

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

G. Brandt Atkins
License No.: 011504
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2014-063

FINAL DECISION AND ORDER

Before the New Hampshire Office of Licensure & Certification, New Hampshire Real Estate Commission (“Commission”) is an adjudicatory/disciplinary proceeding in the Matter of G. Brandt Atkins (“Respondent” or “Mr. Atkins”) in Docket Number 2014-063.

BACKGROUND INFORMATION

This proceeding was commenced by a Notice of Hearing dated December 30, 2015 by the New Hampshire Real Estate Commission (“the Commission”), to determine whether Mr. Atkins, licensed New Hampshire Broker, committed a number of violations of statutory law and rules governing his practice as a licensed Real Estate Broker in the State of New Hampshire as follows: failed to maintain an escrow account or accounts, separate and apart from the individual or office account in violation of RSA 331-A:13; as a principal broker in the course of his real estate business in the State of New Hampshire received, accepted and held monies on behalf of a principal or principals, clients or other persons, and failed at all times to maintain a separate escrow or real estate trust account in violation of RSA 331-A:13 and Rea 702.01(a); failed to comply with the requirements of Rea 702.01(b) in that he did not, upon acceptance and execution of a contract(s), deposit all earnest monies and down payments he received into an escrow agent

or real estate trust account and/or make a full accounting of said monies to the signatories to the contract; the Respondent failed to promote the interests of the seller or landlord, including accounting in a timely manner, during and upon termination, expiration, completion or performance of the brokerage agreement in violation of RSA 331-A:25-B, I(b)(3); Respondent failed to properly place funds in a proper trust account or failed to reconcile records monthly, which is a violation of RSA 33-A:26, VIII; Respondent failed, upon demand, to disclose any information within the licensee's knowledge, or to produce any document, book or record in the licensee's possession for inspection of and copying by the Commission or its authorized representatives acting under authority of law, in violation of RSA 331-A:26, IX; Respondent breached his fiduciary duty owed by a licensee to the principal in a real estate transaction, in violation of RSA 331-A:26, XXVIII; Respondent committed unprofessional misconduct pursuant RSA 331-A:2, XV and RSA 331-A:26, XXIX related to his conduct regarding his failure to maintain separate trust accounts; his failure to provide an accounting; his failure to conduct monthly reconciliations; his failure to cooperate in the investigation with the Real Estate Commission or its representatives in not providing the requested copies of documents and requested information; his comingling of funds that belonged in separate trust accounts with his other office or personal accounts in violation of RSA 331-A:26, XXXV.

Testimony was received at the hearing from Kinsman Corthell, Investigator, New Hampshire Real Estate Commission, Office of Professional Licensure and Certification and the Respondent, G. Brandt Atkins, as well as Gene Cormier, Detective Rochelle Jones, Jennifer Ouellette (via telephone), Craig Sawyer (via written statement). During the proceedings the following Commission members present were:¹

John Cronin, Esquire, Presiding Officer;

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

Paul Lipnick, Commissioner;
Calley Milne, Commissioner;
Daniel Jones, Commissioner, Chairperson (participated telephonically for Atkins deliberations).

COMPLAINANT'S EXHIBITS:

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

1. The complaint form 11 initiated and Investigator Flanagan (NHREC) and amended Complaint filed by Kinsman Corthell, Investigator for the New Hampshire Real Estate Commission, and attachments – File #2014-063.
2. Email correspondence between Investigator Corthell and the Respondent: 10/28/11-11/17/15.
3. Email correspondence dated 11/17/15 with attached bank records of the Respondent.
4. Motion to Quash Petitioner's Subpoena Duces Tecum.
5. Documentation provided by Respondent of his business broker transactions.
6. Additional documentation of Respondent's bank statements.
7. MLS (Multiple Listing Service) activity log.
8. Statement by Craig Sawyer with supporting documents.

RESPONDENT'S EXHIBITS.

- A. Email correspondence related to Craig Sawyer's claim.
- B. W-9 of Eugene Cormier dated 04/8/15 and attachment; Supplement to Exhibit B.
- C. Copy of RSA 354-A:12 (Fair Housing) and bank records of Respondent; Supp. to Exh.C.
- D. Miscellaneous emails and correspondence of the Respondent.
- E. Court documents and correspondence regarding South Mill Investments, LLC.
- F. Certificate of Release of Federal Tax Lien regarding G. Brandt Atkins and/or NH Management & Brokerage, Inc.

