

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of: David O'Rourke

Docket # 2019-005, 2019-053

Violations of NH RSA 331-A: 25-b (Seller Agent Duties), 331-A: 26, XXVIII
(Breach of Fiduciary Duties), 331-A: 26, XXIX (Unprofessional Conduct)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission ("Commission") and David O'Rourke ("Respondent"), a real estate principal broker licensed in the State of New Hampshire, agree to resolve allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to NH RSA 331-A:28, RSA 331-A:29, I and RSA 541-A:31, V, and if such proceeding were commenced, the allegations against the Respondent would be:
2. Respondent, a licensed principal broker in the State of New Hampshire, entered into an exclusive listing agreement with Amy Baker ("Baker") to sell Baker's home located in Easton, NH (2016). During the transaction, Respondent unintentionally violated NH RSA 331-A: 25-b (Seller Agent Duties), 331-A: 36,

XXVIII (Breach of Fiduciary Duties), and 331-A: 26, XXIX (Unprofessional Conduct).

3. Respondent acknowledges that this conduct set forth in paragraph 2 constitutes grounds for the Commission to impose disciplinary sanctions against Respondent pursuant to the New Hampshire Real Estate Practice Act, NH RSA 331-A and New Hampshire Real Estate rules and regulations.

WHEREFORE, the Respondent consents to the Commission imposing the following discipline pursuant to RSA 331-A: 28. I:

- A. Violation of NH RSA 331-A: 25-b (Seller Agent Duties): **Two Thousand Dollar (\$2,000)** administrative fine due and payable within ninety (90) days upon execution of this *Settlement Agreement*, with a check made payable to: Treasurer, State of New Hampshire.
- B. Violation of NH RSA 331-A: 26, XXVIII (Breach of Fiduciary Duties): **One Thousand Dollar (\$1,000)** administrative fine due and payable within ninety (90) days upon execution of this *Settlement Agreement* with a check made payable to: Treasurer, State of New Hampshire.
- C. Violation of NH RSA 331-A: 26, XXIX (Unprofessional Conduct): **Two Thousand Dollar (\$2,000)** administrative fine due and payable within ninety (90) days upon execution of this *Settlement Agreement* with a check made payable to: Treasurer, State of New Hampshire.

- D. Respondent further agrees to attend a **3-hour commission approved continuing education class in the area of ethics within ninety-(90) days of the effective date of this Settlement Agreement.** The ethics course must be taken in a classroom setting unless only offered on-line due to the current declared NH State of Emergency. These hours shall be 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 *Settlement Agreement*. Within fifteen- (15) days of completing these hours, Respondent shall notify the Commission and provide the original certificate of completion.
- E. As spelled out in A-C, the total administrative fine assessed is Five Thousand Dollars (\$5,000).
- F. The Commission may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Commission regarding Respondent's license. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall institute unprofessional conduct and shall serve as a separate and sufficient basis for further disciplinary action by the Commission.
- G. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Commission based upon the misconduct described above. However, the Commission may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondents in the future.

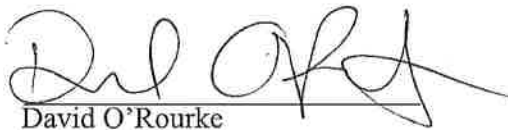
- H. This *Settlement Agreement* shall become a permanent part of the Respondent's file, which is maintained by the Commission as a public document.
- I. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to Respondent other than those terms and conditions expressly stated herein.
- J. The Commission agrees that in return for Respondent executing this *Settlement Agreement*, the Commission will not proceed with the formal adjudicatory process based upon the facts described herein.
- K. Respondent understands that Respondent's action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
- L. Respondent has had the opportunity to seek and obtain the advice of an attorney of Respondent's choosing in connection with Respondent's decision to enter into this *Settlement Agreement*.
- M. Respondent understands that the Commission must review and accept the terms of this *Settlement Agreement*. If the Commission rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this *Settlement Agreement* has prejudiced their right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Commission.
- N. Respondent certifies that Respondent has read this document titled *Settlement Agreement*. Respondent understands that Respondent has the right to a formal

adjudicatory hearing concerning this matter and that at said hearing Respondent would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on Respondent's own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, quality and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, Respondent waives these rights as they pertain to the misconduct described herein. This *Settlement Agreement* shall take effect as an Order of the Commission on the date it is signed by an authorized representative of the Commission.

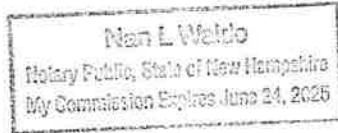
FOR RESPONDENT

I, David O'Rourke, have reviewed the foregoing Settlement Agreement settling misconduct allegations pending against me and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this *Settlement Agreement*. Further, David O'Rourke knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated:


David O'Rourke
Respondent

On this 23rd day of February A.D. 2020 personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.



Nan L. Waldo
Justice of the Peace/Notary Public

My commission expires: June 24, 2025

FOR THE COMMISSION

Dated: 3/5/21

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