

**Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301**

In The Matter Of: **Docket No.: 2015-037**
New Hampshire Real Estate Commission v. George N. Sanders, Jr.

License Nos.: 047614
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of George N. Sanders, Jr. ("Respondent" or "Mr. Sanders") in Docket Number 2015-037.

Background Information:

Matthew McCosker contacted the Commission's Investigator Kinsman Corthell complaining about Respondent for failure to provide McCosker with real estate services that were promised, failing to provide copies of all documents requested, failing to enter his property into the Multiple Listing Service ("MLS") as agreed to, failing to list McCosker's property on Respondent's website with terms and photos that were agreed to, and failing to reply to certified letters and phone calls from McCosker. On November 23, 2015, Commissioner Investigator Corthell filed a complaint against Respondent, relative to his conduct as a seller agent in various transactions with sellers Matthew McCosker, Thomas Anderson, Charles Hopkins, Sandra Stubbs, Robert and Kathy King, Craig Brandon, Brenda Vigneault, alleging violations of RSA 331-A:25-b, I, (a); 331-A:25-b, I, (b), (1); 331-A:26, II, IV, V, XIII, XXV, XXVI, XXVIII, XXIX, XXXI, XXXVI; and Rea 404.03(a). Subsequent to an investigation, on June 20, 2016, the Commission issued a Notice of Hearing for a hearing scheduled for July 19, 2016. On July 6, 2016, a Request for Continuance of the hearing was received from Respondent stating that he would be out of the area on July 19, 2016 and would not be returning until September 8, 2016 and requested the hearing to be scheduled sometime in October to allow for a reasonable amount of time to prepare for the hearing. On July 6, 2016, the

Commission requested Respondent to submit documentation to substantiate his unavailability until September 8, 2016. Respondent failed to respond to the Commission's request for documentation. Absent documentation from Respondent, the Commission granted a Continuance on July 15, 2016 and scheduled a hearing for August 16, 2016. Notice of the Continuance and the August 16, 2016 Hearing was delivered to Respondent's last resident address provided to the Commission by Respondent by US Certified Mail #70060810000324158403. Notice of this certified mail was left at Respondent's residence by the US Postal Service on July 20, 2016, and a second notice on July 26, 2016. This certified mail was returned to the Commission office as unclaimed on August 12, 2016. The Commission granted an additional Continuance on August 18, 2016 and scheduled a hearing for September 20, 2016. Notice of the Continuance and September 20, 2016 Hearing was delivered to Respondent's last resident address provided to the Commission by US Certified Mail #70060810000324155945. Notice of this certified mail was left at Respondent's residence on August 20, 2016 and returned to the Commission office on September 26, 2016. On September 23, 2016, the Commission granted a third Continuance and scheduled a hearing for October 18, 2016. Notice of the Continuance and October 18, 2016 Hearing was delivered to Respondent's last resident address provided to the Commission by US Certified Mail #70060810000324155709. Notice of this certified mail was left at Respondent's residence on September 28, 2016, and a second notice on October 5, 2013. (Exhibit 3) On Tuesday, October 18, 2016, at 10:50 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter.

Commission members present¹ were:

John G. Cronin, Esquire, Presiding Officer
Daniel S. Jones, Commissioner
Calley M. Milne, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Kinsman Corthell, the Commission's Investigator. Mr. Sanders was not present at the hearing.

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

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

Complainant Investigator Corthell's Exhibits:

Exhibit #1 – Documents from Complaint File No. 2015-037, pages 1-13.

Exhibit #2 – Documents obtained through the investigation of Complaint File No. 2015-037 by Investigator Corthell, pages 1-179.

Exhibit #3 – Respondent's Request for Continuance of Hearing and Continuances Granted and Notices of Hearings by US Certified Mail #70060810000324158403; 70060810000324155945; and 70060810000324155709.

Exhibit #4 – Letter from Jean S. Winter on behalf of her husband Craig M. Brandon

Respondent exhibits introduced:

None.

There were no witnesses present to testify at the hearing.

Delivery of Notice:

The Respondent failed to appear at the Real Estate Commission hearing scheduled for October 18, 2016 at 9:30 a.m. The Notice of Hearing was deposited for delivery by U.S. Certified Mail #70060810000324155709 on September 23, 2016, and Respondent was sent the Notice of Hearing by U.S. First Class Mail on September 27, 2016. Notice of this Certified Mail was left by the U.S. Postal Service at Respondent's last resident address provided to the Commission on September 29, 2016, and a second notice was left on October 5, 2016. The Commission determined that proper notice as required by RSA 331-A:30 was provided to Respondent. In accordance with Rea 205.11, the presiding officer declared Respondent to be in default and proceeded to hear the testimony and receive the evidence offered by the party bearing the burden of proof in this case, the Complainant New Hampshire Real Estate Commission through its Investigator Kinsman Corthell. (Ex.3, pg. 1-3)

Licensure Facts:

Respondent was first granted a real estate salesperson's license by the Commission on February 13, 1996 and a real estate broker's license on August 26, 1999. Respondent's broker license is currently suspended. At the time of the allegations, Respondent was licensed as a real estate broker, license #047614.

