

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

IN THE MATTER OF:

JASON VALENTINE
License No. 18789

N.MREC CASE NO. 14-11-07-120

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:

FINDINGS OF FACT

1. Jason Valentine 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 Jason Valentine ("Respondent") by Elizabeth Munoz-Hamilton ("Complainant"). Ex. B p. 1144-1145;

3. Respondent represented the buyer and was the qualifying broker in the subject transaction. Tr. 57: 23-25, Tr. 58: 1 and Tr. 73: 3-5;
4. The Complainant represented the seller in the subject transaction. Tr. 58: 2-6;
5. Both the Respondent and the Complainant worked for the same brokerage at the time the subject transaction occurred. Tr. 58: 4-6;
6. The complaint involved an allegation that Respondent generated a fraudulent prequalification letter in order to show a property that was listed by the Complainant. Tr. 45: 16-19, Tr. 47: 12-19, Tr. 58: 2-6 and Ex. B p. 411;
7. The Complainant required there be a prequalification letter submitted to her prior to showing the home. Tr. 47: 4-6, 12-14 and Tr. 51: 8-10, 23-25;
8. The Complainant only showed the property after receiving a pre-qualification letter from buyer. The requirement ensured appointments were set to show the house only to serious buyers and to avoid inconveniencing the seller and wasting time on showing the property to people who just wanted to see the property. Tr. 51: 8-25 and Tr. 52: 1-2;
9. The Complainant called the bank to verify the pre-qualification letter of a prospective buyer given to her by Respondent and learned that the letter was fraudulent. Tr. 53: 2-25 and Tr. 54: 1-18;
10. The Complainant informed both her direct supervisor, David "Rick" Laemmle, and Coldwell Banker's regional manager, Judy Vessa, about the fraudulent pre-qualification letter. Tr. 55: 2-6, 16-25, Tr. 56: 21-25, and Tr. 57: 1;
11. Mr. Laemmle allegedly wanted to report the incident to the Commission but decided not to report it. Tr. 68: 2-10 and Tr. 72: 1-11;
12. Complainant maintained that she did not immediately report the incident because of her concern that it would adversely affect the brokerage. Tr. 56: 4-25, Tr. 57: 1-3 and Tr. 68: 13-19;
13. Respondent admitted he altered the pre-qualification letter. Tr. 47: 20-22, Tr. 75: 11-15 and Ex. B p. 410;
14. The forged pre-qualification letter head states "Bank of Colorado Mortgage Division" and at the bottom states that the Bank is an "Affiliate of Pinnacle Bankcorp." Tr. 48: 5-10 and Ex. B p. 411;
15. The letter sent to Ms. Vessa from Tommy Haws, senior vice president of Pinnacle Bank, informed Ms. Vessa that there was never a mortgage loan pre-

- qualification letter issued for Matthew Hughbanks and that the November 13, 2013 pre-qualification letter on Bank of Colorado letter head was fraudulent. Tr. 48: 12-20 and Ex. 410 and 411;
16. The Bank informed Complainant that it would not take any action in the matter because they believed it could be handled internally by Coldwell Banker. Tr. 60: 10-17 and Tr. 61: 21-24;
 17. Buyer deposited \$5,600.00 in earnest money into a trust account for the purchase of the house. Tr. 75: 22-25, Tr. 76: 1-11 and Ex. B p. 435;
 18. Respondent's supervisor, Mr. Laemmle, is confident that Respondent will be a trustworthy and reliable employee. Tr. 69: 3-25, Tr. 70:1-6 and Tr. 71: 6-10;
 19. Respondent reportedly has sought assistance to learn how to cope with his anxiety, and as a result, has not engaged in other fraudulent activity. Tr. 76: 22-25 and Tr. 77: 1-25;
 20. Since the 2014 complaint, Respondent has reportedly closed 164 transactions for \$23,600,000 in volume sales and has revised and implemented new systems and processes for running the brokerage. Tr. 69: 24-25, Tr. 70: 1, 78: 2-4, Tr. 80: 9-25 and Tr. 81: 1-2.

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:
 - (1) made a substantial misrepresentation;
 - (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;
 - 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;

16.61.19.8 NMAC;

- E. The preponderance of the evidence reveals Respondent generated a fraudulent prequalification letter in order to permit the showing of a property that was listed by the Complainant in violation of NMSA 1978, Sections 61-29-12(A)(1), (2), (10) and (11) and 16.61.19.8(A) and (B).

III. ORDER

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

- A. All real estate broker's licenses held by the Respondent be suspended for six months (6) commencing from the date this Decision and Order is received by the Respondent.
- B. All real estate brokers' licenses held by the Respondent be surrendered to the Commission upon receipt of this Decision and Order.
- C. 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 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.
- D. Respondent shall receive a Letter of Reprimand from the Commission that shall be a matter of public record.
- E. Respondent shall successfully complete, for no continuing education credit, the Commission-approved thirty-hour course entitled "Broker Basics" within ninety (90)

days after the Respondent receives 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.

- F. 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 B of this Order.
- G. 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