

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDGS. 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

DEBBIE DeROSA-DiSANTO and	:	
JOSEPH DiSANTO,	:	
Complainants,	:	
	:	
v.	:	DBR No. 09-L-0094
	:	
DANA S. PHILLIPS and	:	
JEANNE SMITH HAROIAN,	:	
Respondents.	:	

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: September 11, 2009

Appearances: For Complainants: Debbie DeRosa-DiSanto
For Respondent Dana S. Phillips: Roger Coutu, Esq.
For Respondent Jeanne Smith Haroian: Donald M. Gregory II, Esq.

I. INTRODUCTION

This matter came before the Department for Business Regulation (“Department”) as the result of a complaint filed on or about January 7, 2009 by Debbie DeRosa-DiSanto and Joseph DiSanto (“Complainant(s)”) against Dana S. Phillips and Jeanne Smith Haroian (“Respondents”). Each Respondent holds a real estate broker’s license pursuant to R.I. Gen. Laws §5-20.5-1, *et seq.* After an investigation by the Department, an order appointing Hearing Officer Catherine R. Warren and providing notice of complaint hearing was issued April 22, 2009, and served on the parties (“Order”). A pre-hearing conference was held in this matter on May 19, 2009. At that pre-hearing

conference, the issues in this matter were clarified and an opportunity for discovery was afforded to the parties.

On August 12, 2009, an Order appointing Ellen R. Balasco as substitute Hearing Officer and providing notice of hearing date was issued. The noticed hearing date was September 1, 2009, but the hearing was continued at the request of Respondent Phillips' counsel. A hearing was held on September 11, 2009. Complainant Debbie DeRosa-DiSanto appeared *pro se*, and the Respondents were both represented by counsel.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 5-20.5-1 *et seq.*, 42-14-1, *et seq.*, and 42-35-1, *et seq.*

III. ISSUES

The issues presented in this matter were determined by the Order, which issued from the pre-hearing conference of May 27, 2009, and are as follows:

1. Whether Respondents violated R.I. Gen. Laws §§ 5-20.5-14(a)(1), (3), (15) and (20) during the real estate transaction at issue, and
2. Whether Respondents violated Rule 20 of *Commercial Licensing Regulation 11 - Real Estate Brokers and Salespersons* ("CLR 11") during the real estate transaction at issue.

IV. STANDARD OF REVIEW FOR AN ADMINISTRATIVE HEARING

It is well settled that in formal or informal adjudications modeled on the federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 at 759 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.*

at 763-766; see also, *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases); *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) (“satisfaction by a ‘preponderance of the evidence’ [is] the recognized burden [of proof] in civil actions”). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. See *Parker*, 238 A.2d at 60. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

Here, the proponents of this action are Complainants. As such, they bear the burden for establishing why it is more likely than not that Respondents conducted themselves in a manner that violated the statutes and regulations under which they hold their real estate brokers’ licenses.

V. **MATERIAL FACTS AND TESTIMONY**

A. **Complainants’ Case in Chief**

Complainant Joseph DiSanto did not appear at the evidentiary hearing. Complainant Debbie DeRosa-DiSanto appeared approximately fifteen minutes after the scheduled start of the hearing. She stated that her co-complainant Joseph DiSanto would not be present because he was currently out of state. She presented no witnesses, although she asked at one point during the hearing for an opportunity to do so at a later date. Before her abrupt departure from the hearing room midway through the hearing, she withdrew that request and asked that the hearing officer make a decision based on the documents she had submitted to the Department, and her own testimony.

1. Testimony of Complainant Debbie DeRosa-DiSanto¹

Ms. DeRosa-DiSanto testified that she entered into a listing agreement with RE/MAX Post Road Realty in August 2008, with respondent Jeanne Smith Haroian as the listing agent. She indicated that she wanted Ms. Haroian specifically because she had two other properties listed on the Complainants' street, that she was well known in the area, and because she had previously listed another property with Ms. Haroian several years earlier.

She was not happy with the service delivered by Ms. Haroian with this listing, and in the early Fall of 2008, called Respondent Dana Phillips, the principal broker for RE/MAX Post Road Realty, Inc., to report her dissatisfaction and request an early termination of her agreement. In that discussion, Respondent Phillips offered to have another agent take over the listing, but the complainant agreed during that telephone conversation to give Respondent Haroian "another chance."

She testified that her relationship with Respondent Haroian over the course of the six-month listing agreement deteriorated over time. According to Complainant DeRosa-DiSanto, Respondent Haroian was ignoring her instruction to not disclose details regarding the Complainant's pending domestic difficulties with her husband and pending litigation in the Family Court. Respondent Haroian, according to Complainant's testimony, agreed not to mention the divorce action to potential buyers at the time of execution of the listing agreement, but later disregarded that request. According to her testimony, she was also upset by the fact that Ms. Haroian was contacting her husband, Joseph DiSanto, while he was living in Arizona, to discuss details about the real estate listing.

¹ The names Debbie DeRosa-DiSanto and Debbie DeRosa refer to the same party. As both were used in the prior pleadings, complaint documents and hearing exhibits in this matter, the names are used interchangeably in this Decision .

Complainant testified that she was desirous of terminating the listing agreement, which was for a term of six months, after just five months. Her request to do so was refused by the Respondents, and she testified that “they told [her] to file a complaint with the DBR” in response to her request for the early termination. She attributes her dissatisfaction with Haroian’s performance under the contract to the Respondent’s “attitude, her lies, and her complete disrespect.” She did not describe any particular statement about which Respondent Haroian lied, but only that she lied “constantly.” She also testified that an example of this was that Ms. Haroian called Joseph DiSanto in Arizona, and tried to “cut a deal” with him wherein Respondent Haroian would accept a reduced commission of three percent. This happened after the Respondent presented them with the only offer received.

Complainant DiRosa-DiSanto testified further that Ms. Haroian only conveyed one offer to her in the five months of the listing, which was two hundred thousand dollars below the assessed value, and had a buyer’s contingency, to which Complainant DiRosa-DiSanto would not agree. Further, as evidence of further dissatisfaction with Respondent Haroian, Complainant DiRosa-DiSanto asserted that Respondent Haroian had promised the Complainant when she signed the listing agreement to bring her a “cash buyer,” who never materialized. According to the Complainant, she and Ms. Haroian argued about this one offer to purchase, during which time Respondent Haroian reportedly made rude comments, including “get off the casino floor and see what’s happening in the housing market.” Complainant testified that Ms. Haroian went to the Family Court and copied documents relating to her divorce action, which was quite upsetting to her.

