

**BEFORE THE NEW MEXICO  
REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**DAVID VAZQUEZ  
License No. 48171**

**NMREC Case No. 15-06-04-055**

**Respondent.**

**DECISION AND ORDER**

This matter was presented before the New Mexico Real Estate Commission ("Commission") at its September 25, 2017 meeting at the Regulation and Licensing Department located at 5500 San Antonio Dr. NE, Albuquerque, NM, for a decision and order pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -34.

The proceedings in this matter were presided over by Commissioner Kurstin Johnson, the Hearing Officer duly appointed by the Commission. The allegations in the Notice of Contemplated Action were heard on Thursday, August 3, 2017, at the Regulation and Licensing Department located at 5500 San Antonio Dr. NE, Albuquerque, NM. Rebecca Branch, Assistant Attorney General and Administrative Prosecutor, was present on behalf of the State. Respondent, David Vazquez was present and appeared *pro se*. Lori Chavez, Assistant Attorney General and commission counsel, was present to advise the Hearing Officer. The Hearing Officer's Report was filed with the Commission on September 2, 2017.

On September 25, 2017, a quorum of the Commission, having familiarized themselves with the record, including the Hearing Officer's Report, participated in the deliberation and decision in this matter. A copy of the Hearing Officer's Report is attached hereto and incorporated by reference. All references below to the hearing transcript are noted as ("Tr.").

By an affirmative vote of 3-0, the Commission renders the following Decision and Order.

## I. FINDINGS OF FACT

1. David Vazquez ("Respondent") is licensed with the Commission as an associate broker, license number 48171. Tr. 35: 1-20 and Ex. A and NCA;
2. A Complaint was filed with the Commission against Respondent by Fernando and Agustina Garcia's ("Sellers") daughter, Marisela Garcia, because the Sellers are primarily Spanish speakers. Tr. 19: 18-25 and Tr. 20: 1-3 and Tr. 48: 19-21 and Ex. B;
3. Respondent was the Sellers' broker in the subject transaction. Tr. 17: 12-17, Tr. 20: 6-10 and Ex. G;
4. The Sellers sold a house to Rosa Romero ("Buyer") on a Real Estate Contract on October 23, 2014. Ex. C;
5. Commission investigator, Perry Bryant ("investigator"), investigated the complaint filed against the Respondent. Tr. 14: 16-23;
6. The investigator requested Respondent to provide him with the Listing Agreement, the MLS printout, a copy of the Purchase Agreement, a copy of the Closing Statements and a copy of the Real Estate Contract. Tr. 15: 2-6;
7. Respondent provided all documents except for the Listing Agreement which Respondent said he could not find. Tr. 15: 7-13, Tr. 16: 6-10, Tr. 36: 13-18 and Tr. 44: 19-23;
8. The Listing Agreement shows the listing agent for the property. Tr. 15: 23-25, Tr. 16: 1 and Tr. 41: 16-25;
9. Commission Rules require that qualifying brokers execute and maintain listing agreements in transaction files. Tr. 16: 2-8;
10. The MLS Listing Agreement shows Respondent's brother, Jose Vazquez, as the listing broker for the subject property. Tr. 16: 12-21, Tr. 17: 2-7 and Ex. H;
11. The Purchase Agreement shows Respondent's brother, Jose Vazquez, as the Buyer's broker for the subject property. Tr. 17: 12-17, 18: 6-25, Tr. 20: 6-10 and Ex. G;
12. The MLS Listing printout shows Respondent as the selling broker for the subject property. Tr. 17: 2-10 and Ex. H;

