissioner Cronin ultimately allowed Exhibit I into evidence along with Exhibits M-R, T-V, and Y.

FINDING OF FACTS

1. Respondent was first issued a license as a New Hampshire real estate salesperson by the New Hampshire Real Estate Commission on March 17, 1987 with no disciplinary history. Respondent's license was in good-standing and is currently inactive with an expiration of 6/17/2020.

2. An original complaint was received by the Commission office on February 15, 2016 from Attorney David Craig representing Michael Panebianco. The complaint alleges that Respondent violated NH RSA 331-A: 26, IV, V, XXVI, XXIX, XXXI, XXXVI and N. H. Administrative Rule Rea 404.04, alleging Respondent unlawfully listed and continued to list a certain parcel of property in Northfield, NH for sale without any valid written agreement, or with an agreement obtained through willful misrepresentations, without informed consent of all owners.
3. Respondent is a licensed real estate salesperson and was so licensed at the time of the filing of this complaint.
4. On or about August 3, 2009, Respondent listed the subject property located at 3 Turnpike Road, Northfield, NH, 3.03 Acres ("**Property 1**"). At the time of listing, Respondent had permission to list the subject Property.
5. On or about December 7, 2009 Respondent listed the subject property located at 0 Keyser, Bean Hill, Turnpike Road, Northfield, NH, 214.97 Acres ("**Property 2**").
6. **Property 1** and **Property 2** were listed with Volpe Realty LLC, which is owned and operated by Respondent.
7. At the time both properties were listed, Respondent was a member of ALV Inc.
8. ALV Inc. was created in 1969 as a corporation to buy and sell property. The original members of ALV Inc. were John Argue (Deceased), Levi Ladd (Deceased) and Frank Volpe (Deceased).
9. Per the March 31, 2015 Secretary of State listing, ALV Inc. officers were Thomas Argue (Son of John Argue) President, Gary Volpe (Son of Frank Volpe) Vice President, and David Ladd (Son of Levi Ladd) Secretary, Gary Volpe (Son of Frank Volpe) Treasurer.

10. On December 30, 2015, Gary Volpe was removed as an officer of ALV, Inc.
11. On or about January 5, 2016 Attorney David Craig mailed a letter to Respondent's counsel, Attorney Steiner, informing Attorney Steiner Respondent was removed as an officer of ALV, Inc. and was no longer involved with the company in any capacity.
12. On or about August 8, 2016, Respondent executed a Change of Terms and Conditions / Status Update for **Property 1** and **Property 2**. Specifically, with regard to **Property 1**, Respondent, along with Thomas Argue and David Ladd executed a price reduction from \$59,000 to \$45,000. The change expiration date is listed as August 8, 2017.
13. On August 8, 2016 **Property 1** is listed as being owned by ALV, Inc. on the listing sheet.
14. On August 8, 2016 **Property 1** was actually owned by the Clara E. Volpe Trust and the John S. Argue Trust.
15. On August 8, 2016, **Property 2**, the list price was reduced from \$220,000 to \$199,900 with a change of expiration date extended to August 8, 2017.
16. On August 17, 2016, a Purchase and Sale Agreement ("P&S") was drafted for the purchase of **Property 1** in the amount of \$30,000. This P&S was drafted by the buyer's agent, Jan Wickens, and signed by the buyers on August 17, 2016.
17. The August 17, 2016 P&S with Respondent was never fully executed however **Property 1** did close between Panebianco / Argue and buyers on a different transaction September 27, 2016 which excluded Respondent.
18. On August 19, 2016 Attorney David Craig mailed Respondent a letter notifying Respondent he improperly listed **Property 1** as being owned by ALV, Inc. (as it was owned by the Clara E. Volpe Trust and John S. Argue Trust) and requested the listing be removed from MLS.

19. On or about August 19, 2016 Attorney Craig, representing Clara Volpe, mother of Respondent, directed Respondent to cease and desist any communication with Clara Volpe regarding her property, business interests, estate planning, or personal financial matters.
20. Respondent was also reminded he was removed from ALV, Inc. and had no authority to act on behalf of ALV, Inc.
21. Respondent refused to remove his sign from **Property 1** and also refused to remove **Property 1** or **Property 2** from MLS.
22. On or about October 13, 2016 Attorney David Craig mailed a letter to Respondent's counsel, R. James Steiner, Esq. to reiterate Respondent is not to interfere with Clara Volpe's finances, planning, or business interests.
23. On or about October 13, 2016 Attorney David Craig informed Attorney Steiner Respondent had not yet removed the listings from MLS as requested on August 19, 2016.
24. Respondent removed **Property 1** on 2/9/2017, nearly four and one-half months after the property had already been sold and the deed had already been transferred to William Coulter ("Coulter") and Steve Morrissette ("Morrissette") effective September 27, 2016.
25. Respondent wrongfully continued to list **Property 1** without the owner's consent between the months of September 27, 2016 and February 9, 2017 as the subject property, **Property 1**, had been transferred by deed to Coulter and Morrissette effective September 27, 2016.
26. **Property 2** was still listed as "Active" as of 5/19/ 2017 even after Respondent was put on notice he was to remove the listing of **Property 2** effective August 19, 2016.
27. Respondent improperly, and without legal authority, listed and continued to list **Property 1** and **Property 2** even after proper notification from the legal owner's Attorney to cease and desist.