The Complainant referenced a notarized letter she had obtained from a potential buyer for her home, from Mr. James Nichols, not admitted into evidence, but which she summarized into the record. (This letter had been sent to the Department by the Complainant along with other

documents in support of her Complaint.) The letter stated that he expressed an interest in and was shown the Complainants' home by Ms. Haroian, but she encouraged him to look at other properties instead, which were a long distance from hers, and out of Nichols' price range. The letter also stated that Respondent Haroian informed him that the home was for sale due to a separation, not a divorce, and was a "must sell."

Complainant further testified that she had been in touch with another potential buyer, Dr. Ali (sp.). The Complainant stated that she contacted this person by telephone and he reported to her that Respondent Haroian told him about the Complainants' domestic problems, so he would only be willing to buy the property at a short sale, although she presented no evidence to support this claim.

According to her testimony, the Complainants would have been satisfied to have the listing agreement terminated four weeks early, and to receive an apology from the Respondents. She stated that this matter would have ended at that point if she received those two things.

The Complainant testified that she wrote the words "court approval" on her listing agreement because her husband did not agree to have the Respondents list the home for sale. She indicated that she went to the Family Court and fought to have Ms. Haroian engaged as the couple's listing agent.

The Complainant alleged in her testimony that the Respondents caused her great financial harm by bringing an offer to her that was two hundred thousand dollars below value, and that, if her husband agreed to accept that offer, the Court would have ordered the sale and she would have lost her interest in the property. She did not, however, present any documentary evidence to support a claim that she incurred any financial loss. Her last act, she testified, was to call Respondent Dana Phillips to report that she had no confidence in Ms. Haroian. His response was to offer to have another agent take over the listing. The Complainant rejected this offer because

she believed that Ms. Haroian would somehow benefit if the property was sold while listed with the other broker, and she did not want that to happen.

At the close of the Complainant's testimony, she was asked by the undersigned whether she had any other witnesses. Her reply was "not today", and the Hearing Officer asked whether she wanted to continue her case to another day for more witnesses. She declined at that point, stating that she has made her statement, and submitted all of the documents with her complaint that she wished the Hearing Officer to consider. She asked that the Hearing Officer review and consider all of the documents she sent to the Department during the complaint/response/rebuttal process. Neither of the attorneys for the Respondents objected to this request. Complainant then stated that she was resting her case.

At the close of complainant's case, counsel for Respondent Haroian made an oral motion to dismiss the complaint as to Joseph DiSanto, based on his default for failure to appear. The Complainant stated that he is out of state, and that she explained previously to the Department that he would not be appearing. The Complainant again stated that she did not want to continue the hearing date, as she would be traveling out of state for the next several months, and that it was her intention to speak for both she and Mr. DiSanto.

The Hearing Officer reserved judgment on the motion, until after the close of the evidence, and it is addressed elsewhere in this Decision.

B. Respondent Jeanne Smith Haroian's Case in Chief

1. Testimony of Complainant Debbie DeRosa-Disanto

Counsel for Respondent Haroian, Donald Gregory, called Complainant DiRosa-DiSanto as his first witness. The Complainant was first asked a series of questions regarding whether she actually wanted to sell her house at the time she executed the listing agreement with the Respondents. The Complainant testified that she did want it sold, and wanted it done quickly.

Complainant testified that she and her husband had made a joint decision to sell the home, but that he wanted a different realtor to list it. She denied that the decision to sell the house was precipitated by the pending divorce action. When asked who decided on the listing price of \$649,900.00, which appears in the listing agreement, the Complainant answered that she had done so herself, after Ms. Haroian suggested a price of \$689,000.00. She testified that she decided on the figure when it “just popped into (her) head.”

There was a lengthy series of questions by counsel relating to a pending Family Court domestic action, the existence of which the Complainant admitted. However, she testified that she and her husband have reconciled, and that was the end of it. When counsel moved to mark certain documents for identification which were related to a pending divorce action, the Complainant objected, stating that the evidence relating to her divorce action was irrelevant to the pending complaint. Counsel for Respondent made an offer of proof that the domestic action was relevant to these proceedings because certain orders were made by the Family Court relative to the listing and sale of the real estate, and they had affected the Respondents’ actions in the transaction. Counsel further argued that the evidence would show a lack of credibility of the complainant.

The documents were admitted, and found by the Hearing Officer to be relevant for the purpose of showing how those Family Court matters affected the real estate transaction, and as evidence as to the credibility of the Complainant.

Respondent’s Exhibit #3 was a Civil Docket Sheet from the Rhode Island Family Court, which outlined the travel of an action for divorce between Ms. DeRosa and Mr. DiSanto, terminating with a hearing on Bed and Board Divorce on August 14, 2009, contradicting the testimony of the Complainant.

Respondent's Exhibit #4 was a copy of a certified Order issued by Judge Forte of the Family Court, issuing from a Motion for Temporary Allowances. That Order contained provisions which reflected that the subject property had been listed for sale with RE/MAX Post Road Realty, Jean Smith Haroian acting as realtor, and that it was to remain on the market at a listing price no lower than \$625,000. The Order indicated that the stated price was based on an appraisal that was obtained by Ms. DeRosa.

The discrepancies between the testimony of Ms. DeRosa-DiSanto and the facts contained in these documents did impact negatively on her credibility. She testified that she and her husband had reconciled, yet Exhibit #3 states that the domestic litigation continued throughout the term of the listing agreement, through August of 2009, when the Court heard a Bed and Board divorce action between the parties.

When copies of the documents were presented to the Complainant before they were admitted into evidence, she tore the documents in half. She stated that she did not object to the documents being admitted, and that she did not care if they were admitted or not. There was a period of time at this point in the hearing that the Complainant raised her voice, continually spoke out of turn, sometimes using inappropriate language, such as using the word "shitty" at least twice to describe her treatment by the Respondents, and refused to answer questions being asked by counsel. During this time, she also took out her cell phone while the hearing was in progress, and began to make a telephone call. When asked by the Hearing Officer to end the call, she did so, and her testimony continued.

Complainant testified that the offer brought to her by the Respondent Haroian in the amount of \$550,000.00 was \$200,000.00 below assessed value as stated in her previous testimony, and admitted that the Family Court order in place at the time mandated that the property be listed and not be sold for an amount less than \$625,000.00. Her further testimony

established that there was a mid-term price change to the listing agreement to \$629,900.00, to which she did not object.