13. Respondent is listed as the Sellers' broker on all other documents including the Purchase Agreement. Tr. 17: 12-17, Tr. 20: 6-10 and Ex. G;
14. On the cover page of the Purchase Agreement for the subject property, entitled Part II, Broker Duties, Respondent checked Paragraph 5 that states "Buyer's Broker does not have a material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party". Tr. 18: 24-25, Tr. 19: 1-4 and Ex. G;
15. By checking Paragraph 5 of the cover page, the Respondent made a false statement because:
  - i. The Respondent and Jose Vazquez, the Buyer's Broker in the subject transaction, are brothers. Tr. 19: 5-13; and
  - ii. The Respondent admits that he and his brother, Jose Vazquez, work as a team in the brokerage office. Tr. 43: 11-16 and Tr. 46: 18-23;
16. Respondent states that he misunderstood the meaning of paragraph 5. Respondent said he believed that paragraph 5 applied only when he was selling property he owned and that "material interest" referred to the owner of the house. Tr. 47: 21-25 and Tr. 48: 1-5;
17. A WRAP is a term used in the industry, whereby a Real Estate Contract (REC) "wraps" around an existing encumbrance, such as a mortgage. In this case the REC wrapped around an existing mortgage and the regular monthly payments from the REC were used to pay the monthly payments on the mortgage.
18. Respondent said he explained a WRAP and the consequences of a WRAP to the Sellers in English. Respondent said the explanation was translated into Spanish by the Sellers' daughter. Tr. 48: 13-24;
19. The Purchase Agreement shows that the down payment for the purchase of the subject property was \$8,700.00 Tr. 20: 22-25 and Ex. G;
20. Only a partial payment of \$1,200.00 was put down at closing. Tr. 20: 25 and Tr. 21: 1-1 and Ex. G;
21. Buyers were to make additional monthly payments of \$650.00 to be applied towards the down payment. Tr. 21: 2-5 and Exs. C and G;
22. The \$650.00 monthly payments were in addition to the payments on the Real Estate Contract and were paid to Respondent's company, Legacy Home Realty. Tr. 21: 2-5, Tr. 27: 10-23 and Exs. C and G;

23. \$7,500.00 of the \$8,700.00 down payment paid in \$650.00 monthly installments went to pay the Respondent's commission on the subject transaction. Tr. 21: 2-14, Tr. 27: 15-23, Tr. 49: 8-11 and Exs. C and G;
24. Buyer paid five \$650.00 payments, totaling \$3, 250.00;
25. Commission Investigator Bryant testified that it was his opinion that a \$1,200.00 down payment on a \$126,000.00 home is an indication of the buyer's poor credit and is an indicator of a high risk for default on a Real Estate Contract.
26. The investigation of the complaint revealed that the transaction was closed by an escrow company instead of through a title company; therefore no title insurance was purchased for the subject property. Tr. 23: 16-25 and Tr. 24: 1-11;
27. The Respondent stated that the main reason that he had the escrow company handle the closing rather than a title company was to avoid expenses, including the cost of title insurance. Tr. 48: 25 and Tr. 49: 1-8;
28. The investigator discovered several other real estate transactions involving the Buyer in the subject transaction that showed a pattern of purchasing property on Real Estate Contracts with a small down payment and either defaulting on or terminating the contact. Tr. 29: 11-25, Tr. 30: 1-25, Tr. 31: 1-25, Tr. 32: 11-18 and Exs. I and J;
29. The investigator said he obtained the information about the Buyer's past pattern from public records on file with the County Clerk that were readily available to the Respondent. Tr. 32: 19-25 and Tr. 33: 1;
30. Respondent claims he did not know about the Buyer's past history of defaulting on or terminating Real Estate Contracts. Tr. 45: 22-25, Tr. 46: 1-3 and Tr. 51: 4-17;
31. Respondent said he never thought that Buyer would default on the purchase of property "again". Tr. 45: 20-25 and Tr. 46: 1;
32. Respondent admitted he did not pre-qualify the Buyer. Tr. 50: 15-25 and Tr. 51: 1-3;
33. Commission records indicate that Respondent did not have Errors and Omissions insurance coverage as required by the Real Estate License Law and the Commission Rules for the time period in 2014 when Respondent handled the sale of the subject property to the Buyer. Tr. 33: 4-20, Tr. 36: 13-14, Tr. 36: 20-22 and Tr. 45: 8-13;
34. Sellers mailed Buyer a default notice pursuant to paragraph 5 of the Real Estate contract on April 15, 2015. Tr. 28: 3-19 and Ex. C;

35. An "Affidavit of Uncured Default and Election of Termination of Real Estate Contract" was signed by Sellers on May 18, 2015. Tr. 28: 3-5, Tr. 28: 20-25, Tr. 29: 1-4 and Ex. C.

## II. CONCLUSIONS OF LAW

- A. Respondent is a real estate broker licensed by the Real Estate Commission, and therefore is subject to the Real Estate Brokers and Salesmen Act, NMSA 1978, Section 61-29-1 through -29 and the jurisdiction of the New Mexico Real Estate Commission. NMSA 1978, Section 61-29-4;
- B. Licenses shall perform all duties that are established for licensees by the commission. NMSA 1978, Section 61-29-10.2;
- C. 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; and
  - (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;
- D. Part 19-Broker Duties and Brokerage Relations: 16.61.19.8 Broker Duties Disclosure: 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;
  - G. written disclosure to their client or customer and to other brokers involved in the transaction of 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, personal, or family nature that the broker has in the transaction;
    - (3) Other brokerage relationship options available in New Mexico.

