

15-10-06-098  
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**BEFORE THE NEW MEXICO  
REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**NMREC Case No. 15-10-06-098**

**SARA MICHELLE CARTER,  
Broker License: 19123**

**Respondent.**

**FINAL DECISION AND ORDER**

This matter was presented to the New Mexico Real Estate Commission ("Commission") during its March 18, 2019, meeting held at the Greater Albuquerque Association of Realtors located at 1635 University Blvd NE, Albuquerque, New Mexico, for a Decision and Order pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to --34.

A Disciplinary Hearing was held on February 14, 2019, before the designated hearing officer, Commissioner Kurstin Johnson, at the New Mexico Real Estate Commission Office located at 5500 San Antonio Dr. NE; Albuquerque, New Mexico. Rebecca C. Branch, Assistant Attorney General and Administrative Prosecutor was present on behalf of the State. Respondent, Sara Michelle Carter, appeared and was represented by Rudolph B. Chavez, Esq. Lori Chavez, Assistant Attorney General and Commission Counsel was present to advise the hearing officer.

On March 18, 2019, a quorum of the Commission, having familiarized themselves with the record, including the Hearing Officer's Report, participated in the deliberation and decision in this matter. A copy of the Hearing Officer's Report is attached hereto and incorporated by reference. By an affirmative vote of 5-0, the Commission adopts the Hearing Officer's Report and reaches the following Decision and Order:

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I. CONCLUSIONS OF LAW

- A. Respondent is a real estate broker licensed by the Real Estate Commission, and therefore subject to the Real Estate Brokers and Salesmen Act, NMSA 1978, Section 61-29-1 through -29 and the jurisdiction of the New Mexico Real Estate Commission. NMSA 1978, Section 61-29-4.
- B. 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 NMSA 1978.

- (1) made a substantial misrepresentation;
- (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member; . . . .
- (5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them; . . . .
- (10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;
- (11) committed an act, whether of 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; . . . .

- C. 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. honesty and reasonable care as set forth in the provisions of this section . . . ;
- B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;
- . . . . .
- E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

- F. prompt accounting for all money or property received by the broker;
- G. written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to "(2) any material interest or relationship of a business, personal or family nature that the broker has in the transaction;
- H. written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by the federal fair housing laws or the New Mexico Human Rights Act. 16.61.19.8 NMAC . . .
- D. Licensees shall perform all duties established by the commission. NMSA 1978, Section 61-29-10.2(B).
- E. The Commission may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. NMSA 1978, Section 61-1-11(B).
- F. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3.
- G. Respondent 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).
- H. The preponderance of the evidence reveals Respondent failed to disclose her dual relationship with both the seller and the buyer to the seller in violation of NMSA 1978, Sections 61-29-12(A) (10) of the Brokers and Salesmen Act and 61-29-10.2(B) and 16.61.19.8(G) and (H) NMAC of the Commission Rules.
- I. The preponderance of the evidence reveals that Respondent failed to disclose adverse material facts actually known by her about the buyer's inability to complete the short sale in violation of NMSA 1978, Sections 61-29-12(A) (10) and 61-29-10.2 (B) of the Brokers and Salesmen Act and 16.61.19.8(H) NMAC of the Commission Rules.
- J. The preponderance of the evidence reveals that Respondent made false statements concerning the effect of the transfer of the deed for the property and selling of her redemption right in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11) and 61-29-10.2(B) and 16.61.19.8(A) NMAC.
- K. The preponderance of the evidence reveals that Respondent made false statements concerning the necessity of transferring the deed and redemption rights for the property to Respondent in order for the Respondent to engage in short sale negotiations in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11) and

61-29-10.2(B) and 16.61.19.8(A) NMAC.

- L. The preponderance of the evidence reveals that Respondent misrepresented the status of the renters as "caretakers" in violation of NMSA 1978, Sections 61-29-12(A)(1) and (10) and 61-29-10.2(B) and 16.61.19.8(A) NMAC.
- M. The preponderance of the evidence reveals that Respondent demonstrated bad faith, untrustworthiness, fraud and dishonesty when placing renters into the home and collecting rent without informing the homeowner that renters were placed in the home in exchange for rental payments in violation of NMSA 1978, Sections 61-29-12(A) (10) and (11) and 61-29-10.2(B) and 16.61.19.8(A) NMAC.
- N. The preponderance of the evidence reveals that Respondent failed to promptly account for all rental money received in violation of NMSA 1978, Sections 61-29-12(A)(1) and Sections 61-29-10.2(B) and (11) and 16.61.18. (F) NMAC.
- O. The preponderance of the evidence reveals that Respondent made a bad faith effort and demonstrated incompetency when transacting the short sale in violation of NMSA 1978, Sections 61-29-12(A) (11) and 61-29-10.2(B) and 16.61.19.8(E).

## **II. ORDER**

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

- A. Respondent shall pay a fine in the amount of five thousand dollars (\$5,000.00) within sixty (60) days after the date this Decision and Order is received by Respondent. Payment shall be made in the form of a cashier's check payable to the New Mexico Real Estate Commission and mailed to the Commission office at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn: Germelyn Vivar, Administrative Secretary.
- B. Respondent shall pay the cost of the disciplinary proceedings in the amount of two thousand one hundred and fifty-two dollars and eight cents (\$2,152.08) within sixty days (60) of receiving this Decision and Order. Payment shall be made in the form of a cashier's check payable to the New Mexico Real Estate Commission and may be combined with payment of the fine ordered in paragraph A of this Order.
- C. A Letter of Reprimand shall be issued to Respondent.
- D. Respondent's Real Estate Broker's License is revoked effective upon the date this Decision and Order is received by Respondent.

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.

**For the New Mexico Real Estate Commission**

4/29/19  
Date

/s/ Gretchen Koether  
President Gretchen Koether

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