In response to counsel's continued examination, the Complainant admitted that she had actively sought out the services of Respondent Haroian because she had previously listed a house for the Complainants on Post Road and because she was the listing agent for several other houses on Complainants' street and she was well known in the community. When her testimony was completed, the Complainant made several more remarks restating her previous testimony, which the Hearing Officer allowed as rebuttal to Mr. Gregory's direct examination. Mr. Gregory then called Respondent Haroian as his first witness.

At that point, the Complainant protested, and announced that she would be "ending the proceeding now." When told by the Hearing Officer that she did not have the option to end the hearing, the Complainant responded that she felt had already given the Department sufficient evidence to decide the case, and that she did not wish to "waste any more time" here than she already had. She was encouraged by the Hearing Officer to remain and take part in the proceedings, and was advised that leaving would likely have an effect on the outcome of the case, and that it was the Department's intention to give her every opportunity to be heard. After several more comments of this type, the Complainant left the hearing room, and the building.

Counsel for the Respondents argued that the Respondents wished to exercise their right to be heard, and asked that they be allowed to offer their testimony. Their testimony was allowed.

Prior to continuing, counsel for the Respondents made a joint oral motion to default both of the Complainants for failing to prosecute their complaint, and a joint motion to dismiss the complaint based on the default. Judgment was reserved on those Motions, and is incorporated into this Decision.

2. Testimony of Respondent Jeanne Smith Haroian

According to her testimony, the Department has licensed Ms. Haroian as a real estate broker for a period of twenty-eight years. She has been affiliated with various RE/MAX offices for all of that time, and is currently affiliated with Post Road Realty, also a RE/MAX office. She stated that this the first complaint ever filed against her during her real estate career.

Ms. Haroian testified that the Complainant DiRosa-DiSanto first contacted her by telephone on August 12, 2008, relative to the subject property. At the Complainant's request, she and her sister, Maureen Delfarno (also a RE/MAX agent) went to the home at 138 Shadow Brook Drive, Warwick the same day to meet with the Complainant. Ms. DeRosa-DiSanto reportedly told them that it was urgent that the property was listed immediately for sale. There was some discussion about what the listing price should be and, according to the testimony, Ms. DeRosa-DiSanto said she did not care what the listing price was, only that it was done without delay. Ms. Haroian testified that the listing price of \$649,900 was her suggestion, and that the Complainant had no objection. She stated that she based the listing price on her other sales on that street, and her extensive knowledge of values in the neighborhood.

Respondent Haroian testified that on August 13, 2008, she prepared a Listing Agreement, and, at the Complainant's request, brought it and a Real Estate Disclosure Form to J.C. Penney in Warwick, where the Complainant worked. When she arrived, the Complainant told her she had to show the documents to her divorce attorney before completing the listing. Ms. DeRosa-DiSanto stated that her attorney was on vacation, and she told Ms. Haroian she would contact her when she returned. The Listing Agreement and Disclosure Form, presented by counsel and admitted together as Respondent's full Exhibit #2, were left with the Complainant. The Agreement bears the signatures of Debbie DeRosa and Jeanne Smith Haroian, both dated "8/13/08" or August 13, 2008, and includes a listing price of \$649,900.

The next contact from the Complainant came on August 20, 2008, when Ms. DeRosa-DiSanto telephoned Post Road Realty and spoke with Maureen Delfarno, as Ms. Haroian was away on vacation in Nantucket, Massachusetts. Ms. Haroian testified that she flew back to Rhode Island for the purpose of finalizing the listing with Ms. DeRosa-DiSanto the same day. When she retrieved the documents from the Complainant, the dates for each signature had been changed – August 13, 2008 had been crossed out and changed to August 20, 2008. The Respondent testified that the Complainant had changed the dates, but she did not know the reason. (Respondent’s Exhibit #5, Full) This statement contradicts the statement of the Complainant in the attachment to her complaint, which alleges that it was Haroian who changed the dates. Complainant Haroian testified that the date change shortened the term of the listing by one week, making it contrary to her own best interest and supporting her position that she is the one telling the truth about the date change.

Respondent Haroian further testified that Ms. DeRosa-DiSanto had also added the words “subject to court approval” in the comments section of the four-page disclosure form, and initialed her handwritten comment. When the Respondent questioned this, the Complainant reportedly told her this was necessary because of her pending domestic litigation. The Respondent considered that this action by the Complainant made the pending divorce litigation a matter of public record. Also worthy of note is that the Complainant indicated her authorization for the Respondents to advertise the property using photos and “virtual tours,” as well as in other media, by initialing that portion of the agreement

Later the same day, the Respondent met with Mr. DiSanto and obtained his signatures on the listing documents. Respondent, through her attorney, presented for admission as a full exhibit a set of documents containing the three-page Listing Agreement, two-page Mandatory

Relationship Disclosure Form, and four-page Sales Disclosure Form. They were marked together as Respondent's #6.

The Respondent also produced a one-page MLS Broker Display form, showing that the Complainant's comments "subject to court approval" appeared on the listing as instructed. (Respondent's #7, Full)

Ms. Haroian testified at length providing a detailed description of her marketing efforts made relative to the sale of the subject property. Those efforts are summarized as follows:

1. Virtual Tour. The Respondent scheduled a photographer through MLS for August 26, 2008. Approximately ten minutes before he arrived, Ms. DeRosa-DiSanto called to cancel the filming, citing as a reason that she did not want her husband, Joseph DiSanto, to be able to view online what furnishings and personal effects were located in the home.
2. September 2, 2008. Open House scheduled and advertised, but then cancelled by Ms. DeRosa-Disanto just prior to its scheduled start.
3. September 3, 2008. 2 showings: one to co-broker from Keller-Williams, and personal showing to Dr. Ali Kazin (to whom the Complainant had referred in her testimony as "Dr. Ali")
4. The Caravan. On September 4, 2008, approximately 25 professional brokers were scheduled to tour the new listings in their area. (This event routinely takes place bi-weekly) The Respondent arranged to include the subject property on the tour, which would have included a luncheon for the brokers at the home. When the brokers arrived at the DeRosa-DiSanto home, they were not allowed in by the Complainant, who literally stopped them "on the doorstep," stating that her "mother was taking a shower." Respondent testified that she had notice of the event several weeks prior.
5. September 9, 2008. Third showing to named potential buyer².
6. Open Houses. October 19, 2008 and October 26, 2008
7. November 3, 2008. Co-broke showing to Peter Ciccone and client.
8. November 6, 2008. Showing to named potential buyer from Connecticut.

² To protect the confidentiality of private parties, only those potential buyers who were included in other relevant testimony are named in this section.

