

**STATE OF NEW HAMPSHIRE  
OFFICE OF PROFESSIONAL  
LICENSURE AND CERTIFICATION**

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**REAL ESTATE COMMISSION**

**In Re: Elise Labbe,  
Rea. Salesperson  
License #077147**

Docket No.: 2022-007

**NOTICE OF DECISION AND  
ORDER ON DISCIPLINARY HEARING  
OF 08/16/22**

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**I. ATTENDEES:**

**Steven F. Hyde, Esq., Commission Chair  
Paul Lipnick, Commissioner  
Matthew W. Cabana, Commissioner  
Ralph Valentine, Commissioner  
Susan Doyle, Commissioner (recused)<sup>1</sup>  
Nikolas K. Frye, Esq., Presiding Officer for the Commission  
Bobbie Mayo, Commission Administrator  
Dawn Couture, Commission Administrator  
Elise Labbe, Licensee  
Matthew Johnson, Esq., Counsel for Licensee  
Marissa Schuetz, Esq., Hearing Counsel  
Eric Goulet, OPLC Investigative Paralegal and Witness**

**II. CASE SUMMARY/PROCEDURAL HISTORY:**

On or about 01/19/21, the New Hampshire Real Estate Commission (“Commission”) initiated a complaint alleging Elise Labbe (“Licensee”) appeared to have conducted multiple transactions with an expired license between 11/23/19 and 01/19/21. On or about 01/15/22, after further investigation into the matter, Michael Porter, Investigations Bureau Chief for the New Hampshire Office of Professional Licensure and Certification filed an additional complaint against the Licensee, alleging the Licensee had,

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<sup>1</sup> Commissioner Doyle as the Evaluating Commissioner was recused and sequestered from and took no part in the deliberation of this matter.

while her New Hampshire salesperson license was expired license, 1) engaged in multiple other transactions between 11/23/19 and 01/19/21 than previously known; 2) omitted the newly discovered transactions in her response to a request for information from the Commission; 3) held herself out to be qualified and/or engaged in real estate brokerage activity; and 4) failed to keep the Commission informed of changes to her contact information as required. The Commission voted on 05/17/22 to issue a Notice of Adjudicative Hearing for a disciplinary action against the Licensee based upon the complaints. The Commission held a disciplinary hearing in this matter on 08/16/22. This Notice of Decision and Order on the disciplinary hearing follows.

### **III. EVIDENCE PRESENTED:**

The Commission received and fully admitted or excluded the following exhibits submitted by Hearing Counsel. The Commission labels these Exhibits as follows:

1. Report of Investigation, dated 04/04/22 **FULLY ADMITTED OVER OBJECTION<sup>2</sup>, EXCEPT THE PORTION OF THE REPORT LABELED “VI. ANALYSIS”, HC 0015 – HC 0025.<sup>3</sup>**
2. Initial Complaint, dated 01/27/21 **FULLY ADMITTED.**
3. Licensee’s Initial Response, dated 03/18/21 **FULLY ADMITTED AS EXHIBIT A.<sup>4</sup>**
4. Second Complaint, dated 01/25/22 **FULLY ADMITTED.**
5. Second Response, dated 02/02/22 **FULLY ADMITTED.**
6. Interview of Licensee on 03/28/22 **WITHDRAWN BY HEARING COUNSEL.**
7. New Hampshire Real Estate Commissioners’ Memo with enclosure, dated 12/03/20 **WITHDRAWN BY HEARING COUNSEL.**
8. New Hampshire Real Estate Commission Meeting Minutes, dated 01/19/21 **FULLY ADMITTED.**
9. New Hampshire Real Estate Commission Salesperson Application, dated 02/26/21 **FULLY ADMITTED.**
10. NEREN MLS Listing for Licensee **FULLY ADMITTED.**

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<sup>2</sup> Licensee argued the exhibit should be excluded because it is unduly repetitious of Eric Goulet’s testimony and contains legal conclusions as to the ultimate determinations of whether the Licensee is guilty of misconduct.

