

NEW HAMPSHIRE  
REAL ESTATE COMMISSION

DECLARATORY RULING  
ON THE APPLICABILITY OF RSA 331-A TO  
WWW.ZEROBROKERFEES.COM

Assistant Attorney General David M. Hilts of the New Hampshire Department of Justice presented his Petition for Declaratory Ruling as to the applicability of RSA 331-A to www.ZeroBrokerFees.com to the NH Real Estate Commission ("Commission") at its meeting held on April 19, 2007. Attorney Hilts explained that Skynet Corporation, the corporation which controls the ZeroBrokerFees website, states in its suit against the New Hampshire Real Estate Commissioners and the Attorney General, that Skynet, as controller of ZeroBrokerFees.com ("ZBF") is subject to the Real Estate Practice Act and that their First Amendment Rights are being violated. Attorney Hilts explained that there are three elements to the petition. The first, is whether ZeroBrokerFees.com "is acting for another" under the definition of broker under RSA 331-A:2, III, which states that "a broker is any person acting for another." The second element under the definition of broker is whether ZBF is acting for another "on commission or for other compensation", and the third element deals with the specific actions that RSA 331-A:2, III specifies, which Skynet Corporation admits in its suit that they engage in three of the listed activities through ZBF. They admit that they list, offer, attempt or agree to list real estate for sale, lease or exchange as defined under RSA 331-A:2, III (d); assist or direct in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate as defined under RSA 331-A:2, III (h); and engage in the business of charging an

advance fee in connection with any contract for listing in a publication or database as defined under RSA 331-A:2, III (j).

The Petition for Declaratory Ruling submitted by Attorney Hilts requested rulings on the following questions regarding the activities of Skynet Corporation through its website, [www.ZeroBrokerFees.com](http://www.ZeroBrokerFees.com).

1. Based upon ZeroBrokerFees.com's description of itself and its business practices in the Complaint, and upon review of its website at [www.ZeroBrokerFees.com](http://www.ZeroBrokerFees.com), is it or any other business with the same or substantially similar characteristics subject to licensing and/or other regulatory requirements set forth in the New Hampshire Real Estate Practice Act, codified in RSA Chapter 331-A?

Based upon the facts that were presented by Skynet Corporation of the activities conducted through ZBF in the complaint of ZeroBrokerFees.com v. Arthur Slattery, et al, the Commission rules that ZBF would not require a real estate broker license in New Hampshire based on the facts presented in the Petition to the Commission that ZBF receives an upfront fixed fee for advertisement only, and does not receive any commission or any other form of compensation. This decision is based on the fact that Skynet Corporation states that they do not hold themselves out as brokers or agents for sellers or buyers with respect to the real estate the company advertises; that neither ZBF nor its employees charge or receive a commission when properties are successfully sold; that ZBF is an online classified advertising and information service; and that the company charges a flat fee to property owners who wish to advertise their property on ZBF.

2. Is ZeroBrokerFees.com or any other business with the same or substantially similar characteristics a “newspaper or other publication of general circulation” as those terms are used in the definition of “Advance Fees” in RSA 331-A:2, I?

The Commission rules that the Internet falls under the definition of “other publication of general circulation” and would exempt ZBF from licensure under RSA 331-A consistent with the answer above, and on a past ruling made on a request for a Commission interpretation at the August 22, 2006 Commission meeting.

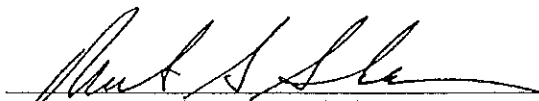
3. Does ZeroBrokerFees.com or any other business with the same or substantially similar characteristics “act for another” for the purposes of RSA 331-A:2, III?

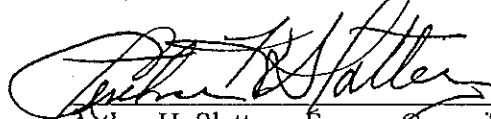
The Commission rules that ZBF would not fall under the element of the definition of broker, “acting for another”, based on the facts stated in the Petition that are referenced in the Commission’s ruling on question #1 and the following additional facts stated in the Petition: “Neither ZBF nor any of its officers or employees purport to exercise judgment on behalf of any particular individual whose circumstances the company is directly acquainted”; “Sellers and buyers retain their own legal counsel, work and negotiate their own sale themselves”; and the Commission found no evidence in the Petition that ZBF provides advice, direction or counsel to the sellers or buyers on this advertising and information service.


4. Do any of the practices described above or that are apparent in a review of the Complaint or ZBF’s website indicate that ZBF acts on the promise of receiving, and then receives, a commission or other compensation, other than their advertising fee?

Based on the facts stipulated in the decision in the ruling to question #1 and that ZBF states that they only receive an up-front fixed advertisement fee and do not receive any commissions or other compensation, the Commission rules that the activities of ZBF do not fall under the definition of brokerage activity under RSA 331-A.

The following Commissioners took part in the discussions and decisions of the declaratory ruling:

  
Robert S. Stephen, Commissioner 6/15/07  
Date

  
Arthur H. Slattery, Former Commissioner 6/14/07  
Date

  
Nancy G. LeRóy, Commissioner 6/14/07  
Date

  
Barbara K. Heath, Commissioner 6/15/07  
Date  
*idk*