9. November 8, 2008. Showing from Open House to St. Amand family.
10. November 13, 2008. Co-broke showing to agent, Jen Ruhling.
11. November 15, 2008. Showing to Mr. James Nichols. He was shown four houses, and requested that he see them in a particular order, with the subject property being second. Respondent characterized his behavior during the showings as “odd”, as he rushed through the homes and did not appear to have a genuine interest in buying. Based on the Respondent’s testimony, she later determined by internet search that Mr. Nichols was an employee at the same business as the Complainant. (The Complainant sought to introduce at hearing, and had provided previously to the Department a letter signed by Mr. Nichols which indicated that Ms. Haroian told him during the showing that the sale of the subject property was due to the Complainant’s separation from her husband and was a “must-sell.” The Respondent denied this in her testimony.)
12. November 16, 2008. Offer received from Alan and Mary St. Amand, in the amount of \$555,000. Offer was tendered by Respondent to the Complainant and her husband and rejected by both.
13. Counter-offer received. (date unclear) St. Amunds offer increased to \$575,000. with a written itemized list of repairs the buyers felt were required based on the potential buyers’ inspection. Respondent testified that when she brought this counter-offer to the Complainants, she offered to reduce her commission to 3%, in order to net them close to the \$600,000. A figure that Mr. DiSanto requested. No action was taken on the offer by either Mr. or Ms. DiSanto, and it was withdrawn approximately three weeks later.
14. November 18, 2008. Co-broke showing with Peter Almonte
15. November 25, 2008. Open House. (Respondent testified that the Complainant told her on this date that this would be the last Open House she would agree to.)
16. Advertising. Respondent testified that she spent “thousands of dollars” on placing for sale ads in the Providence Journal. Those expenses, she stated, were never recouped.

In describing her marketing of the subject property, the Respondent testified that there were a number of factors that hampered her efforts. First, she indicated that Ms. DeRosa-DiSanto’s behavior during showings and Open Houses made the property difficult to show. She

reportedly refused to have the house shown without being present herself (requiring that at least two brokers were present), questioned the prospective buyers during the showing, wrote down license plate numbers and engaged them in conversation. The Respondent testified that this behavior by a seller is most unusual and that, in her experience, it is unnerving to potential buyers.

Another factor, which the Respondent feels interfered with marketing, was the condition of the property. Most notably, in November of 2008, the exterior of the home appeared to have been neglected. The lawn had not been cut since August and the yard was full of leaves. The Respondent testified when she asked Ms. DeRosa-DiSanto to correct this, she refused, stating that she did not have the money to do so. Ms. Haroian then, with the approval of the sellers, paid for the yard work to be done herself. She stated that Mr. and Mrs. DiSanto both agreed that she would be reimbursed from the proceeds of sale. Respondent testified that she has never been reimbursed for those expenses.

Also affecting the condition of the subject property was exterior mold, which she discussed with the Complainants, and for which she recommended remediation to improve the appearance of the home. Both sellers agreed that Ms. Haroian would have her own husband perform the work. He did so by power washing the siding and front walkway to the home. The inspection done by the St. Amand's had detected deterioration and rot on some exterior front columns, as well. Ms. Haroian testified that her husband, for that reason, intentionally did not touch those. The Respondent presented eleven photos which illustrated the mold conditions on the home's exterior, and included one photo of her husband power-washing the walkway. These photographs were marked as Respondents #11, Full (6 photos) and Respondent's #12, Full. (5 photos)

Respondent further testified that, beginning in January 2009, her “for sale” sign was taken from the front lawn of the home on numerous occasions. She testified that she believed the culprit of the sign removal to be Ms. DeRosa-DiSanto, evidenced by the Respondent having found it in the backyard of the property next to the garbage cans. Respondent reported this to Mr. DiSanto, who instructed Ms. Haroian to put the sign back up whenever it went missing.

Ms. Haroian testified that, despite these setbacks, she continued her attempts to market the property. She contacted Ms. DeRosa-DiSanto in early January 2009 to schedule another Open House. The Complainant reportedly refused, telling her that she “did not want her (Respondent) in the house again.”

In response to questions regarding what she told potential buyers about the reason for the sale, Ms. Haroian testified that she initially followed the instructions of Ms. DeRosa-DiSanto and told buyers that the seller was being “transferred to Plano, Texas.” However, after other brokers saw the words “subject to court approval” which the Complainant had written into the MLS disclosure form, they all asked for further information about the court involvement. At that point, Respondent testified, she felt obligated, in the interest of full disclosure and honesty, to report that there was some pending domestic litigation.

Respondent stated that she recommended a price reduction to \$629,900 in an attempt to increase interest in the property. This recommendation was based on a shift in market conditions, in that two abutting properties were being foreclosed and were about to be sold at very low prices. Respondent felt this would negatively affect the subject property sale. Ms. DeRosa-DiSanto refused to allow this price change, but instead asked that the price be increased.

C. Respondent Dana Phillips' Case-in-Chief

1. Testimony of Respondent Dana Phillips.

Respondent Dana Phillips testified under direct examination by his attorney, Mr. Couto. Mr. Phillips has been a licensed broker since 1977 and was licensed as a salesperson for the two years prior. He is the principal broker for RE/MAX Post Road Realty, Inc., having approximately 30 agents for whom he is responsible, and 6 or 7 associate brokers at the present time. He is the former President of the Rhode Island Board of Realtors and was named Realtor of the Year for Rhode Island in 2000. He testified that he has never been the subject of a complaint filed with the Department, or with any local real estate board.

Ms. Phillips testified that he had no direct participation in the process of securing the listing on the DeRosa-DiSanto property, but that the first contact he had with the listing was during the Brokers' Caravan previously referenced herein during the summary of Respondent Haroian's testimony. He corroborated the testimony in that he witnessed the Complainant refusing entry to the brokers that day.

He was contacted in October of 2008 by a telephone call from Ms. DeRosa-Disanto. She reportedly called to report to him that Respondent Haroian had made rude comments to her and that she was unhappy with her attitude. The Complainant never mentioned early termination of her listing agreement, but simply wanted to complain about Ms. Haroian. Mr. Phillips testified that he said he would speak to Ms. Haroian about the call.

During the evening hours of January 2, 2009, the Complainant left a voicemail message at Mr. Phillips' cell phone number, which had been given to her by an agent at Post Road Realty who told her that Mr. Phillips was out of town. As he was out of cell phone reception range that weekend, Mr. Phillips did not receive the message until late on that Sunday evening, when he was driving home from Vermont.

