

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

In the Matter of:

NHREC v. ROLAND LABRECQUE

Docket No. 2018-008

License No: 070171

(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. Roland Labrecque (“Respondent”) in Docket Number 2018-008 held on September 18, 2018.

BACKGROUND INFORMATION

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 salesperson 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: 26-

Prohibited Conduct, XXIX: Unprofessional conduct defined in RSA 331-A:2, XV 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 Respondent engaged in Unprofessional Conduct when he failed to publish an advertisement promised to Mr. and Mrs. Jerry Jordan, advertising their property in the Berlin Daily Sun, which resulted in their release from the exclusive listing contract, which was contested by Respondent's Principal Broker, in violation of NH RSA 331-A:26, XXIX as defined in NH RSA 331-A:2, XV.

Testimony was received at the hearing from Jerry and Carolanne Jordan (original complainants), Erin Poirier, Roland "Chip" Labrecque (Respondent), John Trumbull and Kathy Trumbull.

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

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.

Daniel Jones, Presiding Officer/Chair;

Richard Hinch, Commissioner;

Susan Doyle, Commissioner

John Cronin, Esquire, Commissioner (Recused/Evaluator)

Paul Lipnick, Commissioner, Absent

COMPLAINANT'S EXHIBITS:

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

1. Complaint submitted by Jerry and Carolanne Jordan
2. Exclusive Listing Agreement
3. Change of Terms and Conditions dated September 19, 2017
4. Change of Terms and Conditions dated February 6, 2018
5. E-Mail Exchange between Kathy Trumbull and Roland Labrecque dated February 22, 2018
Text Message Exchange between John Trumbull and Roland Labrecque dated February 24, 2018
6. E-Mail Exchange between Carolanne Jordan and Roland Labrecque dated February 24, 2018
7. Change of Terms and Conditions (Release from Exclusive Right to Sell) dated February 24, 2018

8. Communication from John Trumbull to Mr. and Mrs. Jordan dated February 28, 2018
9. Copy of Advertisement dated February 29, 2018
10. Response from Roland Labrecque dated April 27, 2018
11. Response from John Trumbull dated May 1, 2018
12. Change of Terms and Conditions dated June 6, 2018
13. Additional Statements received from John Trumbull on August 5, 2018
14. Property History Detail

RESPONDENT'S EXHIBITS.

- A. EXIT Realty Trailblazer's MLS Listing
- B. MLS Activity Report on EXIT Realty Trailblazer's listing
- C. EXIT Realty Trailblazer's policy excerpt.
- D. ReMax Northern Edge Realty's MLS listing.
- E. On line listings of property
- F. Notification to Danoski from NEREN re: non-compliance.
- G. Email from Trumbull to Danoski March 2, 2018 indicating Labrecque not authorized to terminate listing.

LIST OF WITNESSES:

Jerry Jordan

Carolanne Jordan

Erin Poirier

Roland "Chip" Labrecque

John Trumbull

Kathy Trumbull

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 May 22, 2015 with no disciplinary history. Respondent's license was in good-standing and is currently inactive with an expiration of 5/22/2019.
2. An original complaint was received by the Commission office on March 27, 2018 from Complainants Jerry and Carolanne Jordan. The complaint alleges Respondent violated NH RSA NH RSA 331-A: 26, XXVI, XXIX, and XXXVI.
3. On or about July 19, 2017, Jerry and Carolanne Jordan entered into an Exclusive Listing Agreement with Exit Realty Trailblazer's for the sale, lease, or exchange of property located at 199 Collins Street, Berlin, NH in the amount of \$119,000.
4. John Trumbull ("Trumbull") is the principal broker for Exit Realty Trailblazers.
5. Respondent was a licensed real estate salesperson working with Exit Realty Trailblazers under Trumbull.