<sup>3</sup> The Commission had received Hearing Counsel’s Exhibits 1-13 as filed before the hearing. Based upon that information, the Presiding Officer determined that Exhibit 1 was material and relevant and not *unduly* repetitious and thus should be admitted. The Presiding Officer instructed the Commission that it could not consider the legal analysis contained the report of investigation in deciding this matter.

<sup>4</sup> This was originally filed as Hearing Counsel’s Exhibit 3, but Hearing Counsel never moved to submit it as a full exhibit. Licensee moved to submit it as part of her case-in-chief. Hearing Counsel made no objection. Thus, the Commission re-labels it Exhibit A.

11. Records of compensation paid to Licensee **FULLY ADMITTED.**
12. Records of unlicensed transactions by Licensee **FULLY ADMITTED.**
13. Certificate of good standing **FULLY ADMITTED.**

The Commission received and fully admitted or excluded the following exhibit moved by Licensee.

The Commission labels the exhibit as follows:

- A. Licensee's Initial Response, dated 03/18/21 **FULLY ADMITTED**

The Commission received sworn testimony from the following witness(es):

1. Eric Goulet, OPLC Investigative Paralegal (called by Hearing Counsel)
2. Elise Labbe, Salesperson and Licensee (called by Hearing Counsel)

#### **IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:**

The issues presented in this disciplinary adjudicatory hearing are as follows: 1) whether Licensee violated RSA 331-A:26, II (*See* RSA 331-A:18, IV, RSA 331-A:26, VI, RSA 331-A:26, XXIII, RSA 331-A:26, XXIX, and/or RSA 331-A:34) on one or more occasions when, between 11/23/19 and 01/26/21, she conducted multiple real estate transactions, assisted clients in a salesperson capacity, and received a portion of related commissions with an expired license; 2) whether Licensee violated RSA 331-A:26, VI on one or more occasions when, between 11/23/19 and 01/26/21, she conducted multiple real estate transactions, assisted clients in a salesperson capacity, and received a portion of related commissions with an expired license; 3) whether Licensee violated RSA 331-A:26, XXIII on one or more occasions when, between 11/23/19 and 01/26/21 she conducted multiple real estate transactions, assisted clients in a salesperson capacity, and received a portion of related commissions with an expired license; 4) whether Licensee violated RSA 331-A:26, XXIX on one or more occasions when, between 11/23/19 and 01/26/21, she conducted multiple real estate transactions, assisted clients in a salesperson capacity, and received a portion of related commissions with an expired license; 5) whether Licensee violated RSA 331-A:26, II (*See* RSA 331-A:34) and/or RSA 331-A:26, XXIX on one or more occasions when, between 11/23/19 and 01/26/21, she advertised herself as engaging in real estate brokerage activity on New England Real

Estate Network or engaged in real estate brokerage activity and held herself as qualified to do so, or called herself a real estate salesperson, real estate broker, or real estate licensee for real estate transactions she conducted; 6) whether the Licensee, between 11/23/19 and 01/26/21, failed to keep the Commission informed of her change in current resident address, mailing address, email address, contact telephone number(s), work location address, legal name, firm officers or partners, or trade names, as required by Rule 404.02, in violation of RSA 331-A:26, II and/or RSA 331-A:26, XXIX; and 7) if any of the allegations are proven, whether and to what extent, Licensee should be subjected to one or more of the disciplinary sanctions authorized by RSA 331-A: 28. *See* Notice of Hearing at II(c). Pursuant to Rule 205.14, Hearing Counsel has the burden of proving her case by a preponderance of the evidence. The credible evidence presented at the hearing allows the Commission to find the following facts.