Respondent testified that the Complainant called him early on Monday morning, January 5, 2009. According to his testimony, Ms. DeRosa-DiSanto was very distraught and angry at him for not returning her call. She reportedly told him that she wanted to withdraw her listing agreement, which was due to expire in approximately six weeks. Mr. Phillips reportedly tried to discuss the matter with her and explained that, in accordance with the terms of the agreement, the sellers would be responsible for payment to Post Road Realty for marketing expenses if they did so.

He further testified that Ms. DiRosa-DiSanto then asked that the listing price on the property be changed. When he told her that she would have to sign a Listing Change Form to do so, the Complainant refused. She further stated that she would “not pay a dime for advertising or anything else.” According to his testimony, Mr. Phillips was polite and respectful to the Complainant during the telephone call, but that she called him an obscene name and hung up. This call was the last contact Mr. Phillips had from the Complainant.

Mr. Phillips was the only witness presented in his case-in-chief.

VI. DISCUSSION

A. Motion for Default Judgment and Motion to Dismiss Complaint

At the close of Ms. DeRosa’s testimony and after her departure, counsel for Respondents made a joint oral motion to have each of the Complainants adjudged to be in default for failure to prosecute their complaint at the administrative hearing. Counsel further moved jointly that, if Complainants were defaulted, that the complaint be denied and dismissed as to each.

As grounds for their Motion, counsel state that Mr. DiSanto’s failure to appear at either the pre-hearing conference, or the evidentiary hearing constitutes his default. Ms. DeRosa-

DiSanto, it was argued, should be defaulted for leaving the hearing room after only giving her own testimony in the case, and refusing to stay for the remainder of the evidentiary hearing.

Clearly, Section 21 of the Department's Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings* (CLR 2) affords to a Hearing Officer the discretion to enter a default judgment in circumstances where a party fails to prosecute or defend an action. In pertinent part, that regulation sets forth:

“ If any party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by the Rules, the Hearing Officer may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the nondefaulting party as the Hearing Officer deems appropriate in his/her sole discretion or take such other action as the Hearing Officer deems appropriate in his/her sole discretion.”

As the Motion relates to Mr. DiSanto, there must first be a determination made as to his somewhat ambiguous status as a Complainant, and therefore a party, to this case. Only Debbie DeRosa signed the complaint form which initiated this action, although his name was written into the Complainant's Name section. The next document filed by Complainants was a letter in rebuttal to Respondents' responses to the complaint. At the close of that letter, the names “Debbie and Joseph DiSanto” were typed at the signature line, and the names “Debbie & Joseph” were written above that, in the same handwriting.

The first pleading filed by the Department, the Order Appointing Hearing Officer and Providing Notice of Complaint Hearing listed Debbie DeRosa-DiSanto as the sole Complainant. However, the Order which issued from the pre-hearing conference includes the name of Joseph DiSanto in the caption, and the document is foot-noted as follows: “Joseph DiSanto's name was added to the case caption by order of the undersigned.”

As the Hearing Officer who heard the pre-hearing conference has been substituted with the Hearing Officer issuing this Decision, the basis for that amendment to the caption cannot be

ascertained. But, the clear effect of the amendment was to make Mr. DiSanto a party, and co-Complainant in this action.

That determination being made, it is clear from the record that Mr. DiSanto has had only minimal direct participation in this action. That participation was limited to his attendance at the pre-hearing conference. He did not independently sign either the initial complaint or the rebuttal letter. He did not answer the Notice of Complaint Hearing, did not file or respond to discovery requests, and failed to appear at the evidentiary hearing. Although Ms. DeRosa-DiSanto indicated at the evidentiary hearing that she was appearing on behalf of both herself and Mr. DiSanto, there was no evidence presented at hearing to support the contention that she was authorized or instructed to do so by Mr. DiSanto. The undersigned finds that Mr. DiSanto's limited participation in this matter was insufficient to adequately prosecute this action.

Accordingly, to the extent that it has only a technical effect on this Decision, Mr. DiSanto is hereby defaulted, and the portion of the complaint which relates strictly to him, if any exists, is hereby dismissed. As a practical matter, this has little or no effect on the resultant findings of fact in this matter, as the complaint remains outstanding as to his co-Complainant.

Ms. DeRosa-DiSanto did, in fact, actively take part in the prosecution of her complaint against the Respondent. She filed not only a complaint, but also a rebuttal to the responses of Ms. Haroian and Mr. Phillips. She answered Interrogatories during the discovery process, attended the pre-hearing conference and the evidentiary hearing at which she gave her testimony. Whether her prosecution efforts were adequate to meet the requisite standard of proof must be left to the trier of fact. A full hearing did take place, and Ms. DeRosa-DiSanto did take part – though choosing to leave prior to the close of the proceedings.

Whether her early and abrupt departure from the hearing room was appropriate and reasonable is another matter entirely.³ It was disrespectful of all parties present and most inappropriate, as was some of her behavior earlier in the hearing.

The Complainant stated on the record that, although she was leaving the hearing room, she invited the parties to continue the hearing without her, to “stay and chit-chat”, but that she did not wish to stay and hear anything further from any of them. She withdrew an earlier request to have the Hearing Officer rule only on the pleadings.

Accordingly, the undersigned cannot, and does not conclude that Ms. DeRosa-DiSanto failed to prosecute her complaint under the provisions of Section 21 of CLR 2, and the Motion for Default Judgment as it relates to her is denied.

B. Whether Respondents violated any statute or regulation during the transaction

The allegations made by Ms. DeRosa-DiSanto in her complaint are quite general, and lack specificity. The Respondent’s allegations on the pre-printed complaint form state simply: “1. Unethical, 2. Unprofessional and, 3. Not trustworthy.”

The space provided in the complaint form to list laws or rules violated was left blank. While there is some explanation in the statement attached to the complaint, it lacks any description of specific acts or conduct by the Respondents, which constitute said violations. However, the Pre-Hearing Conference Order issued by the previous Hearing Officer cites the following laws and regulations as those which are at issue in this matter.

1. R.I. Gen. Laws § 5-20.5-14(a)(1) – Substantial Misrepresentation.

The first provision implicated is R.I. Gen. Laws § 5-20.5-14(a)(1), which authorizes the Department to suspend or revoke a license where a licensee makes a substantial

³ Section 15(A) of CLR 2 requires that the parties present at a hearing “conduct themselves in a manner consistent with the standards of decorum commonly observed in any courtroom.”

misrepresentation in a real estate transaction. As noted in a previous Department decision, statutory and regulatory requirements serve and protect the public interest by promoting real estate transactions based on honesty, good-faith, competency and fair-dealing. See *D'Orsi v. Santilli*, DBR No. 99-L-0086 (July 18, 2000).

