

New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION
New Mexico Real Estate Commission
5500 San Antonio Dr. Suite A • Albuquerque, New Mexico 87109
www.rld.state.nm.us

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&
EXECUTIVE SECRETARY

September 25, 2019

Felipe Joseph Garcia
Qualifying Broker
Excaliber Asset Management
P.O. Box 93172
Albuquerque, New Mexico 87199

Re: NMREC Case No. 16-06-16-042

Dear Mr. Garcia:

The New Mexico Real Estate Commission approved a settlement agreement in the above-referenced case at their September 16, 2019 meeting. A copy of the settlement agreement and order are enclosed.

The agreement provides that you pay a \$2,000 administrative fee by November 30, 2019 complete for no continuing education credit a four (4) hour course in brokerage relationships by September 30, 2019, and receive a letter of reprimand.

Because it will be impossible to complete the course requirement by the end of September, you have until November 30, 2019 to complete the four (4) hour online course in Agency Law provided by McKissock Learning. The course can be accessed from the Commission web site from the Approved List of On Demand Continuing Education Courses at the Requirements and Continuing Education link.

The \$2,000 administrative fee should be in the form of a cashier's check payable to the New Mexico Real Estate Commission. The check and the certificate of completion of the Agency Law course should be mailed to the New Mexico Real Estate Commission, 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn: Germelyn Vivar, Administrative Secretary.

In keeping with the final term of the settlement agreement, you are hereby reprimanded for violating Part 16.61.16.9 E (1), (3), and (4), Qualifying Broker: Affiliation and Responsibilities, of the Real Estate Commission Rules.

These violations occurred when you failed in your duties as a qualifying broker to properly supervise associate broker Phil Griego in his brokering of the sale of property by the state Energy and Minerals Department (EMNRD) to Galisteo Street, Inc. (GSI) a private company, including ensuring that Mr. Griego disclosed broker duties to his customer or client. You further failed to execute an

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independent contractor agreement with Mr. Griego when he affiliated with your brokerage.

This letter of reprimand will become part of your licensing file. It is a matter of public record and it will be published in the Disciplinary Actions section of the Commission web site.

Finally, you are directed to correct the brokerage practices that led to the complaint and the subsequent disciplinary action.

Sincerely,



Wayne W. Ciddio
Executive Secretary
New Mexico Real Estate Commission

Enclosure

cc: Business Law Southwest, LLC
Kallie L. Dixon
320 Gold Avenue SW, Suite 610
Albuquerque, New Mexico 87102

**BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF:

NMREC Case No. 16-06-16-042

Phil Griego
License No. 17003 (Expired),

Felipe Joseph Garcia
License No. 12090,

Respondents.

SETTLEMENT AGREEMENT AND ORDER

WHEREAS, the State of New Mexico Real Estate Commission (“the Commission”) received a formal complaint on June 16, 2016, regarding Phil A. Griego, a real estate broker licensed by the Commission (who was convicted of multiple counts of corruption) and who was associated with and licensed under Felipe Joseph Garcia (“the Respondent”), qualifying real estate broker licensed by the Commission, but who was not involved in the activities by which Phil A. Griego was convicted, and a Notice of Contemplated Action (“the NCA”) was authorized and issued by the Commission on June 15, 2018; and

WHEREAS, the State of New Mexico and the Respondent are willing to resolve this matter in an amicable fashion and without the need for a formal hearing as required pursuant to the Uniform Licensing Act (NMSA § 61-1-1 through 61-1-34, hereafter “ULA”); and

WHEREAS, the Administrative Prosecutor believes that this Settlement Agreement is an appropriate resolution to of the charges raised in the NCA and, therefore, recommends that the Commission approve the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **Jurisdiction.** The Commission is responsible for licensure and enforcement under the Real Estate Licensing Act, NMSA 1978, §§ 61-29-1 through -29 (the "Act"). Respondent is a real estate broker licensed by the Commission and, therefore, is subject to the jurisdiction of the Commission with respect to the allegations set forth in the NCA.
2. **Allegations of Violations.** Respondent acknowledges that this disciplinary action is based on allegations that he violated provisions of NMAC § 16.61.16.9.
3. **No Admission of Wrongdoing.** Nothing in this Settlement Agreement shall be interpreted as Respondent's admission that he violated any provision of NMAC § 16.61.16.9.
4. **Requirements.** Respondent shall enroll and complete a four-hour credit course on brokerage relationships, by September 30, 2019. This course will not go to fulfill Respondent's continuing education requirements. The Respondent will pay a \$2,000 administrative fine by November 30, 2019. The Respondent shall accept a letter of reprimand.
5. **Commission's Forbearance.** The Commission agrees that it will take no further action against Respondent with respect to the allegations set forth in the NCA in this matter provided Respondent fully and timely complies with the requirements set forth in Paragraph 4 above.
6. **Waiver.** Respondent acknowledges, agrees and stipulates that by signing this Settlement Agreement he is waiving the following rights as they pertain to the alleged misconduct described herein:
 - A. Respondent enters into this Settlement Agreement voluntarily and waives his right to have these matters heard in the manner described in the ULA, including the right to a full evidentiary hearing on the charges made in the complaint against them, the right to confront and cross-examine witnesses, assert defenses and the right to appeal any