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Matthew McCosker contacted the Commission complaining about the Respondent who McCosker entered into a listing agreement with on March 5, 2015, to sell 196 Tower Hill Road, Hinsdale, NH. The Respondent failed to return keys when asked, provide McCosker with the services that were promised, provide copies of all documents, enter the property into the Multiple Listing Service ("MLS") as agreed to, list the property on the Respondent's website with terms and photos that were agreed to, and reply to certified letters and phone calls from McCosker. McCosker asked to be released from the contract which the Respondent refused unless he was compensated and ultimately told McCosker he would release him for \$100 if McCosker agreed not to file a complaint with the Commission. (Exhibit 2, pages 19-35)

2. The Respondent entered into an agreement to list 85 Grove Street, Claremont, NH for the owner Thomas Anderson. Anderson did not know he was signing an agreement with Respondent for one year and expected the 7% commission fee would be split 50/50 with an agent bringing in a buyer. The Respondent listed information in MLS to be a Buyer Agent ("BA") Fee of 2.5% and a Facilitator ("FA") fee of 1% and an effective date of 2/4/15 – 11/11/15. (Exhibit 2, pages 102-124)

3. Charles Hopkins was a Power of Attorney for his mother Stella Howkiewicz and signed a listing agreement with the Respondent on July 12, 2013, to sell 29 Grove Street, Claremont, NH. The Respondent entered the property into the MLS on August 3, 2013 with a BA

and FA fee of \$200. Hopkins believed the commission he was paying would have been split 50/50 with any other agent involved. (Exhibit 2, pages 125-144)

4. Sandra Stubbs signed a listing agreement with the Respondent on June 11, 2014 to sell 360 South Hemlock Road, Charlestown, NH for a 7% fee. The Respondent listed the BA fee as 2.5% and the FA fee as 1% but never discussed this with Stubbs. The Respondent posted documents on his website containing Stubb's personal credit card number. (Exhibit 2, pages 1-2)

5. The Respondent testified before the Commission at a hearing on Docket 2013-035 to having an oral agreement with Robert and Kathy King who signed a listing agreement with him for 501 Old Claremont Road, Charlestown, NH on June 19, 2013, regarding reducing the co-broke fees on MLS to \$200. The BA and FA fees were listed as \$200. The Kings never agreed to this nor had they ever discussed this with the Respondent. The Kings recall the Respondent sending them an addendum so that he could require a pre-approved letter from potential buyers. The Respondent asked the Kings to backdate the addendum however they refused and signed it on September 16, 2013. The Kings property was not entered into MLS until July 30, 2013. The Respondent testified at the hearing on Docket No. 2013-035 that the addendum was prepared upon the Commission's request for documentation since he could not provide evidence of the oral agreement. (Exhibit 2, pages 3-14)

6. Craig Brandon owns 159 Joslin Road, Surry, NH and began signing documents with the Respondent to list his home in August 2014. The Respondent entered the property into MLS on June 14, 2015 with a BA fee of 2% and a FA fee of 1%. Brandon was aware he was paying 7% to the Respondent and believed it would be split 50/50 with any other agent bringing in a buyer. The Respondent refused to list the property into MLS until Brandon provided a large amount of information to include the type of plants he had on the property. The Respondent did not appear at every showing despite the agreement he had with Brandon that he would be present regardless of the considerable distance between the property and the Respondent's residence, but claimed it was not a factor that later became a factor. The Respondent tried to convince Brandon to list the

property below market value so that a bidding war could be created and then obtain more than the asking price.

7. Brenda Vigneault signed a listing agreement with the Respondent on April 15, 2014 to list 27 Ainsworth Road, Claremont, NH. Vigneault believed the commission she was paying to be split 50/50 with anyone bringing in a buyer. Respondent entered the property in the MLS on May 27, 2014 with a BA fee of \$1,000 and a FA fee of 1%. (Exhibit 2, pages 158-173)

8. The Respondent asked his clients if they had been contacted by the Commission or if they had spoken to the Commission.

9. Complaint File No. 2015-037 was sworn to by the Commission Investigator Corthell on November 23, 2015. The Respondent signed for the complaint via certified mail on December 1, 2015. The complaint required the Respondent to provide a complete record for all transactions listed in the complaint.

10. The Respondent failed to provide any documents relating to the complaint.

11. The Respondent failed to reply to the complaint but did make a formal request under the NH Right to Know Law on December 28, 2015.

Relevant Law:

RSA 331-A:1 Purpose.

It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

RSA 331-A:2 Definitions. In this chapter:

XV. "Unprofessional conduct" means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

RSA 331-A:25-b Seller Agent; Duties.

I. A licensee engaged by a seller or landlord shall:

- (a) Perform the terms of the written brokerage agreement made with the seller or landlord.
- (b) Promote the interests of the seller or landlord including:

(1) 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.