In order to prove a violation of this statute, the Complainant must show that the Respondent did, in fact, misrepresent facts, and also demonstrate that the misrepresentation was substantial. A misrepresentation is “any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.” *Travers v. Spidell*, 682 A.2d 471, 473 n. 1 (R.I. 1996) (per curiam) (quoting *Halpert v. Rosenthal*, 107 R.I. 406, 413, 267 A.2d 730, 734 (1970)). The meaning of substantial in this context has been defined in *Altomari v. Clark and Shirley*, DBR No.: 01-L-0160 (January 8, 2003):

... It is reasonable to interpret that substantial misrepresentation as envisioned in R.I. Gen. Laws § 5-20.5-14(a)(1) applies to the conduct of the licensees and its effect on the transaction at issue. Thus, the requirement that the misrepresentation be substantial in order to support a finding of a violation of R.I. Gen. Laws § 5-20.5-14(a)(1) infers that it is necessary for the misrepresentation to be made knowingly by the real estate licensee and affect the real estate transaction at issue (internal citation omitted).

According to *Black's Law Dictionary*, Fifth Edition, “misrepresentation” is defined in pertinent part as follows:

Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead.

See also Restatement of Contracts, § 470 at 890-891.

Since the statutory requirements deal with real estate licensees involved in real estate transactions, it is reasonable to infer that the “substantial misrepresentation” applies to real estate licensee actions or real estate transactions. It is reasonable to interpret that substantial misrepresentation as envisioned in R.I. Gen. Laws § 5-20.5-14(a)(1) applies to the conduct of licensees and its effect on the transaction at issue. Thus, the requirement that the misrepresentation be substantial in order to support a finding of a violation of R.I. Gen. Laws § 5-20.5-14(a)(1) infers that it is necessary for the misrepresentation to be made knowingly by the real estate licensee and affect the real estate transaction at issue. *D’Orsi* at 13-14.

The transaction at issue in this case consists solely of the execution and existence for a six-month term of a listing agreement between the Complainant(s) and RE/MAX Post Road Realty, Inc. by its agent, Respondent Haroian. As no sales agreements issued out of the listing, the transaction ended when the Listing Agreement expired on February 14, 2009.

The Complainant in this matter has failed to describe, either in her testimony or her complaint, a specific fact or circumstance of misrepresentation by either Respondent during the term of that Listing Agreement. She did not identify even one statement made by either Respondent that was later determined to be untrue or misleading. While she did testify that she was upset by Ms. Haroian going “behind her back” to speak to Mr. DiSanto about the marketing and sale of the home, it is clear that these communications between the broker and co-owner of the property were appropriate and, in fact, required by the laws and regulations for broker licensees.

In her rebuttal letter, and in her testimony, the Complainant describes Ms. Haroian’s behavior as *nefarious* and *deceitful*, without specific example. She made some explanation of those allegations when she testified that this Respondent provided information regarding the DiSantos’ pending divorce action to potential buyers, contrary to the Complainant’s wishes. This disclosure was supported by fact, and so cannot be considered a misrepresentation.

Additionally, Ms. DiRosa-DiSanto's insistence on including the language, "subject to court approval," highlighted a legal issue to potential buyers and the Respondents would have been remiss in their professional duties if they did not explain the purpose of that statement.

Without the identification of any particular instance in which the brokers misrepresented, by words or conduct, a condition or fact which affected the transaction, it is impossible to make a judgment on this issue, and so this general allegation remains unproven. None of the evidence presented at hearing indicates that Respondents made any misrepresentations.

Due to the Complainant's decision to depart from the hearing before the close of the evidence, the testimony of the Respondents stands uncontradicted. The undersigned finds both Respondents to be credible and reliable witnesses. Respondent Haroian testified in detail as to her marketing efforts and her disclosures to potential buyers and co-brokers. The documentary evidence presented at the hearing supported these disclosures. There was no allegation that the Disclosure Statements included misrepresentations and, in fact, it was the Complainant who added the comment "subject to court approval" which necessitated that the Respondent discuss this matter with interested parties.

The Complainant has not alleged any specific substantial misrepresentations on the part of Respondent Dana Phillips. His participation in this transaction was tangential, at most, and consisted of attempts to salvage the listing agreement and maintain Ms. DeRosa-DiSanto as a client. Even by Complainant's own testimony, she refused Respondent Phillips' offer of a different salesperson to handle the listing.

Accordingly, the undersigned finds that the Respondents did not make any material misrepresentation in violation of R.I. Gen. Laws §5-20.5-14(a)(1).

2. **R.I. Gen. Laws § 5-20.5-14(a)(3) – Continued and Flagrant Course of Misrepresentation or False Promises.**

As cited in the previous section, the various definitions of misrepresentation in real estate matters involve specific acts or omissions by licensees and their effect on the transaction at issue. Again here, without the identification of specific allegations of untruthful or misleading acts or statements, there can be no assessment of the validity of the allegation.

The only specific statement testified to by the Complainant, which she considered to be a false promise was that Respondent Haroian stated she had a “cash buyer” who may be interested in the subject property. It is unclear from the testimony of both the Complainant and Respondent Haroian whether this “cash buyer” ever came forward to view or inquire about the property. As such, there can be no determination that such a promise, if made, was in fact false.

Since the Complainant has not proven any specific or individual acts of misrepresentation on the part of either Respondent, as set forth previously, logic dictates that no pattern of such acts can be found. The undersigned finds that the Complainant has failed to meet her burden of proof as to alleged violations of R.I. Gen. Laws §5-20.5-14(a)(3) on the part of either Respondent.

3. **R.I. Gen. Laws § 5-20.5-14(a)(20) – Bad faith, Untrustworthiness, Incompetency.**

This statutory provision authorizes the Department to suspend or revoke a license where a licensee engaged in any conduct in a real estate transaction that demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. “The purpose of licensing real estate salespersons and real estate brokers is to ensure professional standards within the real estate business.” See R.I. Gen. Laws § 5-20.5-1, *et seq.*, and CLR11; *Gallo v. Smith*, DBR No. 98-L-0058 4/19/00 at 12. As such, licensees have certain statutory and regulatory duties imposed upon them in order to maintain these

standards and to ensure that the public receives a certain level of service. *Id.* As held in a Department decision,

A [real estate] licensee's honesty, trustworthiness, integrity and reputation affect his or her ability to conduct all real estate transactions fairly. If one of these character traits are [sic] compromised, then the stability and integrity of the transaction is compromised. *D'Orsi v. Santilli*, DBR No. 99-L-0086 (July 18, 2000).