#### **A. HEARING COUNSEL’S CASE-IN-CHIEF**

##### **1. Eric Goulet, OPLC Investigative Paralegal**

Eric Goulet began his testimony by explaining he was the OPLC Investigative Paralegal assigned to this matter. His testimony revealed that the basic allegations against the Licensee were that between approximately 11/23/19 and November of 2020 she practiced as a real estate salesperson while her license was expired. He stated the Commission first learned of the allegations when the Licensee reached out to OPLC in November of 2020 requesting guidance on what she should do about her expired license.<sup>5</sup> According to his testimony, the Licensee provided a response to the Commission concerning the allegations. Inspector Goulet relayed that the Licensee’s initial response was that she was involved in five transactions while her license was expired, and she later confirmed that number during an interview he

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<sup>5</sup> When viewed in conjunction with Investigator Goulet’s testimony, Exhibit 2 at HC 0028-29 shows on 11/17/20, OPLC received a letter from the Licensee explaining her situation with an application for renewal. In the letter submitted with her application, the Licensee acknowledged her license lapsed on 11/23/19 and since that time she had “continue[d] to work throughout 2020 and closed on... [5 properties]”. Exh. 2. The Licensee’s testimony covered the details of her explanation in the letter.

conducted with her. Inspector Goulet clarified; however, that after receiving information and documentation pertaining to the matter from the Licensee's broker, Maurice Robichaud, he later learned the Licensee was involved in four additional transactions while her license was expired.

Inspector Goulet was cross-examined as to whether he knew if the Licensee received a mailed notification from the Commission to renew her license in 2019, pursuant to RSA 331-A:19, and answered he did not. He also agreed during cross examination that he had no reason to believe that the Licensee did not meet the requirements of licensure as far back as March of 2020, the Commission had granted the Licensee a license in 2021, and the Licensee has no disciplinary history of which he was aware.

## **2. Elise Labbe, Licensee**

The next witness to testify for Hearing Counsel was the Licensee. The Licensee began her testimony by explaining the allegations in this matter relate to her second renewal cycle as a New Hampshire real estate salesperson, which occurred in November of 2019. She testified that in March of 2020, after having spoken with work colleagues about their renewal applications, she realized she was late in submitting hers and her license had "lapsed". She stated that she then completed her continuing education courses and submitted her application and fee for renewal to the Commission sometime in March of 2020.<sup>6</sup> According to the Licensee's testimony, she did not realize that her license had not been renewed until November of 2020, when she learned from a representative from Zillow that the reason one of her clients could not post a review for her was that her license showed as expired.

The Licensee next discussed the efforts she made to address her license status after she learned of it in November of 2020. Her testimony revealed that she went to the OPLC website to find information as to how to correct the problem. She asserted that she had also emailed multiple individuals at OPLC to learn what she needed to do to rectify the problem. *See also* Exh. A. She indicated that it took a while to

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<sup>6</sup> The Licensee also testified that she submitted the required late fee with this application.

receive a response that was helpful. According to her, that response indicated she should appear at the next regular meeting of the Commission to explain the situation. The Licensee acknowledged during her direct testimony that she did not stop conducting real estate transactions after she learned from the Zillow representative that her license appeared to be expired. *See also* Exhs. 11 and 12. She also agreed she was required to know the Commission rules as they pertain to renewal but clarified that in her mind her having an expired license “was not a problem”. She viewed it as a “clerical error.”

The Licensee was next questioned by her counsel. Under his direction, she began by testifying that in 2019 she did not receive a postcard from the Commission or OPLC notifying her that she needed to renew her license. She then shifted her testimony to discuss the four transactions she had not initially reported to the Commission. She explained that she was not trying to hide those transactions from the Commission and had simply viewed her work in relation to them as ministerial. *See also* Exh. A. For two of those four transactions, she testified all negotiations and contract work were completed, and the parties to the transaction were just waiting on the title company and lenders to provide a closing date. *See also Id.* She stated all four of the transactions were all disclosed in the paperwork provided to the Commission by her broker, Maurice Robichaud.