6. Respondent signed the Jordans to the Exclusive Listing Agreement for the sale, lease or exchange of property located at 199 Collins Street, Berlin, NH.
7. On September 19, 2017, the Jordans executed a Change of Terms and Conditions/Status Update form reducing the sale price of their home from \$119,000 to \$115,000.
8. The Jordans report since they signed the Exclusive Listing Agreement with Respondent, there was no activity on their home.
9. On February 6, 2018 the Jordans executed another Change of Terms and Conditions / Status Update form reducing the sale price of their home from \$115,000 to \$107,000.
10. The Jordans report there had been little to no advertising or marketing of their home between July 19, 2017 and February 6, 2018.
11. On or about February 22, 2018 the Jordans spoke with Respondent and demanded to know why their home had not been advertised. Through conversation the Jordans and Respondent reached an agreement an advertisement for Complainants property would run in the local newspaper that weekend.
12. On February 22, 2018 Respondent submitted an advertising proof to Kathy Trumbull, Owner/Manager of Exit Realty Trailblazers. This proof was reviewed by Kathy and she appropriately requested edits to conform to the manner in which Exit Realty Trailblazers advertises.
13. On February 22, 2018 there were several text messages exchanged between Respondent and Kathy in which Respondent was not interested in the edits recommended by Kathy. At no time during the text messages did Kathy refuse to allow Respondent to run the ad, she merely made recommendations for edits.

14. Respondent informed the Jordans the advertisement would not run in the local paper as originally promised by Respondent.
15. On February 22, 2018 Respondent text messaged the Jordans to advise them the ad would not run. During this text message string, on February 24, 2018 at 12:13 PM the Jordans requested Respondent take their home off the market. Respondent responded by texting, "*Ok, I will let my broker know that's what you want because he has to be the one that does it. "Chip".*" At 1:07 PM, same day, Respondent texted the Jordans : "*I just tried to call you, in order to release your listing I need both of you to sign a paper. I would like to do this today if possible.*"
16. At no time does Respondent inform the Jordans his broker refused to allow them to be released. Instead, nearly one hour after informing the Jordans his broker needs to do this, Respondent texts the Jordans and explains they need to sign the paperwork today.
17. On February 24, 2018 Respondent informs the Jordans if he terminates them they can go elsewhere. Respondent then writes, "*And I terminated it.*"
18. On February 24, 2018, Respondent brought a Change of Terms and Conditions / Status Update to the Jordans for their signature. The Jordans checked the box reading, "*Seller is hereby released from the Exclusive Right to Sell Listing Agreement.*" The Jordans and Respondent signed the form.
19. On February 24, 2018, prior to the execution of the release, Respondent sent a text message to Trumbull informing Trumbull of Complainants desires to be released from their contract.
20. During this text exchange, Trumbull wrote, "*Why do they want to do that? They don't have an automatic right to terminate their listing agreement.*" Respondent responded "*Because I*

promised them an ad in the paper this week and now that is not happening. Chip.” Trumbull replied, “That is your choice. No one is preventing you from running an ad.”

21. At no point in this text string provided by Trumbull did Trumbull write Respondent was not allowed to release the Jordans from the Exclusive Listing Agreement. He merely said the Jordans don't have an automatic right to terminate their listing agreement.
22. On February 24, 2018 the Jordans believed Respondent had the right to terminate the listing agreement as they had met in person with Respondent to sign the release. At no time did Trumbull reach out to the Jordans, being aware of the ongoing situation, to resolve the matter or inform the Jordans he would not authorize Respondent to release them from the Exclusive Listing Agreement.
23. On February 24, 2018 at 5:45 PM, Respondent terminated the listing from MLS.
24. On February 25, 2018 Respondent resigned his employment with Exit Realty Trailblazers.
25. On February 25, 2018 at 4:59 PM, Trumbull returned the listing to active, and never notified the Jordans on this date that he re-activated their listing.
26. On February 27, 2018 when Trumbull was reviewing the Jordans file, he discovered the signed termination of listing form executed by Respondent and the Jordans.
27. On February 28, 2018, four days after Respondent terminated the listing in writing and on MLS Trumbull drafted and mailed a letter to Jordans informing them Respondent was no longer associated with Exit Realty Trailblazers.
28. Trumbull informed the Jordans the listing is still “active” with his company until July 20, 2018. He further wrote, *“I understand Roland represented to you that he was to terminate your listing last weekend; however, he did not have authority to do so.”*