- G. Submitted initially via thumb drive at the hearing and subsequently admitted by Motion filed following the hearing.
- H. Submitted initially via thumb drive at the hearing and subsequently admitted by Motion filed following the hearing.
- I. Respondent's Application for Renewal of Broker's License dated February 23, 2015 with attachments.
- J. Numerous Rental Replacement Agreements between NH Real Estate Management & Brokerage, Inc. and several individuals and/or companies.

LIST OF WITNESSES:

- A. G. Brandt Atkins, Respondent.
- B. Gene Cormier.
- C. Detective Rochelle Jones.
- D. Jennifer Ouellette (via telephone).
- E. Craig Sawyer (via written statement).

PRELIMINARY PROCEEDINGS

This case was timely scheduled for hearing on January 19, 2016. Prior to the hearing, the Respondent filed a Motion to Continue. The Motion to Continue was granted. The hearing was rescheduled for January 26, 2016. Prior to the rescheduled hearing, the Respondent filed a second Motion to Continue. The second Motion to Continue was denied. The Commission denied the Motion as it decided that the Respondent had notice of the case for an extended period of time, had ample time to prepare and engage counsel. The denial was based further on concerns about the seriousness of the allegation.

On the day prior to the hearing, the Respondent filed a Motion for a Pre-Hearing Conference. The Commission determined the Motion was tardy and was designed to circumvent

the hearing and effectively obtain another continuance. The Motion for Pre-Hearing Conference was denied. The Commission accommodated the Respondent by providing an opportunity to conference prior to the hearing. The Commission delayed the hearing by approximately forty-five (45) minutes to allow the Respondent and the Investigator to meet in private to mark exhibits, discuss evidentiary concerns and any other matters typically discussed at a Pre-Hearing Conference. The Commission offered the Respondent additional time if so desired. The Respondent did not request additional time to address pre-hearing matters.

The Respondent's claim of unfairness due the denial of his Motion lacks factual or legal support. The Respondent had an extended period of time to request a Pre-Hearing conference and failed to do so. The Respondent's Motion for a Pre-Hearing conference filed just prior to the hearing was untimely. The Commission finds the Pre-Hearing conference was not requested to address pre-hearing matters. Rather, the Pre-Hearing Conference was requested to further delay the process.

Notwithstanding the denial of the Motion, the Respondent was provided an opportunity to participate in a Pre-Hearing Conference with the Investigator on the morning of the hearing.

DISCUSSION

The Claims asserted against the Respondent are numerous. The claims involve several different transactions and several different people. This case does not involve an isolated incident. The evidence presented at the hearing proves that for a period of time the Respondent was out of control and not attending to his business, his clients or the requirements of New Hampshire law or the Real Estate Commission regulations. The evidence establishes that the Respondent failed to properly and timely account for client funds, one of the most important obligations of any licensee.

In the Cormier case, the Respondent failed to return calls or communicate with the client. It is apparent from the evidence that the Respondent avoided communications. Numerous requests were made for the return of funds that the Respondent was holding or should have been holding. The Respondent did not return or account for the funds when requested. Due to the failings of the Respondent, the Client filed a police report and the police initiated a prosecution. Detective Jones made attempts to secure returns of the funds but was unsuccessful. After the initiation of the criminal action but prior to conviction, the Respondent paid back money to the Cormiers. The Cormiers were willing to accept the funds and agreed to the dismissal of the criminal action. There was a dispute as to whether the amount was proper but due to poor record keeping and the Respondent's failure to establish proper escrow accounts, neither the Respondent nor Cormier could say for certain the proper amount that should have been in escrow. As a result of the pre-hearing payment, the criminal case did not move forward. The Respondent advances in his defense that there was never a criminal conviction regarding his custody of the Cormier funds. The Commission finds the lack of a criminal conviction has no relevance as to whether or not the Respondent violated the laws and regulations applicable to licensees.

The Sawyer case involves another event of financial mis-management. The Respondent provided property management services to Mr. Sawyer. The evidence establishes that the Respondent did not properly account for the funds and Mr. Sawyer was forced to file a claim against the bond. The evidence establishes that the Respondent failed to honor his duties and responsibilities in a proper manner in accord with the applicable law and regulations.

The Ouellette claim is based on an allegation that the Respondent discriminated against a child in the course of showing an apartment for lease. The evidence establishes that during a showing to the Ouellette family, the Respondent inquired of Mrs. Ouellette if there was something wrong with her child. Mrs. Ouellette was offended and disturbed by the comment to

the extent she filed a Complaint with the Commission. The Respondent claims no ill will was intended by the comment and the child was rambunctious during the showing. The Commission finds the comment may have been inappropriate and it understands why a mother would take offense, however, the evidence did not support a finding of discrimination.