Thus, "[t]he statutory and regulatory scheme of licensing real estate salespersons and brokers ensures a system where consumers can rely on licensed professionals to handle real estate sales in a trustworthy and competent manner." *Altomari v. Clark and Shirley*, DBR No. 01-L-0160 at 24.

In the instant matter, Complainant alleged that Respondent Haroian "went behind her back" and had a conversation with Joseph DiSanto regarding an offer which had been presented for the subject property. The Respondent reportedly offered, during that conversation, to reduce her commission to make the offer more attractive to the sellers. This, the Complainant testified, was why she knew she was unable to trust this Respondent.

The undersigned does not find Respondent's offer to a party to a listing agreement to facilitate a sale by reducing her commission to be untrustworthy conduct. This broker licensee is required, under the provisions of R.I. Gen. Laws § 5-20.5-14, and CLR 11, to communicate all purchase offers to the owner of the property. Mr. DiSanto and Ms. DeRosa-DiSanto were co-owners and were therefore owed an equal duty to be informed by the Respondent. According to the uncontradicted testimony of Respondent Haroian, she also made this offer to Ms. DeRosa-DiSanto.

The Complainants allege that Respondent Haroian caused damage to the subject property. Ms. DeRosa-DiSanto also alleged that Ms. Haroian told the sellers she would reimburse them for damages caused to front columns of the house when Ms. Haroian's son power-washed the front

entryway. The undersigned finds this statement lacks credibility for several reasons. Ms. Haroian testified, and produced photographs to support her testimony, that it was her husband, not her son, who power-washed the outside of the subject property. Further, this Respondent produced documentary evidence of an informal inspection done of the subject property by a potential buyer, conducted prior to the power-washing event, that describes the pre-existing rot in the columns.

As to the incompetency component of this section, the undersigned finds that the evidence presented at hearing illustrates that the Respondents conducted this transaction in a competent fashion. The documents presented and executed in the transaction were in accordance with the laws and regulations in effect, and the marketing efforts as outlined in the testimony were performed in an efficient manner, consistent with professional standards and the state of the real estate market at that time.

Interestingly, the Complainants do not cite as evidence of the Respondents' incompetency the fact that the subject property was not sold during the course of the listing. Rather, it was Ms. DeRosa-DiSanto who sought to terminate the listing early, shortly after the first purchase offer was presented, supporting the Respondents' position that this Complainant did not want to sell her home, and was listing it only to comply with a Family Court order to sell. The undersigned finds, based on the uncontradicted and credible testimony of the Respondents, that the Complainant was not cooperative with and actually hindered the Respondents' marketing efforts. This fact gives great support to the Respondents' contention that the Complainant did not want to sell the home, and was only doing so because there was an outstanding order to do so from the Family Court.

As there were no other specific descriptions of dishonesty, incompetency or untrustworthiness on the part of the Respondents, the undersigned finds that the Complainant(s) failed to meet the burden of proof relative to R.I. Gen. Laws § 5-20.5-14(a)(20), and therefore finds that the Respondents did not violate this section.

4. Rule 20 of Commercial Licensing Regulation 11 - General Obligations of Licensees – Fair Dealing

“The purpose of licensing real estate salespersons and real estate brokers is to ensure professional standards within the real estate business.” See R.I. Gen. Laws § 5-20.5-1 *et seq.* and CLR11. *Gallo v. Smith*, DBR No. 98-L-0058 4/19/00 at 12. Licensees have certain statutory and regulatory duties imposed upon them in order to maintain professional standards and to ensure that the public receives a certain level of service. *Id.* “A [real estate] licensee’s honesty, trustworthiness, integrity and reputation affect his or her ability to conduct all real estate transactions fairly. If one of these character traits are compromised, then the stability and integrity of the transaction is compromised.” *D’Orsi v. Santilli*, DBR No. 99-L-0086 7/18/00 at 12. “The statutory and regulatory scheme of licensing real estate salespersons and brokers ensures a system where consumers can rely on licensed professionals to handle real estate sales in a trustworthy and competent manner. Part of this regulatory scheme includes that real estate salespersons owe a duty of fair dealing to all parties in a transaction.” *Altomari v. Clark and Shirley*, DBR No. 01-L-0160 at 24.

Fair dealing constitutes more than just being honest about a property’s value. In order to have a regulatory system that commands the confidence of consumers, consumers must be able to rely upon the professionalism of licensees. “Such professionalism includes honesty, good faith, and a lack of trickery (e.g. equity) by the realtors involved in the transaction.” See *Altomari, supra*, at 25.

The complaint alleges that Respondent Haroian disregarded the property owners' instructions by failing to tell prospective buyers that the home was on the market due to "relocation". The Respondent testified that she did tell some individuals this story. However, when co-brokers made specific inquiries about this issue due to the "subject to court approval" language on the listing, she felt obligated by law to disclose the pending domestic litigation. If that disclosure had been intended to deter potential buyers from making an offer, it may have been considered to be a breach of the Respondent's fiduciary duty to the sellers. However, the Respondent's testimony is clear. She disclosed the information because she was bound to do so in the interest of full disclosure. Indeed, licensees carry the responsibility of dealing fairly with *all parties*, and misrepresenting the reason for the sale would also constitute a violation of these provisions. The fact is that the Complainant herself opened the door for this disclosure by insisting upon adding that language to the listing form. It made the pending litigation a matter of public record. Accordingly, this does not amount to a breach of fiduciary duty by the Respondent.

The Complainant has presented no evidence to support her allegation that Ms. Haroian told potential buyers the home "must be sold" or that the sellers were "separating". These allegations are unsubstantiated in the record.

The Complainant also alleges that Respondent Haroian failed to follow up with potential buyers. The testimony and documentary evidence presented does not support this contention. The only evidence presented by the Complainant which purports to prove this allegation was a letter she produced first with her Answers to Interrogatories, and later at hearing. It is a letter signed by James Nichols and stating, "we were not contacted by the realtor as a follow up to showing us the house at Shadow Brook Drive or any other house we saw." The letter is

notarized, but the author was not called as a witness by the Complainant to substantiate the statement.

Contradicting this evidence, the Respondent testified that she did, in fact, make several attempts to contact Mr. Nichols after the showing; leaving messages for him which were not returned. She further testified that he provided misinformation regarding his contact information. He claimed to be from Connecticut when he arranged the showing, but the letter lists his address as New Bedford, Massachusetts. The undersigned finds the information contained in the letter for this reason less than credible, when coupled with the testimony of Respondent that she discovered that Mr. Nichols works at the same company which employs Ms. DeRosa-DiSanto, and that she pretended not to know him during the showing.