29. Immediately upon being released, the Jordans re-listed their property with another real estate firm in Berlin, NH.
30. When the Jordans signed with the new agency they agreed to a 6% commission with that new firm.
31. In the February 28, 2018 letter to the Jordans Trumbull informed them he was assigning a new salesperson, Erin Poirier, to the listing.
32. As of June 5, 2018, Erin Poirier, the new sales agent Trumbull assigned to Complainants listing, had made no contact with Complainants about the status of their home.
33. Erin Poirier ("Poirier") reported she was advised by her boss, Trumbull, not to work on the Jordans listing as a complaint had been filed with the Real Estate Commission.
34. Trumbull admits he never communicated to the Jordans the fact that Respondent had no authority to release them until AFTER the Jordans executed the release from the listing.
35. Trumbull admits he was aware of the situation unfolding as he communicated with Respondent on February 24, 2018 and was informed of the Jordans desire to be released from the Exclusive Listing Agreement.
36. June 6, 2018 Trumbull agreed to release the Jordans from the Exclusive Listing Agreement.
37. Trumbull admits he should have called Complainants but he did draft a letter on February 28, 2018.
38. Trumbull believes it was also incumbent on the Jordans to call him if they had any issues.
39. The Jordans filed their complaint with the Real Estate Commission which was received on March 27, 2018, almost one month after they executed the original release.

40. During the time frame of 3/1/2018 and 6/9/2018, the Jordans were afraid to actively market their house out of fear of paying two commissions amounting to approximately 13% (7% to Exit Realty Trailblazers and 6% to RE/MAX Northern Edge Realty).

The evidence and testimony established that the Respondent violated the following statutes in this regard: NH RSA 331-A: 26, XXIX- Unprofessional Conduct as defined in NH RSA 331-A:2, XV.

DISCUSSION

At the time of the complaint, Trumbull was the Principal Broker for EXIT Realty Trailblazers.

Respondent was a New Hampshire real estate salesperson in good standing, working under Trumbull.

Erin Poirier is also a licensed New Hampshire real estate salesperson who, at the time of the complaint, was working under Trumbull.

The Jordans listed their home with EXIT Realty Trailblazers on or about July 19, 2017. Between July 19, 2017 and February 24, 2018, the home located at 199 Collins Street, Berlin, NH was continuously listed on MLS. There appears to have been some activity via on-line resources, but no showings occurred during this time frame.

The evidence demonstrates Respondent promised the Jordans an advertisement in the local paper for a specific time frame. That advertisement didn't run. Kathy Trumbull, the manager of EXIT Realty Trailblazer's Realty did not believe the advertisement conformed to the standards set by

EXIT. Respondent on the other hand did not agree and felt the advertisement should run. While Kathy Trumbull never forbade Respondent from running the ad, Respondent felt he couldn't because the paper wouldn't run it without Kathy's approval.

On February 24, 2018 Respondent informed the Jordans their home would not appear in the local newspaper advertisement as he promised them. The Jordans demanded they be released from their contract as they were fed up with the inactivity on their home. Respondent appropriately informed the Jordans his broker would have to release them.

The evidence shows Respondent did inform Trumbull of the Jordans wishes. Trumbull replied to the text message from Respondent and at no time made it clear Respondent could NOT release the Jordans. Instead, Trumbull replied, "*Why do they want to do that? They don't have an automatic right to terminate their listing agreement.*" Respondent responded, "*Because I promised them an ad in the paper this week and now that is not happening.*" Trumbull replied, "*That is your choice. No one is preventing you from running an ad.*"

Approximately 52 minutes after Respondent told the Jordans he would have to inform the Broker, Respondent texts the Jordans, "*I just tried to call you. In order to release your listing I need for both of you to sign a paper. I would like to do this today.*"

Late in the afternoon on February 24, 2018 Respondent and the Jordans signed the Release of Exclusive listing agreement. Respondent then informed the Jordans they are free to sign with another firm.

On February 24, 2018 at 5:45 PM, Respondent admits he terminated the Jordans listing on MLS.

On February 25, 2018, Trumbull admits he saw the listing was terminated and created an active listing for the Jordans.

It wasn't until 4 days after the Jordans believed they were rightfully released from their contract, Trumbull drafted a letter and reports he mailed the letter out on February 28, 2018.

The Jordans report they did not receive the letter until the following Saturday March 3, 2018 and had already signed on with RE/MAX on March 2, 2018, the day before the Jordans testified they received Trumbull's letter.

The evidence demonstrates the first recorded entry to MLS with the new firm was on March 2, 2018 at 1:12 PM by RE/MAX Northern Edge Realty, LLC.

The evidence also shows Trumbull did not notify RE/MAX until after the property was listed by RE/MAX. Specifically, the evidence demonstrates Trumbull emailed Mark Danoski at RE/MAX on March 2, 2018 at 2:43 PM to inform Mark EXIT Realty Trailblazers still had an active listing. Mark then responded and included a copy of the release they executed with Respondent. Trumbull, at 4:03 PM responds, "*Chip is not authorized to terminate a listing. I have informed the sellers of this.*"

On March 2, 2018 Mark Danoski received a message from NEREN informing him the listing for 199 Collins Street is not in compliance with NEREN's NAR rules.