The Licensee then provided context to the Commission as to why she did not realize her license was expired until November of 2020. She testified that in addition to not receiving a mailed renewal notice from the Commission, she had multiple familial issues that weighed heavily on her mind between the late summer of 2019 through March of 2020. She stated the first time she realized there was an issue was during a conversation with an agent in her office who had not renewed yet. She testified that this prompted her to immediately complete all the necessary continuing education coursework and paperwork for renewal and submit it to the Commission in March of 2020. *See also* Exh. A. According to her testimony, she sent the paperwork to 1231 Fruit Street in Concord, New Hampshire because this is the

address that came up when she “googled” the Commission online. She explained that she believed her license had been renewed because her application had never been returned as “undelivered” and she had received no follow-up from the Commission. The Licensee testified that she had no indication from March of 2020 onward that she was not renewed until she communicated with the Zillow representative in November of 2020. The Licensee’s testimony revealed that after speaking with the Zillow representative, she made efforts to contact the Commission and get herself on the Commission’s November agenda to address the matter. She explained, however, that the earliest the Commission could accommodate her request to appear on the agenda was January of 2021.<sup>7</sup>

The Licensee’s testimony next shifted to discussing her level of engagement in three of the other nine transactions in which she had admitted to being involved during the period her license was expired. She testified that the Tate Road transaction closed around Thanksgiving 2020 and the parties were awaiting on scheduling a closing date. She did not believe she had engaged in the practice of real estate in assisting on that transaction. With respect to the 202 Elmwood transaction, the Licensee explained that the parties to the transaction had engaged in all the negotiation on their own and she had never listed it on MLS. She said she only “walked” her clients through doing the contract. Finally, the Licensee stated that with respect to 161 Ferry Street, she had gone through all negotiations and received the clear to close before her license had expired. She explained the only reason that the transaction closed later was that the buyer and seller asked for a late closing date. She described herself as having engaged in no “broker activity”<sup>8</sup> on this transaction during the relevant period that her license was expired. She testified her

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<sup>7</sup> The Licensee testified she was told she could not be on the agenda in November because the request was made too close in time to the November meeting. The Licensee could not appear at the Commission’s December meeting because it was cancelled. *See also* Exh. A.

<sup>8</sup> *See* RSA 331-A:2, III.

broker had overtaken responsibilities on this transaction, as well as all others that were outstanding, once he learned her license was expired.

The Licensee concluded her testimony under the direction of her counsel by expressing her remorse for the situation. She reemphasized that she had no intent to hide any transactions from the Commission and reminded it that she had subsequently obtained a new real estate salesperson license by following the requirements for becoming a new agent. She explained that she has learned from the situation the importance of asking for help when needed and reflected that she could have handled the matter differently. She stated that her firm has since put new processes in place to help avoid situations like this in the future. She closed this portion of her testimony by clarifying that in her mind she never viewed what she was doing as practicing without a license because she had all the credentials, training, and experience. Nonetheless, she clarified she now understands the severity of the situation.

Upon Commission questioning, the Licensee acknowledged that after 11/23/19 she had closed two transactions before March of 2020, but from March of 2020 until November of 2020 she believed she was reinstated. She explained that for the 2017 renewal cycle, she had never received a notification that her license was renewed but had received a notification that she needed to renew. She also added that she had never asked the Commission to send her notification of renewal via email, but admitted she received an email notifying her she needed to renew at an email address she no longer used at the time it was received. Nonetheless, she explained that she did not review that email until November of 2020, when she began investigating her license status after the Zillow representative claimed her New Hampshire real estate salesperson license was expired. She further agreed that it was her responsibility to update the Commission on her contact information. During Commission questioning she also admitted to having been compensated on the transactions at issue up until she attended the January 2021 Commission meeting. *See also* Exhs. 11-12.



### **3. Exhibits**

Hearing Counsel also provided the Commission with a broad array of Exhibits. The admissible portion of Exhibit 1 is a summary of Mr. Goulet's investigation. Exhibits 2 and 4 are the two complaints filed against the Licensee in relation to this matter. The first complaint, Exh. 2, was initiated by the Commission's Administrator on 01/27/21 and addresses the original five transactions disclosed by the Licensee as occurring while her license was expired. The second is a complaint initiated by Michael Porter, Investigations Bureau Chief at OPLC. It addresses the additional four transactions that the Licensee originally failed to disclose as occurring while she was expired. Aside from alleging that the Licensee practiced without a license on those four transactions, it also claims she previously omitted information requested by the Commission in relation to the first complaint and failed to inform the Commission of an update to her contact information. Exhibit 5 is the Licensee's response to the second complaint. It generally mirrors her testimony in relation to the four transactions she did not initially disclose to the Commission.

