

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

**IN THE MATTER OF:**

**JASON VALENTINE  
License No. 18789**

**NMREC CASE NO. 14-11-06-119**

**Respondent.**

**DECISION AND ORDER**

THIS MATTER came before the New Mexico Real Estate Commission on November 20, 2017 for a Decision and Order. A hearing was held on September 15, 2017, before the designated hearing officer, Kurstin Johnson, for the Real Estate Commission ("Commission") at the Public Defender's Office located at 285 South Boardman, Gallup, New Mexico. On October 14, 2017, the hearing officer submitted her Hearing Officer's Report pursuant to NMSA 1978, Section 61-1-7(A). Citations to the record are as follows: "Tr. Page: Line" refers to the written transcript, page and line number, "Ex." refers to the exhibit number attached to the transcript and "NCA" refers to the Notice of Contemplated Action issued by the Commission and is incorporated by reference.

By an affirmative vote of 5-0, the Commission renders the following Decision and Order:

**I. FINDINGS OF FACT**

1. Jason Valentine ("Respondent") is licensed with the Commission as a qualifying broker, license number 18789. Tr. 31: 5-7 and See NCA;
2. On or about November 12, 2014, a Complaint was filed with the Commission against Respondent by Gene Turk ("Complainant"). Ex. A p. 1143-1145;
3. The complaint involved an individual who was attempting to sell his house. An offer to purchase the house was made by a buyer represented by

16. Respondent believed that the correct title company was Gallup Title. Tr. 34: 21-25, Tr. 38: 11-16 and Tr. 39: 13-19;
17. Respondent returned the check to Ms. Darreh. Tr. 38: 7-16;
18. Ultimately, it was determined the Four Corners Title Company was the correct title company. Tr. 35: 8-11 and Tr. 39: 13-19;
19. The transaction terminated on October 15, 2014 after the home inspection when it disclosed numerous items needed repair which the seller was unwilling to make. Tr. 34: 4-7, Tr. 36: 1-18 and Ex. A p. 425 and 433-434;
20. Seller's agent was sent a termination package via email on October 22, 2014. Ex. A p. 433-434;
21. Respondent has since made corrections to his organizational system to prevent this type of mistake from reoccurring. Tr. 41: 19-25, Tr. 42: 1-22 and Tr. 43: 3-14.

## **II. 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:
  - (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;
- 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;
- C. performance of any and all written agreements made with the customer or client;
- D. Assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client . . .;
- F. prompt accounting for all money property received by the broker;

16.61.19.8 NMAC;

E. All trust account deposits shall conform to the following requirements:

- (1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust account per written agreement of the parties to the transaction.
- (2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:
  - (a) Date received;
  - (b) Date deposited;
  - (c) From who received;
  - (d) Amount of deposit
  - (e) Property address or legal description including unit number (if unit number is applicable); and
  - (f) Category or purpose of receipt (e.g. earnest money, rent, security deposit, funds from owner, etc.).
- (3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:
  - (a) Depositing a broker's own funds into a trust account without disclosure to the owner or a managed property;
  - (b) Depositing funds in a trust account that are not directly related to a real estate transaction or a managed property; and
  - (c) Depositing funds of others in an account that is not a properly designated trust account.

16.61.23.11 NMAC;

F. 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);

- G. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3;
- H. 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);
- I. The preponderance of the evidence reveals that Respondent buyer did not timely deposit the money into the trust account with the title company in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.8 (A), (C), (D) and (F) NMAC and 16.61.23.11(A) NMAC;
- J. The preponderance of the evidence reveals that Respondent failed to verify that the money had been deposited in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.8(A), (C), (D) and (F) NMAC and 16.61.23.11(A) NMAC.

### **III. ORDER**

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

- A. Respondent pay a fine in the amount of one thousand dollars (\$1,000.00) 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 pay the cost of the disciplinary proceedings in the amount of three hundred eighty-four dollars and fifty-three cents (\$384.53) 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.
- D. 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.

Gretchen Koether, 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.

Date 12-13-17

For the New Mexico Real Estate Commission



Commissioner Gretchen Koether  
President

**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

I, Germelyn Vivar, do hereby certify that I personally mailed by Certified mail a true and correct copy of the Decision and Order on NMREC Case Nos. 14-11-06-119 and 14-11-07-120 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee, at his address on file, as shown by the records of the office of the New Mexico Real Estate Commission this 14th day of December 2017.

GERMELYN VIVAR  
Print the Name of Individual Certifying Service

Administrative Secretary  
Title/Organization

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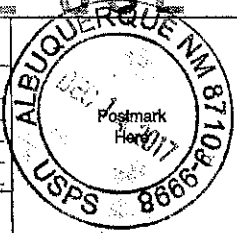
I, Germelyn Vivar, do hereby certify that I personally mailed by Certified mail a true and correct copy of the Decision and Order on NMREC Case Nos. 14-11-06-119 and 14-11-07-120 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee's Attorney at his address on file, as shown by the records of the office of the New Mexico Real Estate Commission this 14th day of December 2017.

GERMELYN VIVAR  
Print the Name of Individual Certifying Service

Administrative Secretary  
Title/Organization

[Signature]  
Signature

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