As of March 3, 2018 the Jordans were caught in the middle, between Trumbull and the new listing agency, RE/MAX. It is fact the listing was terminated on February 24, 2018 by Respondent. Trumbull became aware of this on February 25, 2018 and took it upon himself to re-activate the listing, knowing the Jordans wanted out. Trumbull made no effort to communicate with the Jordans until drafting his letter on February 28, 2018; a letter the Jordans testified they received March 3, 2018.

During this time frame, and in the letter drafted by Trumbull, a new agent, Erin Poirier, was assigned to the case by Trumbull.

Poirier testified she found out she was assigned to the case when she reviewed her case list. She further testified Trumbull never told her she was assigned the case. When Poirier realized she had the case she had a discussion with Trumbull. She testified during this conversation she was told by Trumbull not to do anything with the case because there is an ongoing investigation due to a complaint filed by the Jordans. Poirier testified she did as she was instructed by the Respondent.

Poirier testified she left the employ of EXIT Realty Trailblazer's realty around the end of June, 2018.

Trumbull denied Poirier's testimony. The Commission finds Poirier's testimony to be credible based on the fact she told the NHREC Investigator on June 5, 2018 similar information, at a time she was still employed by Trumbull.

Trumbull testified he never authorized Respondent to release the Jordans from the exclusive listing agreement. We believe this to be true. Respondent admits he was not told he could or couldn't release the Jordans. Respondent points back to the statement he told the Jordans his broker would need to release them. He further points to the text message he sent Trumbull.

Trumbull could have said no, but he didn't. Therefore, Respondent believes he was given the authority to release the Jordans.

Regardless, it is clear at no time were the Jordans ever made aware Trumbull was opposed to releasing them nor did Trumbull actually object to the release to either Respondent or the Jordans until four days after the release had been executed. As a result, when Respondent was

representing EXIT Realty Trailblazer's and he executed the release of exclusive listing agreement, under either apparent authority or actual authority, the Jordans had no way of knowing this release was not authorized. In fact Trumbull was aware of the Jordans desires, and Trumbull's silence on the matter to the Jordans would indicate either actual or apparent authority. Under both theories, the Jordans believed they were released from their exclusive listing contract and went out and retained a new real estate firm.

By all accounts, as a result of the advertisement not running as promised, the Jordans sought and were granted a release of exclusive listing agreement by Respondent. The communication difficulties between Respondent and Trumbull with regard to the release from the exclusive listing agreement seem to have exacerbated the situation leading to the Jordans filing a complaint

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

The Respondent, a licensed real estate salesperson in the State of New Hampshire, engaged in unprofessional conduct pursuant to NH RSA 331-A: 26, XXIX as defined in NH RSA 331-A:2, XV when he promised the Jordans he would run an ad in the local newspaper and failed to do so, causing the Jordan's to demand a release of exclusive listing agreement, which Respondent

honored. Subsequent to the release the Jordans were informed by Trumbull Respondent had no authority to release them from their exclusive agreement and as such, the Jordans are not released from their exclusive listing agreement. The Jordans signed with RE/MAX on March 2, 2018 and were then listed with two agencies causing them financial hardship. Respondent failed to treat the Jordans in an honorable and ethical manner.

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:

The Respondent is **ORDERED** to meaningfully participate in **two (2) 3-hour commission approved continuing education classes**. Specifically one 3-hour continuing education class in **Ethics** and one 3-hour continuing education class in **Agency relationships** prior to returning to active status. All continuing education classes **must be taken in a classroom setting** and are in addition to the hours and classes required by the commission for renewal of licensure, whether active or inactive, and shall be completed prior to Respondent reactivating his salesperson license.

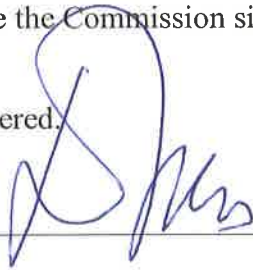
IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Order shall constitute unprofessional conduct pursuant to RSA 331-A: 26, XXIX and constitute separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

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.



Daniel Jones, Presiding Officer
Real Estate Commission Chair



Date