BEFORE THE NEW MEXICO
REAL ESTATE COMMISSION

IN THE MATTER OF:

STACY ROSS,
License No. 48428,

NMREC Case No. 18-07-03-069

Respondent.

DECISION AND ORDER

This matter was presented to the New Mexico Real Estate Commission ("Commission") during its special meeting held November 16, 2020 virtually via webex due to Governor Lujan Grisham's Covid 19 Emergency Health Order 2020-11-16, for a Decision and Order pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to –34. With a quorum of the Commission, having familiarized themselves with the record, including the Hearing Officer's Report (incorporated by reference), evidence and testimony, voted 5-0, as follows:

CONCLUSIONS OF LAW

1. Respondent Stacy Ross is a licensed New Mexico Real Estate Broker, license number 48428, and therefore, subject to the jurisdiction of the Commission. NMSA 1978, Section 61-29-4.

2. The Commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29, Part 12(A) NMSA 1978, has:

   (1) made a substantial misrepresentation;

   (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salesperson, advertising or otherwise;

   (10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission; or

   (11) committed an act, whether the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act.

3. Prior to the time a licensee generates or presents any document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements by the commission. NMSA 1978, Section 61-29-10.2.

4. Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:

A(1) honesty and reasonable care as set forth in the provisions of this section;

A(3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant

B(1)(b) active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction.

16.61.19.8 NMAC;

1. The Commission may utilize its experience and specialized knowledge in the evaluation of the evidence presented during the hearing. NMSA 1978, Section 61-1-11(C).

2. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section.61-1-3.

3. Respondents shall bear costs of disciplinary proceedings unless excused by the board from paying all or part of the fees pursuant to NMSA 1978, Section 61-1-4(G).

4. The preponderance of the evidence reveals Respondent failed to have the Aldermans complete an occupancy agreement in violation of NMSA 1978, Sections 61-29-12(A) (10), (11) and 16.61.19.8(A)(3).

5. The preponderance of the evidence reveals Respondent failed to conduct a background check on the Aldermans prior to allowing the Aldermans to occupy the home in violation of NMSA 1978, Sections 61-29-12(A) (10), (11) and 16.61.19.8(A)(3).

6. The preponderance of the evidence reveals Respondent failed to exercise due diligence to determine whether the Aldermans qualified for a mortgage to purchase the home in violation of NMSA 1978, Sections 61-29-12(A) (10), (11) and 16.61.19.8(B)(1)(b).

7. The preponderance of the evidence reveals Respondent received a payment of $1,250 from the Aldermans but withheld $750 in violation of the contract that required that "no money may be disbursed to owner until sufficient funds have cleared to cover the disbursement to owner from the trust account" in violation of NMSA 1978, Sections 61-29-12(A) (10), (11) and 16.61.19.8(A)(1), (A)(3) and (B)(1)(b).

8. The preponderance of the evidence reveals Respondent comingled funds belonging to the Complainants with a brokerage account that was not a trust account in violation of NMSA 1978, Sections 61-29-12(A) (10), (11) and 16.61.19.8(B)(1)(b).

IV. ORDER

Upon consideration of all the facts and circumstances the Commission **ORDERS**:

A. A letter of reprimand shall be placed into Respondent's file; and

B. Respondent shall complete four hours of continuing education as deemed appropriate by the Commission for no credit within ninety days from receiving this Order. Certification of completion of the course shall be mailed to Germelyn Vivar at the Real Estate Commission Office, Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109.

Gretchen Koether, the Commission's President, is designated to sign this Decision and Order. A copy of the Decision and Order shall be filed and served upon the Respondents in accordance with the law.

NOTICE: Pursuant to Section 61-1-17 of the Uniform Licensing Act and NMSA 1978, Section 39-3-1.1, a person aggrieved by an adverse decision of the Commission issued after a hearing may obtain a review of the decision in the district court of Santa Fe County or in the district court of any county in which a hearing on the matter was conducted. To obtain such review, a notice of appeal must be filed in the proper district court within thirty (30) days after the date of the Commission's decision. Failure to file a notice of appeal within the time stated herein shall operate as a waiver of the right to judicial review and shall result in the decision of the Commission becoming final. The procedures for filing an appeal from the Commission to the district court are governed by Rule 1-074 of the Rules of Civil Procedure for the District Courts.

NEW MEXICO REAL ESTATE COMMISSION

11-23-20
Date

Gretchen Koether
Gretchen Koether
President