decision of the Commission following such a hearing. This waiver only applies if the Commission accepts this Settlement Agreement

B. Respondent waives any and all time limitations set forth in the ULA, including all rights to have this matter heard within the time frame established by the ULA, in order for the Commission to consider this Agreement. This waiver applies regardless of whether the Commission accepts this Settlement Agreement.

7. **Voluntary Agreement.** Respondent acknowledges that he has the right to be represented by counsel, and that Respondent has had the opportunity to consult with counsel prior to signing this Settlement Agreement. Respondent affirmatively states that he has read this entire Settlement Agreement and understands his responsibilities contained herein. Respondent knowingly, intentionally and voluntarily enters into and signs this Settlement Agreement and affirms that no promise or representation has been made to him other than the those in this Settlement Agreement.

8. **Release.** Respondent acknowledges that the Commission has the statutory, administrative and regulatory authority and jurisdiction to investigate and adjudicate allegations of professional misconduct. Upon execution of this Settlement Agreement, Respondent releases the Commission from any and all claims arising out of the Commission's decision to investigate the complaint, refer the matter for issuance of a Notice of Contemplated Action, and take the actions described herein.

9. **Approval by Commission.** This Settlement Agreement is subject to approval by the Commission. If the Commission rejects this Settlement Agreement, the Commission may proceed with a formal hearing. In the event that the Commission rejects this Agreement, neither the fact nor the terms of this Settlement Agreement nor any statements made by Respondent

in connection with this Settlement Agreement shall be used against Respondent in a subsequent proceeding.

10. Effective Date. This Settlement Agreement is binding upon the Commission and Respondent when it is signed by Respondent and the attending Order, validating the terms of the Settlement Agreement, is signed by the Commission President. Upon the Commission President affixing his signature to the Order indicating the Commission's approval of this Agreement, copies of both documents shall be mailed to Respondent by Certified Mail. This mailing shall fulfill the Commission's obligation to notify Respondent of the Commission's acceptance or rejection of the Settlement Agreement.


11. Effect of Settlement Agreement. As long as Respondent complies with the requirements of this Settlement Agreement, the Commission will consider this matter closed and resolved and will take no further action against Respondent for the conduct alleged in the NCA. This Settlement Agreement is a settlement of Case No. 16-06-16-042 only and has no effect on the Commission's authority to take action against Respondent for any separate allegations of violations within the Commission's jurisdiction. Respondent understands and acknowledges that his action in entering this Settlement Agreement is final and not subject to reconsideration, judicial review or appeal.

12. Effect of Failure to Comply. Respondent acknowledges that a failure to comply with the terms and conditions of this Settlement Agreement shall be a separate and independent ground for disciplinary action by the Commission against Respondent and at the discretion of the Commission shall constitute a violation of the Act. Such action will immediately result in the filing of an Order to Show Cause as to why the Commission should not find Respondent in violation of the Agreement and impose any and all lawful sanctions at its

disposal including but not limited to revocation, suspension, restrictions on scope of practice, imposition of fees, penalties and costs and/or taken any other disciplinary action authorized pursuant to the Act and/or the ULA.

13. Public Record. The NCA and this Settlement Agreement are public records within the meaning of the Inspection of Public Records Act, NMSA §14-2-6(E).

8/14/19
Date


FELIPE JOSEPH GARCIA
Broker License No. ~~77002~~

12090 78

Prepared by:

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RBranch@NMAG.gov

ORDER

This proposed Settlement Agreement and Order comes before the Real Estate Commission during a properly scheduled public meeting with a quorum present and majority voting in the affirmative, this Agreement is:

✓ ACCEPTED and the discipline set out in the agreement is hereby imposed.

 REJECTED.

9-24-19
DATE

Mitchell Ketter
CHAIR,
NEW MEXICO REAL ESTATE COMMISSION