The testimony of Respondent Haroian outlines several repeat showings by prospective buyers, who either first saw the property during an Open House arranged by the Respondent Haroian, or through a co-broker's efforts. It does appear from the record that the Respondent Haroian followed up with those buyers who expressed a genuine interest in the property.

Finally, the complaint alleges that Respondent Haroian behaved unethically by "butting one spouse against the other", telling one she would accept a reduced commission. The evidence suggests that the offer to do so was communicated to both Mr. and Mrs. DiSanto, and that no action was ever taken by them to either accept or reject the offer. Indeed, the fact that the offer was withdrawn three weeks later certainly supports the sellers' failure to act.

Ms. DiRosa-DiSanto alleges further that Ms. Haroian was abrasive, argumentative, and disrespectful toward her when they spoke. (The complaint does not cite specific instances of this, and does not specify whether Respondent Phillips is included in this allegation as well.) There is nothing in the record which either confirms or contradicts this allegation. However, the undersigned had the opportunity to observe the behavior and demeanor of the Complainant and

each of the Respondents during the hearing, and to review evidence of the Respondent's licensing history, and to draw inferences therefrom. Neither Ms. Haroian, nor Mr. Phillips at any time acted inappropriately or rudely in the hearing room. Both appeared reserved and well mannered. Their lengthy record of having no previous complaints filed against them with this Department, or with local real estate boards, would tend to support their stated reputations for professional service.

It is, however, clear that Ms. DeRosa-DiSanto and Ms. Haroian were having interpersonal problems with each other during this transaction. That being said, there is no indication in the record whether those problems were caused by either or both of them. Certainly rude comments and insults have no place in the professional marketplace. However, the comments cited by the Complainant did not impact on the Respondents' fair dealing with the parties, nor did it create a breach of the licensees' fiduciary duty to the sellers.

5. R.I. Gen. Laws § 5-20.5-14(a)(15) Violation of any rule of regulation.

A violation of this section must be predicated upon a finding that the Respondents have violated a Departmental regulation. The regulation at issue in this matter is Rule 20 of Commercial Licensing Regulation 11 – *Real Estate Brokers and Salespersons*. The undersigned finds that neither Respondent has violated that, or any other regulation of the Department.

VII. FINDINGS OF FACT

1. On or about January 7, 2009, the Complainants filed a complaint with the Department of Business Regulation against the two named Respondents.
2. A full evidentiary hearing was held on September 11, 2009.
3. The facts, as detailed in sections V. and VI. are incorporated herein by reference.

VIII. CONCLUSIONS

For each of the alleged violations identified, the Complainant(s) failed to provide sufficient evidence to support a finding that the Respondents engaged in improper conduct as licensed real estate brokers. The Complainants' allegations are general in nature and lack specificity. None of the allegations are supported by anything more than Complainant DiRosa-DiSanto's own testimony, if they are supported at all. The Respondents, Ms. Haroian particularly, denies the allegations made against her and in all candor, offers a more credible account of events.

Accordingly, the Hearing Officer finds that neither Respondent named in this matter violated R.I. Gen. Laws §§ 5-20.5-14(a)(1), (3), (15), (20), or Rule 20 of Commercial Licensing Regulation 11 – *Real Estate Brokers and Salespersons*.

IX. CONCLUSIONS OF LAW

In accordance with the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra*.
2. Under the standard set forth in Section IV and the statutory framework and analysis set forth in Section VI(B)(1), Complainant(s) did not establish by a preponderance of the evidence that Respondent made any substantial misrepresentations in violation of R.I. Gen. Laws § 5-20.5-14(a)(1).
3. Under the standard set forth in Section IV and the statutory framework and analysis set forth in Section VI(B)(2), Complainant(s) did not establish by a preponderance of the evidence that Respondent pursued a continued and flagrant course of misrepresentation or making of false promises in violation of R.I. Gen. Laws § 5-20.5-14(a)(3).

4. Under the standard set forth in Section IV and the statutory framework and analysis set forth in Section VI(B)(3), Complainant(s) did not establish by a preponderance of the evidence that Respondent engaged in any conduct in a real estate transaction that demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in violation of R.I. Gen. Laws § 5-20.5-14(a)(20).


5. Under the standard set forth in Section IV and the statutory framework and analysis set forth in Section VI(B)(4), Complainant(s) did not establish by a preponderance of the evidence that Respondent failed to adhere to the laws of agency governing fiduciary relationships in violation of Rule 20(A) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons*.

6. Under the standard set forth in Section IV and the statutory framework and analysis set forth in Section VI(B)(5), Complainant(s) did not establish by a preponderance of the evidence that Respondent violated any rule or regulation promulgated by the Department in violation of R.I. Gen. Laws § 5-20.5-14(a)(15).

X. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department find that Complainants failed to meet their burden to prove that either of the named Respondents violated any provision of R.I. Gen. Laws § 5-20.5-14(a) or CLR 11, as detailed herein, and further recommends that Complainants' complaint be dismissed.

Dated: 16 November, 2009

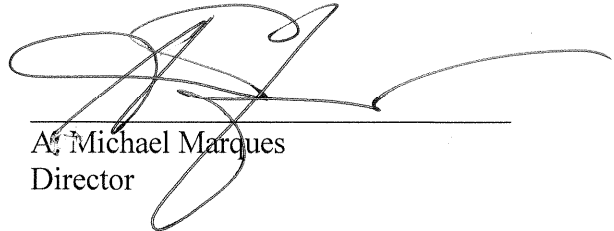


Ellen R. Balasco, Esq.
Hearing Officer

I have read the Hearing Officer's Decision and Order in this matter, and I hereby take the following action:

ADOPT
 REJECT
 MODIFY

Dated: Nov 19, 2009



At: Michael Marques
Director

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 30th day of November, 2009, that a copy of the within Decision was sent by first class mail, postage prepaid, to the following:

Donald M. Gregory II, Esq. 20 Oakdale Road North Kingstown, RI 02852	Roger Coutu, Esq. Hobson & Couto, Ltd. 222 Jefferson Blvd. Warwick, RI 02886
Debbie DeRosa-DiSanto 138 Shadow Brook Drive Warwick, RI	Joseph DiSanto 138 Shadow Brook Drive Warwick, RI 02886

And sent by electronic mail to the following parties at the Department of Business Regulation:

Maria D'Alessandro, Associate Director
William DeLuca, Acting Administrator for Real Estate



Shirley P. DiSanto