

**BEFORE THE NEW MEXICO
REAL ESTATE COMMISSION**

IN THE MATTER OF:

**MARTHA LYNN EDEN
License No. 37830**

NMREC Case No. 16-10-03-072

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 Greg Foltz, the Hearing Officer duly appointed by the Commission. The allegations in the Notice of Contemplated Action were heard on Thursday, July 13, 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, Martha Lynn Eden was present and was represented by her legal counsel, Katherine M. Ferlic. 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 August 1, 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. Martha Lynn Eden ("Respondent") is a qualifying broker, license number 37830. Tr. 53: 5-11;
2. Respondent came before the Commission in response to a 2016 Alford Plea entered into by Respondent concerning an embezzlement charge brought against her by the U.S. Department of Justice in June of 2013. Tr. 41: 2-6, Tr. 105: 9-8 and Exs. 1 and 3;
3. The plea deal requires a five-year probationary period. Tr. 109: 19-24;
4. Respondent said she was facing the possibility of seven years of incarceration if she did not accept the Alford Plea. Tr. 107: 3-6;
5. Respondent self-reported the conviction in her application for renewal of her broker's license. Tr. 53:1-4, Tr. 75: 3-25, Tr. 81: 17-24;
6. The Commission was concerned that there may be a pattern of inappropriate use of other people's money by Respondent. Tr. 42: 2-7 and Tr. 43: 9-12 and Ex. D;
7. The Commission was also concerned with Respondent's failure to place money received from investors into accounts in the each of the investors' names and instead, placed the money into an account in Respondent's name only. Tr. 42: 19-25, Tr. 43: 1-8 and Ex. D;
8. The Commission was particularly concerned with the practice of placing other investors' money in account held in Respondent's name because it was believed Respondent was heavily in debt and was going to file for bankruptcy. Because the account was setup in Respondent's name, the funds would become part of the bankruptcy proceeding. The Respondent maintained that the only way to protect the assets deposited into the Respondent's account from a bankruptcy proceeding was to move the assets into an offshore account. Tr. 44: 14-21, Tr. 51: 23-25, Tr. 52: 1-3 and Ex. D;
9. Embezzlement allegations against Respondent were investigated by the U.S. Secret Service. Tr. 20:18-24 and Ex. D;

10. Embezzlement allegations involved Respondent's dealings in the foreign currency exchange market. Tr. 20: 11-24; Tr. 59: 3-25, Tr. 60: 1-8;
11. Respondent is an experienced and successful foreign currency trader. Tr. 59: 3-10, Tr. 60: 22-25, Tr. 61: 1-5, Tr. 62: 15-18, Tr. 65: 19-21, Tr. 93: 5-17, Tr 96: 7-21;
12. Respondent said she was interviewed the U.S. Secret Service at its Albuquerque Regional Office. Ex. D;
13. Respondent waived her Miranda rights and voluntarily spoke with the investigators. Tr. 21: 1-7, 16-20 and Tr. 36: 1-13;
14. During the investigation by the U.S. Secret Service, Respondent admitted to transferring a significant amount of money from the investment account to an offshore account. Ex. D;
15. During the hearing, Respondent denied transferring money from the investment account to an offshore account. Tr. 35: 1-7;
16. Respondent explains her admission to the U.S. Secret Service investigators of transferring money to an offshore account as a concocted story she gave them because she was intimidated by them during the interview. Tr. 35: 8-25, Tr. 36: 14-25 and Tr. 37: 1-14;
17. As part of her bookkeeping records, Respondent tracked account balances for each investor on a spreadsheet, a system called journaling. Tr. 32: 21-25, Tr. 33: 1-25;
18. The investment accounts set up by Respondent were setup as an "investment pool" in Respondent's name. Tr. 17: 5-6;
19. Respondent explained that investment pools allow a group of people to invest in an account that may be owned by an individual or by an entity. Tr. 63: 3-25, Tr. 64: 1-20, Tr. 67: 2-25, Tr. 68: 1-25, Tr. 69: 1-2;
20. Respondent maintained it is common with investment pools to use a system of journaling to track investor's account balances within the investment pool. Tr. 63:18-25, Tr. 64: 1-20;
21. The Respondent said losses suffered through Respondent's investment pool were related to the market cash between 2008-2010 and bankruptcy filed by the investment

- firm in 2012. Tr. 87: 9-25, Tr. 88: 1-6, Tr. 98: 17-25, Tr. 99: 1-19, Tr. 100: 2-15 and 21-25, Tr. 101: 1-25, Tr. 102: 8-25, Tr. 103: 1-15, Tr. Tr. 104: 8-10, Exs. 4, 5 and 7;
22. Embezzlement and fraud charges were filed against the investment firm on September 14, 2012. Exs. 4 and 5;
 23. Respondent said she was a creditor in the investment firm's bankruptcy, but did not receive any money from the bankruptcy proceeding. Tr. 115: 18-22;
 24. Respondent owes victims a total of \$394,000 for losses in the investment pool. Tr. 37: 23-25, Tr. 38: 1 and Exs. 1 and 3;
 25. It is believed Respondent dispersed restitution to victims based upon preferential treatment given to Respondent's relatives and close friends. Tr. 81: 8-15, Tr. 97: 14-19 and Ex. D;
 26. Respondent is currently making restitution to victims Milavec and Prezzano in the amount of 25% of commissions earned on real estate transactions and \$400.00 a month. Tr. 37: 15-19;
 27. Respondent has made close to \$50,000 in restitution payments to the victims. Tr. 37: 20-22;
 28. Respondent said she relies on her work as a real estate broker to earn money. Tr. 107: 20-25, Tr. 108: 1-8;
 29. Respondent presented several character witnesses who testified Respondent to be ethical and trustworthy. Tr. 58: 12, 60: 9-14, Tr. 61: 6-25; 62: 1-14, Tr. 74: 19-25, Tr. 75: 1-2; Tr. 83: 25, Tr. 84: 1-22, Tr. 84: 14-25, Tr. 85: 1-9, Tr. 17-19, Tr. 122: 13-22;
 30. Character witness, Dennis Bradley Doherty, is a former employer of Respondent and has known Respondent since 1976. Tr. 55: 17-22, 57: 19-22;
 31. Character witness, Ray Seagers, has been Respondent's qualifying broker since 2001, invested in the pool managed by Respondent that lost money, and Respondent has lived with Mr. Seagers for approximately 15 years. Tr. 74: 6-13, Tr. 76: 1-25, Tr. 78: 2-4, Tr. 86: 3-14;