(2) Presenting in a timely manner all offers and agreements to and from the seller or landlord, even if the real estate is subject to contract of sale.

(3) Accounting in a timely manner, during and upon termination, expiration, completion, or performance of the brokerage agreement for all money and property received in which the seller or landlord has or may have an interest.

(4) Informing the seller or landlord that such seller or landlord may be liable for the acts of the principal broker and subagents who are acting on behalf of the seller or landlord when the licensee is acting within the scope of the agency relationship.

(5) Informing the seller or landlord of the laws and rules regarding real estate condition disclosures.

RSA 331-A:26 Prohibited Conduct. The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

II. Violating any of the provisions of this chapter, or any rules adopted or order issued pursuant to this chapter.

IV. Making, printing, publishing, distributing, or causing, authorizing or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or licensee's principal, and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known of the falsity of the statements, descriptions or promises.

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.

XIII. Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal.

XXV. Failing to voluntarily furnish copies of all documents to all parties executing the documents.

XXVI. Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXVIII. Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction.

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

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.

XXXVI. Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

Rea 404.03 Copies of Written Instruments.

(a) A broker shall, after execution by all parties, deliver the original or photocopy or electronic transmission of any instruments to any party or parties executing the same without delay when:

- (1) Such instrument has been prepared by such broker or under her or his supervision;
- (2) Such instrument relates to the employment of the broker;
- (3) Such instrument pertains to the consummation of a lease, purchase, sale or exchange of real property;
- (4) Such instrument pertains to any other type of real estate transaction in which a broker participates.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

The Respondent's lack of cooperation, willingness, and interest in following the requirements of RSA 331-A and Administrative Rules Rea 100-700, and to continue to demonstrate similar

behavior with his seller clients in Docket No. 2015-037 that was ruled in violation of RSA 331-A in Docket No. 2013-035, shows fraudulent behavior between what was contractually agreed to between his clients and what was carried out. The Commission ruled that there was sufficient evidence by offer of proof to support paragraphs 5A through 5M of the Hearing Notice dated September 23, 2016, with the exception of 5C where RSA 331-A:26, II was found by the Commission to be overly broad, and 5F where there was no evidence to support that the Respondent accepted, took, or charged any undisclosed commission, rebate, or direct profit on expenditures made for the principal, and therefor did not violate RSA 331-A:26, XIII.

1. Respondent failed to perform the terms of the written brokerage agreement and promote the interest of seller client Matthew McCosker by failing to provide services as agreed to in the written brokerage agreement, failed to enter the property in the MLS as agreed to, and failed to list the property on the Respondent's website with the terms and photos that were agreed to. Respondent also failed to appear for showings of property listed for Craig Brandon despite the agreement he had with Mr. Brandon that he would be present for all showings. Therefore the Commission found Respondent in violation of RSA 331-A:25-b, I, (a) and (b). (Notice of Hearing, paragraphs 5A and 5B).

2. Respondent testified before the Commission at a hearing on Docket No. 2013-035 that he had verbal permission from Robert and Kathy King, who signed a listing agreement with Respondent for 501 Old Claremont Road, Charlestown, NH on June 19, 2013, to reduce the co-broke fees on the MLS to \$200, but the Kings were not aware of the reduction in co-broke fees. Therefore the Commission found Respondent in violation of RSA 331-A:26, IV and V. (Notice of Hearing, paragraphs 5D & 5E)

3. Respondent failed to furnish copies of all executed documents to his seller client Matthew McCosker for property located at 196 Tower Hill Road, Hinsdale, NH, in violation of RSA 331-A:26, XXV and Rea 404.03(a). (Notice of Hearing, paragraphs 5G and 5M)

4. Respondent breached his fiduciary duty to his seller clients by not providing services as agreed to. (Notice of Hearing, paragraph 5I)

5. Respondent failed to reply to Complaint File No. 2015-037, submit documents requested by Commission Investigator Corthell, and attend the hearing on Docket No. 2015-037, in violation of RSA 331-A:26, XXIX.

6. Respondent failed to list Matthew McCosker's property on Respondent's website with the terms agreed to, and listed other properties on the MLS with reduced co-broke fees without the authorization of the owner, in violation of RSA 331-A:26, XXXI, XXXVI, and XXIX.

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission finds that the Respondents' actions indicate that they failed to "meet and maintain the minimum standards which promote public understanding and confidence in the business of real estate brokerage" (RSA 331-A:1 Purpose) and has voted to order the following:


It IS **ORDERED** that Respondent's real estate broker's license be hereby revoked.

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

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 thirty (30) days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER **ORDERED** that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



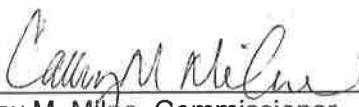
John G. Cronin, Esquire, Presiding Officer

1/17/17
Date



Daniel S. Jones, Commissioner

1/17/17
Date



Calley M. Milne, Commissioner

1/17/2017
Date



Paul A. Lipnick, Commissioner

1-17-17
Date

*\ William E. Barry, Commissioner, (case evaluator), recused.