D. Part 5-Errors and Omissions Insurance 16.61.5.8 Group errors and omission insurance policy: Effective January 1, 202 every active New Mexico real estate broker shall have in effect a policy of errors and omissions insurance.

16.61.5.9 Terms of coverage: The group policy shall provide, at minimum, the following terms of coverage; A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

16.61.5.13 Penalties for violation: Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12(A)(10).

- E. Title 16, Chapter 61, Part 12, of the New Mexico Administrative Code delineates the procedures for disciplinary actions by the Commission in regard to persons acting in the capacity of a real estate broker in New Mexico. The regulation provides that "violation of any provision of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico. 16.61.12.8 NMAC;
- F. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3;
- G. Respondent 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);
- J. Substantial evidence shows that Respondent failed to act honestly and reasonably, in good faith and with competence when Respondent failed to maintain the listing agreement in violation of NMSA 1978, Section 61-29-12(A)(11), NMSA 1978, Section 61-29-10.2 and 16.61.19.8 NMAC;
- K. Substantial evidence shows that Respondent demonstrated bad faith, incompetence, untrustworthiness, dishonesty and made fraudulent misrepresentations when Respondent did not accurately identify each broker's role in the transaction affiliation when completing the MLS listing and purchase agreement in violation of NMSA 1978, Section 61-29-12(A)(10)-(11) and 16.61.19.8 NMAC;
- L. Substantial evidence shows that Respondent demonstrated bad faith, incompetency, untrustworthiness, dishonesty and made fraudulent misrepresentations when Respondent failed to disclose his relationship with his brother when completing the purchase agreement in violation of NMSA 1978, Section 61-29-12(A)(10)-(11) and 16.61.19.8 NMAC;
- M. Substantial evidence shows that Respondent failed to act honestly and reasonably, in good faith and with competence when Respondent failed to pre-qualify the buyer despite information reasonably available to the Respondent that indicated that the buyer could not

afford to purchase the property or was likely default on the purchase in violation of NMSA 1978, Section 61-29-12(A)(10)-(11) and 16.61.19.8 NMAC;

- N. Substantial evidence shows that Respondent failed to maintain omission and errors insurance in violation of 16.61.5.8 NMAC, 16.61.5.9 NMAC and 16.6.5.13 NMAC.

### **III. ORDER**

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

- A. Respondent's license is suspended for two years (2) commencing from the date this Decision and Order is received by the Respondent.
- B. Respondent shall pay a fine in the amount of seven thousand dollars (\$7,000.00) 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.
- C. Respondent shall receive a Letter of Reprimand from the Commission that shall be a matter of public record.
- D. Respondent shall successfully complete, for no continuing education credit, the Commission-approved thirty-hour course entitled "Broker Basics" within ninety (90) days of the receipt of this Decision and Order by the Respondent. Respondent shall provide to the Commission's Chief Investigator a certificate of course completion to document compliance with this term of the Order.
- E. Respondent shall pay the cost of the disciplinary proceedings in the amount of five hundred eighty dollars and ninety-one cents (\$580.91) 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.
- 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.

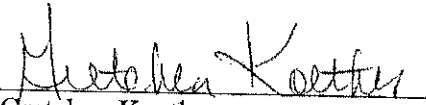
Gretchen Koether, the Commission President, is designated to sign this Decision and Order. A copy of the Decision and Order shall be filed and served upon the Respondents in accordance with the law.

**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: 10-23-17

FOR THE NEW MEXICO  
REAL ESTATE COMMISSION

  
Gretchen Koether  
President  
New Mexico Real Estate Commission



**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

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I, Germelva Vivar, do hereby certify that I personally mailed by Certified mail a true and correct copy of the Decision and Order on NMREC Case No. 15-06-04-055 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee, David Vazquez at his address on file, 7305 Blue Moon Lane NE Albuquerque, New Mexico 87113 as shown by the records of the office of the New Mexico Real Estate Commission this 25<sup>th</sup> day of October 2017.

GERMELVA VIVAR

Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization

  
Signature