Aside from the report, complaints, and Licensee's second response, there are multiple other documents included in Hearing Counsel's Exhibits. Exhibit 8 is the minutes from the Commission's 01/19/21 meeting at which it denied the Licensee's request to renew her license. Exhibit 9 is the Licensee's Real Estate Application, which was received on 02/26/21 after her request to renew had been denied by the Commission. In relevant part, the application includes a 02/25/21 written statement in which the Licensee addresses the allegations that she was working with clients while her license was expired between November 2019 and November 2020. Exhibit 10 is the Licensee's NEREN MLS Listings for properties when her license was expired. Exhibit 11 is a collection of checks for the 9 transactions the Licensee was involved in when her license was expired, along with a cover letter from the Licensee's broker in relation to those checks. Together, they show that she received commissions for all nine

transactions, totaling \$33,102.11. When read in conjunction with Exhibit 12, which includes settlement statements for those nine transactions, it is apparent that the Licensee received a Commission for at least three transactions after she was informed by the Zillow representative that her license was expired. Exhibit 12 also includes purchase and sales and listing agreements where the Licensee is shown as an agent, and which were executed during the period that Licensee's license was expired. Exhibit 13 is a copy of a Letter of Good Standing for the Licensee's current real estate license, which expires 03/15/23.

## **B. LICENSEE'S CASE-IN-CHIEF**

### **1. Exhibits**

Licensee's Exhibit A was included in Hearing Counsel's filed exhibits as Exhibit 3. It is the Licensee's 03/18/21 response to the January 2021 complaint. The Licensee's testimony covered much of what is recited in it. Exhibit A also includes a series of "exhibits" (A through C) related to the response. Exhibit A shows a certificate documenting the Licensee's continuing education course hours completed on 03/24/20 and an 03/25/20 copy of a check made out to the Treasurer, State of New Hampshire for \$150.00. Exhibit B is a chain of emails between the Licensee and OPLC, which are all dated between 11/06/20 and 12/11/20. They document the Licensee notifying OPLC that her license was expired and seeking assistance on what she should do. The earliest of these emails is from 11/06/20 and shows the Licensee notifying OPLC of her license situation. Exhibit C is a picture of a hand holding a letter addressed to the Commission at 121 S. Fruit St. Concord, NH 03301 and a picture of the State of New Hampshire Philbrook Building signed located outside that address. Exhibit B indicates the Licensee drove to the Philbrook Building on or around November of 2020 to deliver a new license renewal application to the Commission when she learned that her March 2020 application had not been received and processed. Lastly, Exhibit C contains a cover letter from the Licensee's attorney, submitted to the Commission in relation to the response to the January 2021 complaint.

V. **DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:**

After reviewing all the evidence and accounting for the presentation and demeanor of the witnesses, the Commission finds Hearing Counsel has met her burden of proof that the Licensee is guilty of professional misconduct. The salient facts are clear and undisputed: the Licensee failed to renew her New Hampshire salesperson license on or before its expiration date of 11/23/19. Thereafter, from approximately 11/23/19 until November of 2020, the Licensee assisted multiple clients on real estate transactions with her license expired. From approximately 11/23/19 until December of 2020, she also received and accepted compensation for transactions in which she was involved as an agent. While multiple sections of RSA 331-A:26 require proof of the Licensee's mental state when engaging in "prohibited conduct", none of the statutory provisions cited in Paragraph II(c) of the Notice of Hearing do. Further, the requirement RSA 331-A:19, I imposes on the Commission does not obviate a licensee from his or her responsibility to know and follow the Commission's statutory scheme and rules regarding licensure. The lack of notice pursuant to RSA 331-A:19 and the Licensee's mental state during much of the period in which her license was expired are not a defense to her conduct, but instead mitigating factors to consider in imposing sanctions. Those mitigating factors, along with others— including her lack of a prior disciplinary record, acknowledgement of wrongdoing, and overall cooperation with the Commission— must nonetheless be balanced against the aggravating factors of the potential harm to the public her conduct posed, as well its effects on the sanctity and integrity of the profession.

