

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEMECIA CSANYI</b>	)	<b>NMREC CASE NO. 16-01-03-03</b>
<b>Broker License No: 7272</b>	)	
	)	
	)	
<b>Respondent.</b>	)	

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**DECISION AND ORDER**

THIS MATTER came before the New Mexico Real Estate Commission the regularly scheduled meeting on January 22, 2018 for a Decision and Order. A hearing was held on December 6, 2017, before the designated hearing officer, Greg Foltz, for the Real Estate Commission ("Commission") at the Regulation and Licensing Office located at 5500 San Antonio Drive NE, Albuquerque New Mexico. The hearing officer submitted her Hearing Officer's Report to the Commission on January 5, 2018 pursuant to NMSA 1978, Section 61-1-7(A). By an affirmative vote of 5-0 and with one abstention, the Commission adopts the hearing officer's findings of fact and upon review of the entire record, including the transcript and exhibits, renders the following decision:

**I. CONCLUSIONS OF LAW**

- A. Respondent is a licensed New Mexico real estate broker subject to the Real Estate Brokers and Salesmen Act and therefore subject to 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(A) NMSA 1978, has:

(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.
- C. The Commission may take disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation who violates any provision of the real estate license law or commission rules. 16.61.12.8 NMAC.
- D. 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;
  - (D.) Assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including
    - (1) Presentation of all offers or counter-offers in a timely manner, and
    - (2) Assistance in complying with terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction.
  - (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;
  - (G) written disclosure to their client or customer and to other brokers involved in the transaction or any potential conflict of interest that the broker has in the transaction including but not limited to:
    - (1) any written brokerage relationship the broker has with any other parties to the transaction or;
    - (2) any material interest or relationship of a business, person, or family nature that the broker has in the transaction;
    - (3) Other brokerage relationship options available in New Mexico.

- (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 federal fair housing laws or the New Mexico Human Rights Act.
- (I) maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law.

16.61.19.8(A), (B), (D), (E), (G), (H) and (I) NMAC

E. Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

(A) Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship in a non-fiduciary relationship.

(B) Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency and sub-agency agreements.

(C) Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

16.61.19.9(A)-(C) NMAC

F. Dual agency relationships:

(A) Dual agency occurs when:

- (1) An associate broker or qualifying broker is agent for both a seller client and a buyer ;
- (2) An associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and
- (3) In a transaction where a buyer client and a seller client are each served by different associate brokers in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the associate brokers and the qualifying broker are dual agents in the transaction.

(B) In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

(C) Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

(D) Information obtained by an associated broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to

the other party unless required by law or rules or permitted by the client who originally disclosed the confidential information.

16.61.19.10(A)-(D) NMAC

- G. All transactions shall be documented and signed by all parties to the transaction. 16.61.33.8 NMAC.
- H. Except as otherwise provided by law, in all circumstances it shall be the responsibility of each broker engaged in the transaction to assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter. 16.61.33.9.
- I. 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);
- J. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3.
- K. 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).
- L. The preponderance of the evidence reveals that Respondent failed to provide the client with signed purchase agreements involving two separate transactions in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.33.8 NMAC and 16.61.33.9 NMAC.
- M. The preponderance of the evidence reveals that Respondent acted with incompetency and bad faith when completing the special warranty deed without a license to practice law or by supervision of a licensed attorney in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.8(B) NMAC.
- N. The preponderance of the evidence reveals that Respondent failed to inform the client or transfer the deed back into the client's name after the purchaser defaulted on the note in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.33.9 NMAC.
- O. The preponderance of the evidence reveals that Respondent failed to enter into a dual agency agreement involving two separate transactions without first obtaining written authority from the buyer client and seller client in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.9 NMAC, 16.61.19.10 NMAC and 16.61.3.9 NMAC.
- P. The preponderance of the evidence reveals that Respondent failed to assist the client in completing the transaction, presenting all offers or counter-offers to the client in a timely manner and assist the client in complying with the terms and conditions of the contract in violation of NMSA 1978, Section 61-29-12(A)(10) and (11) and 16.61.19.8(D).

- Q. The preponderance of the evidence reveals that the Respondent failed to inform the client of potential conflicts when facilitating the assignment of the note to Respondent's daughter in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 61.61.19.8(G) and (H) NMAC.
- R. The preponderance of the evidence reveals that Respondent failed on at least two separate transactions to have the broker duties signed by customers or clients in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.8 NMAC and 16.61.33.9 NMAC.

## II. ORDER

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

- A. Respondent 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 the 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: Lyn Carter, Chief Investigator.
- B. Respondent shall receive a Letter of Reprimand from the Commission that shall be a matter of public record.
- C. Respondent shall successfully complete thirty-hours of Broker Basic Courses, for no continuing education credit, within ninety (90) days of the signing of this Decision and Order. Respondent shall provide to the Commission's Chief Investigator a certificate of course completion to document compliance with this term of the Order.
- D. Respondent shall pay the cost of the disciplinary proceedings in the amount of eight hundred forty-nine dollars and ninety-six cents (\$849.96) within sixty days (60) after the date the Respondent receives 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.
- E. Respondent's broker license shall be suspended for a period of six months (6) commencing from the date Respondent receives this Decision and Order. The license shall be relinquished to the Commission with ten (10) days after the date the Decision and Order is signed.
- F. Respondent's failure to comply with the provisions of this Decision and Order shall result in an Order to Show Cause to be issued by the Commission. The hearing shall be set as soon as is practicable. The hearing may result in the Commission taking additional disciplinary action against the Respondent up to and including revocation of all broker licenses held by the Respondent.

Kurstin Johnson, the Commission 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

3/23/18  
Date

  
Commissioner Kristin Johnson  
President