DISCUSSION

Respondent, knowing he had no right to do so, and without knowledge and written consent from the owner or the owner's authorized agent, extended the listing for **Property 1** effective August 8, 2016 and listing the owner of **Property 1** as ALV, Inc. when a cursory review of the deed, at the Merrimack County Registry of Deeds reveals ALV, Inc. did not own **Property 1**. **Property 1** was actually held in trust by the Clara E. Volpe Revocable trust and the John S. Argue Trust. Attorney Michael Panebianco, of Cambridge Trust Company, was serving as Trustee for the Clara E. Volpe Trust. Attorney David Craig, legal representative of Clara E. Volpe communicated with Respondent in writing on August 19, 2016 and again in October 2016, demanding Respondent immediately cease and desist his activity and involvement with the property which Respondent refused to do.

On September 27, 2016 **Property 1** was conveyed by fiduciary deed from Clara E. Volpe Trust and John S. Argue Trust to Coulter and Morrissette. Even after the property transferred from the Clara E. Volpe Trust and John S. Argue Trust to Coulter and Morrissette, Respondent continued to list **Property 1** on MLS without the knowledge and written consent of the new owners, Coulter and Morrissette. Respondent allowed **Property 1** to be open in MLS for just over four months, until February 9, 2017 at which time the listing was removed.

With regard to **Property 2**, Respondent, knowing he had no right to do so and without knowledge and written consent of the owner or owners authorized agent, extended the listing for **Property 2** effective August 8, 2016, and signing as Gary Volpe, ALV, Inc. knowing he had no right to do so as Respondent, pursuant to a shareholder meeting held in December 2015, was removed as an officer of ALV, Inc. therefore no longer had the right to act on behalf of ALV, Inc. Respondent was made aware of his removal from the corporation via letter to his legal counsel.

Respondent was informed via legal letter from Attorney David Craig, Clara E. Volpe's attorney, Respondent was to cease and desist any involvement with regard to **Property 2** as Respondent had no authority to act as a member of ALV, Inc, of which Clara Volpe is a

member. Respondent refused to abide by the cease and desist letters and subsequently allowed **Property 2** to be advertised on MLS until May 15, 2017, at which time the listing expired from MLS.

At all times Respondent 's conduct was carried out in furtherance of his trade as a licensed New Hampshire Real Estate Broker bound by NH RSA 331-A.

CONCLUSIONS OF LAW

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

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

COUNT 5: NH RSA 331-A:26, XXXI, Prohibited Conduct: *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.*

The following counts were dismissed: COUNT1, 331-A: 26, IV, COUNT 2, 331-A:26, V, COUNT 3, 331-A:26, XXVI, COUNT 4, 331-A:26, XXIX, COUNT 6, 331-A:26, XXXVI, COUNT 7, Administrative Rule REA 404.04(a).

The Respondent, a licensed real estate salesperson in the State of New Hampshire, wrongfully and **in violation of 331-A:26, XXXI** Offered real estate (**Property 1 and Property 2**) for sale or lease without the knowledge and written consent of the rightful owner or the owner's authorized agent. Respondent continued to keep the listings active on MLS even after being duly notified by the rightful owner's legal representative to remove the listings. Testimonial evidence was offered by Attorney Michael Panebianco, Trustee of the Clara E. Volpe Revocable Trust as well as

Attorney David Craig, personal attorney for Clara E. Volpe. Both testified and provided documentary evidence Respondent was not authorized to act on Mrs. Volpe's behalf during these specific transactions.

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

The Respondent is **ORDERED** to pay a fine in the amount of **One-Thousand dollars (\$1,000.00)** 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 to reimburse the Office of Professional Licensure and Certification **Three Hundred and Fifty (\$350) dollars** to cover Investigative costs pursuant to NH RSA 332-G:11 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 FURHTER **ORDERED** that the Respondent is 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 class. 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 Ninety (90) 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, 2019