In addition to the findings of facts and conclusions of law already made herein, the Commission specifically finds the following facts and makes the following conclusions of law based upon the evidence presented:

1. The Commission finds, by a preponderance of the evidence, that the Licensee failed to renew her license on or before its expiration date of 11/23/19;

2. The Commission finds, by a preponderance of the evidence, that from approximately 11/23/19 until November of 2020, the License assisted multiple clients on real estate transactions in an agent capacity while her New Hampshire real estate salesperson license was expired;
3. The Commission finds, by a preponderance of the evidence, that the Licensee believed herself to be licensed between late March of 2020 and November of 2020;
4. The Commission finds, by a preponderance of the evidence, that from approximately 11/23/19 through December of 2020, the Licensee received and accepted compensation for transactions in which she was involved as a real estate salesperson agent while her New Hampshire real estate salesperson license was expired;
5. Based upon the evidence presented and the findings of fact made herein, the Commission concludes that the Licensee at various points acted as a “Broker”, as defined at RSA 331-A:2, III while her New Hampshire real estate salesperson license was expired;
6. Based upon the evidence presented and the findings of fact made herein, the Commission concludes that the Licensee is guilty of having violated RSA 331-A:26, II (*See* RSA 331-A:18, IV *and* RSA 331-A:34).
7. Based upon the evidence presented and the findings of fact made herein, the Commission concludes that the Licensee is guilty of having violated RSA 331-A:26, VI.
8. Based upon the evidence presented and the findings of fact made herein, the Commission concludes that the Licensee is guilty of having violated RSA 331-A:26, XXIII.
9. Based upon the evidence presented and the findings of fact made herein, the Commission concludes that the Licensee is guilty of having violated RSA 331-A:26, XXIX.
10. Upon a finding of guilty of violating this chapter, the Commission imposes the following sanctions against the Licensee:
  - a. A One (1) year SUSPENSION commencing on the signed date of this Order. The entire suspension shall be suspended, conditioned upon the Licensee, 1.) renewing her License on or before and not after 03/15/23, and 2.) good behavior for a period of one year from the date of this Order. Good behavior as used herein is defined as no violations of RSA 331-A during the one-year period following the date of this Order. The one year license suspension shall come forward and commence upon the occurrence of either the Licensee failing to renew on or before and not after 03/15/23, or being found guilty of a violation of RSA 331-A within one (1) year of the signed date of this Order.

- b. A Two Thousand Dollar (\$2,000.00) fine, which shall be paid in full to the Commission within forty-five (45) days of the signed date of this Order;
- c. A requirement that the Licensee successfully complete a three (3) hour core course in real estate practice and provide the Commission with sufficient documentation of same within ninety (90) days of the signed date of this Order. The Commission, in its sole discretion, shall determine what constitutes sufficient documentation.

11. In imposing these disciplinary sanctions, the Commission considered the presence of aggravating and mitigating circumstances as required by Rule 206.01(e) and outlined in Rules 206.01(f) and (g). Particularly, the Commission focused on the factors noted in Rules 206.01(f)(4) and (5) and 206.01(g) (1), (2), (3), and (4).

12. Pursuant to RSA 331-A:28, III and Rule 206.02 the action of the Commission stated in this order may be appealed to the superior court by the licensee charged with practicing unlawful brokerage activity within 30 days after its issuance.

## **VI. ORDER**

The Commission concludes the Licensee is guilty of violating RSA 331-A and subjects her to the disciplinary sanctions stated herein.

SO ORDERED.

DATED: 8/25/2022

\_\_\_\_\_/s/ Nikolas K. Frye, Esq.\_\_\_\_\_  
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