The Commission is also troubled by the Respondent's failure to co-operate with the Commission and the Investigator during the course of the investigation. On numerous instances, the Respondent failed to timely comply with proper document requests.

The Respondent did not attempt to challenge the evidence or advance a substantive defense. The Respondent defended the cases on the principal of justification. The evidence established that the Respondent was at a low point in his life, suffering from the consequences of a bitter divorce and wrestling with alcohol issues. To his credit, the Respondent was candid about his struggles and appears to have stabilized his life and is now on the road to recovery. The Commission acknowledges the personal issues but the issues do not justify or excuse the actions proven in this case. The management and protection of client funds is of paramount importance and the evidence clearly demonstrates that the Respondent failed, neglected or otherwise refused to properly account for and pay over client funds.

FINDINGS OF FACT

1. The Respondent was first issued a license as a New Hampshire real estate broker by the Commission on February 27, 1987.
2. Respondent is a licensed broker and holds license number 011504 and his resident address on his license is Somersworth, New Hampshire.
3. At the time of the allegations in this matter the Respondent was a licensed real estate broker and was self-employed through NH Real Estate Management and Brokerage, Inc.

4. During the period of investigation in this matter the Respondent was managing rental property for Mr. Craig Sawyer, which was located at 44 Franklin Street, Dover, New Hampshire.
5. The Respondent collected rent on behalf of Mr. Sawyer and failed to timely forward the funds to him.
6. Additionally, the Respondent failed to submit timely payment for late fees on mortgage payments, sewer and condo fees accounts while under his management.
7. As a result of the respondent's failure to act and conform within his duties as a broker for Mr. Sawyer he, Mr. Sawyer, issued a claim against the Respondent's broker's bond in the amount of \$16,799.95.
8. In response to this claim the Respondent, sometime later, finally agreed to submit payment to Mr. Sawyer regarding the foregoing.
9. The Respondent also served as a real estate broker for Diana Cormier of CF Investment, Inc.
10. While retained as a licensed real estate broker for Eugene and Diana Cormier/CF Investment, Inc. to collect rents, the Respondent was arrested by the Portsmouth Police Department for issuing two back checks from his Optima Bank real estate broker's account #20018622 to his clients as follows: check #1097 dated 04/16/14 made payable to CF Investment, Inc. in the amount of \$15,000.00; check #1098 dated 04/15/14 made payable to Diana Cormier in the amount of \$5,000.00.
11. Respondent's clients, Eugene and Diana Cormier/CF Investments Inc. own property located at 142 Exeter Road, Hampton, New Hampshire and 146 Exeter Road, Hampton, New Hampshire.

12. An original complaint was filed against the Respondent in this matter on or about December 26, 2014, at which time the investigator for the Real Estate Commission also requested that the Respondent provide three years of escrow accounting and transaction documentation for his NH brokerage business.
13. Mr. Craig Sawyer did provide accounting regarding his business with the Respondent.
14. The Respondent failed to provide the requested documentation.
15. As a result an amended complaint was filed by Investigator Corthell of the NH Real Estate Commission on or about September 16, 2015.
16. The Respondent responded to the amended complaint on or about October 19, 2015 but still did not provide the requested documentation.
17. Respondent was requested numerous times by the investigator for the NH Real Estate Commission to provide three years of his broker business escrow accounts, as follows: 10/28/15; 11/3/15; 11/4/15; 11/13/15 and 11/17/15.
18. Thereafter, on November 17, 2014 the Respondent was given a deposit in the form of cash from Steven and Jennifer Ouellette, which he accepted, in the amount of \$1,525.00.
19. Thereafter they declined to rent said property and a partial refund of that deposit was forwarded to them by the Respondent which was returned for "insufficient funds."
20. The Respondent's Renewal Broker's License Application of February 27, 2015 he answered yes to the question: "Have you, since your last original or renewal application, been or are now involved in any matters which may affect your good repute or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?"
21. On October 20, 2015, in response to a subpoena provided to the Respondent for all real estate broker escrow records to be provided by October 22, 2015, the Respondent

thereafter provided records for an account which he claimed was his personal account with Optima Bank which he identified as "New Hampshire Real Estate Holding Escrow Account" which ended in 2671.

22. Thereafter, the Respondent provided documents of statements for the first six months of 2014 for Optima Bank account #20018622 identified as NH Real Estate Management & Brokerage, Inc., Agent for Gene Cormier, Trustee.
23. Up to the date of the hearing the Respondent maintained that he does not have any current escrow accounts and does not hold escrow funds.