32. Character witness, Darice Houghton, has known Respondent since 2002. Respondent provided real estate services to Ms. Houghton. Tr. 117: 3-17;
33. Prior to the conviction, Respondent did not have any issues directed against her by the Real Estate Commission. Tr. 53: 12-16, Tr. 95: 21-25 and Tr. 96: 1-6.

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 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);
- 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:
 - (6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;
 - (10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the Commission;
 - (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. The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978. NMSA 1978, Section 61-29-3;
- E. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:
 - (2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate

to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficient rehabilitated to warrant public trust.

NMSA 1978, Section 28-2-4

- F. The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law. NMSA 1978, Section 28-2-6.
- G. 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.
- H. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3;
- I. 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 was convicted of a felony in 2016. The felony conviction was one of moral turpitude involving embezzlement of money from clients while working as a foreign currency investor in violation of NMSA 1978, Section 61-26-9, NMSA 1978, Section 61-29-12(A) (6), (10) and (11);
- K. Respondent has made a good faith effort to begin repaying money she embezzled from her clients. However, the conviction is less than a year old and the Respondent will be on probation for five years. Because of the short period of time since Respondent's conviction and the time she began reimbursing clients, there is concern by the Commission whether the Respondent is rehabilitated. The Commission determined that additional time is necessary to allow Respondent to fully demonstrate rehabilitation. NMSA 1978. NMSA 1978, Section 61-29-3 NMSA 1978, Sections 28-2-4 and 28-2-6;

III. ORDER

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

- A. Respondent shall be granted a conditional license. As a condition for licensure, the Respondent shall submit a notarized affidavit every six months to the attention of Real Estate Commission Executive Secretary Wayne Ciddio at the Commission office. The affidavit will include the date, name and amount paid to each client during the six month time period. The first affidavit shall be submitted to the Commission office six months from the date the Respondent receives this Order. The requirement shall continue until the renewal date for Respondent's license.

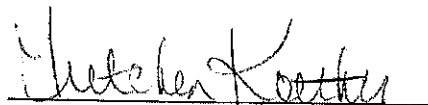
- B. Respondent shall pay the cost of the disciplinary proceedings in the amount of one thousand two hundred seventy-seven dollars and thirty seven cents (\$1,277.37) within sixty days (60) after the Respondent receives this Decision and Order. Payment shall be made in the form of a cashier's check payable to the New Mexico Real Estate Commission and mailed to the Commission office at Regulation and Licensing Department located at 5500 San Antonio Dr. NE, Albuquerque, NM 87109.
- C. Respondent's failure to comply with the provisions of this Decision and Order shall result in the summary suspension of all real estate broker licenses held by Respondent until after a hearing on the matter. 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'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.

Date: 10-23-17

FOR THE NEW MEXICO
REAL ESTATE COMMISSION



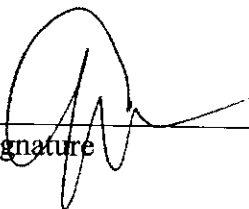
Gretchen Koether
President
New Mexico Real Estate Commission

CERTIFICATE OF SERVICE BY CERTIFIED MAIL
70162710000030463930

I, Germeyn 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. 16-10-03-072 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee, Martha Lynn Eden at her address on file, P.O. Box 1381 Edgewood, New Mexico 87015 as shown by the records of the office of the New Mexico Real Estate Commission this 25th day of October 2017.

GERMEYN VIVAR
Print the Name of Individual Certifying Service

Administrative Secretary
Title/Organization


Signature

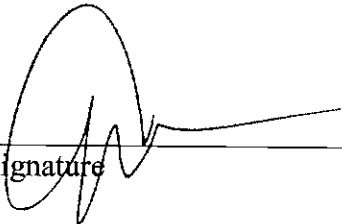
CERTIFICATE OF SERVICE BY CERTIFIED MAIL
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I, Germelyn Vivar, do hereby certify that I personally mailed by Certified mail a true and correct copy of the Decision and Order on NMREC Case No. 16-10-03-072 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee's Attorney, Katherine M. Ferlic at her address on file, 123 W. San Francisco St. Second Floor Santa Fe, New Mexico 87506 as shown by the records of the office of the New Mexico Real Estate Commission this 25th day of October 2017.

GERMELYN VIVAR
Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization


Signature