

**BEFORE THE NEW MEXICO
REAL ESTATE COMMISSION**

IN THE MATTER OF:

**ERIC NEILL
License Application,**

NMREC Case No. 19-01-04-004

Applicant.

FINAL DECISION ORDER

This matter was presented to the New Mexico Real Estate Commission (“Commission”) during its regularly scheduled January 27, 2020 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 hearing was held on October 3, 2019, before the designated hearing officer, Greg Foltz, for the Real Estate Commission (“Commission”) at the Regulation and Licensing Division located at 5500 San Antonio Drive NE, Albuquerque, New Mexico. Erin Lecocq and Amye Green, Assistant Attorneys General and Administrative Prosecutors, were present on behalf of the State. Eric Neill (“Applicant”) appeared with legal counsel, Sean P. McAfee with the Law Office of Sean P. McAfee. Lori Chavez, Assistant Attorney General and Counsel for the Commission, was present to advise the Hearing Officer. The hearing officer filed his report pursuant to NMSA 1978, § 61-1-7(A). The record, including the hearing officer’s report, transcript and exhibits were reviewed at the Commission’s regular meeting held on November 18, 2019. Also presented was additional evidence that was not included in the record. Based upon the additional evidence, the Commission issued an Order to reopen the case on December 13, 2019.

On January 27, 2020, a hearing was held before the entire Commission at the Greater

Albuquerque Association of Realtors located at 1635 University Blvd NE, Albuquerque, NM. Erin Lecocq, Assistant Attorney General and Administrative Prosecutor, was present on behalf of the State. Applicant appeared with legal counsel, Sean P. McAfee with the Law Office of Sean P. McAfee. Lori Chavez, Assistant Attorney General and Counsel for the Commission, was present to advise the Commission. With a quorum of the Commission present, and after reviewing the record, including the hearing officer's report, which is incorporated by reference, and exhibits as well as testimony and evidence presented at the January 27, hearing, the Commission voted 4-0 as follows:

ADDITIONAL FINDINGS OF FACT

1. At the October 3, 2019 hearing, Applicant's counsel stated that Applicant had no record of misbehavior in any form or fashion the last 13 years. Applicant did not dispute that representation TR. 7:15-25.
2. Applicant was arrested on January 17, 2015 for domestic abuse. Ex. 2.
3. Applicant did not credibly explain the incident and took no responsibility for the altercation despite a criminal complaint citing a witness statement. Ex. 2.
4. Applicant testified that he "did nothing wrong." TR. 10: 14-19.
5. Applicant previously testified that he does not need any counseling to assist with his behavioral issues that led to his arrests in the early 2000s. Despite the more recent arrest for domestic abuse, Applicant maintains that he does not have a problem. Tr. 9: 20-24.
6. The hearing officer asked Applicant about the disposition of the case. Tr. 11: 6-7.
7. Applicant responded "Nothing. It was dropped. No prosecution." Tr. 11: 8-9.
8. A jury trial was set for May 13, 2015. Ex. 2.

9. On May 13, 2015, the trial was dismissed without prejudice because the witness failed to appear and the state could not proceed without the witness. Ex. 2.

CONCLUSIONS OF LAW

1. Applicant applied for a Real Estate Broker's license and therefore subject to the jurisdiction of the Commission.
2. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public. NMSA 1978, Section 61-29-9(A).
3. 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.
 - (6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude [...].
4. 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).
5. Substantial evidence reveals that Respondent continues the pattern observed by the California Department of Real Estate of not taking responsibility for his part in altercations or disputes, not being forthcoming when questioned and instead insists upon claiming to be a victim and resorting to dangerous behavior when he is angry, therefore, Applicant is not able to transact business in a manner that safeguards the interest of the public. NMSA 1978, Section 61-29-9(A).
6. Substantial evidence reveals that Respondent refuses counseling to address his continued personal issues limiting his counseling to parenting and co parenting, and therefore, does not demonstrate rehabilitation that would assist with him obtaining coping skills to manage his anger to prevent future altercations. NMSA 1978, Section 61-29-12.

Upon consideration of all the facts and circumstances the Commission **DENIES** Respondent's application for a Real Estate License.

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

2-10-2020

Date

Gretchen Koether

President Gretchen Koether