CONCLUSIONS OF LAW

The evidence in this matter has established that the Respondent has committed statutory and rule violations governing licensed real estate brokers in the State of New Hampshire as follows:

- A. The Respondent, a principal broker in the course of his real estate business in the State of New Hampshire, received, accepted and held monies on behalf of a principal or principals, clients or other persons and failed at all times to maintain a separate escrow or real estate trust account, in a financial institution of his or her choice located in this state, for the deposit of all such monies so received by the licensee, as required by NH RSA 331-A:13 and in violation of Real Estate Commission Rule Rea 702.01(a).
- B. The Respondent is found to be in violation of Rea 702.01(b) as to the allegations regarding Cormier and Ouellette, in that the Respondent failed to comply with the following: "Upon acceptance and execution of a contract, all earnest money deposited and down payments received by a principal broker as escrow agent in a real estate transaction shall be promptly deposited in her or his separate escrow or real estate

trust account, pursuant to RSA 331-A:13, when at that time the principal broker shall be responsible to make full accounting thereof to the signatories to the contract.” Emphasis Added.

- C. There was insufficient evidence to find that the Respondent violated Rea 702.01(b) with regard to the allegations regarding Sawyer.
- D. There was insufficient evidence to find that the Respondent was in violation of NH RSA 331-A:25-a,I, as there were no written and fully executed brokerage agreement(s) submitted into evidence in this matter.
- E. There was insufficient evidence to find that the Respondent was in violation of NH RSA 331-A:25-b,I(a), as there was no evidence submitted of a written and fully executed brokerage agreement in this matter.
- F. The Respondent in this matter failed to promote the interests of the seller or landlord, including accounting in a timely manner, during and upon termination, expiration, completion, or performance of the brokerage agreement in violation of RSA 331-A:25-B, I(b)(3).
- G. Requests for Relief in Notice of Hearing G through I are not ruled on as these requests were omitted from the Notice of Hearing provided to the Respondent.
- H. The Respondent is found to be in violation of NH RSA 331-A:26, VIII in that he failed to properly place trust funds in a proper trust account or failed to reconcile records monthly.
- I. The Respondent is in violation of NH RSA 331-A:26, IX, as the Respondent failed, upon demand, to disclose any information within the licensee's knowledge, or to produce any document, book or record in the licensee's possession for inspection of

and copying by the Commission or its authorized representatives acting under authority of law.

- J. There was insufficient evidence to determine that the Respondent was in violation of NH RSA 331-A:26, VII and that he discriminated against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or that he violated any of the provisions of any state or federal antidiscrimination law.
- K. The Respondent is found in violation of NH RSA 331-26, XXVIII as to Cormier, Sawyer and Ouellette, in that he breached a fiduciary duty owed by a licensee to the principal in a real estate transaction.
- L. The Respondent is found to be in violation of NH RSA 331-A:26, XXIX, in that he committed unprofessional conduct defined in NH RSA 331-A:2, XV: any action by a licensee or accredited individual, institution or organization, which is unlawful, dishonorable, unethical or immoral.
- M. There was insufficient evidence to find that the Respondent was in violation of NH RSA 331-A:26, XXXI, alleging that the Respondent offered 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 the owner's authorized agent.
- N. The Respondent is found to be in violation of NH RSA 331-A:26, XXXV in that he failed to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the Commissioner for inspection and copying.

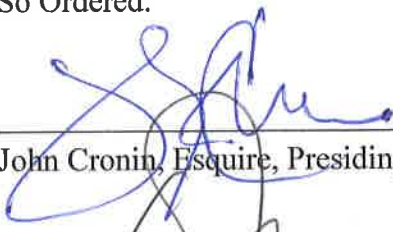
- O. The Respondent is found to be in violation of NH RSA 331-A:26,XXXVI in that the Respondent demonstrated untrustworthiness or incompetency to act as a broker or salesperson.
- P. There was insufficient evidence to establish that the Respondent was in violation of NH RSA 331-A:26,XXXVIII and that he submitted a property owner's name to any electronic database or multiple listing service that may be accessed by any other person other than the property owner's broker without the express written permission of the property owner.

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

- A. The Respondent's NH Real Estate Broker's License is hereby PERMANENTLY REVOKED.
- B. 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:2, XXIX and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.
- C. 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.
- D. 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.

E. 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.



John Cronin, Esquire, Presiding Officer

4/19/16

Date



Daniel Jones, Commissioner, Chair

4/19/16

Date



Paul A. Lipnick, Commissioner

4/19/16

Date



Calley M. Milne, Commissioner

4-19-2016

Date