

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

**IN THE MATTER OF:**

**Adam Trubow  
License No. 16137**

**NMREC CASE NO. 14-07-04-060**

**And**

**Patrick McBride  
License No. 45040**

**Respondents.**

**DECISION AND ORDER**

This matter comes before the New Mexico Real Estate Commission (“Commission”) for 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 Kurstin Johnson, the Hearing Officer duly appointed by the Commission. The allegations in the Notice of Contemplated Action were heard on September 8, 2017, at the Greater Albuquerque Association of Realtors located at 1635 University Blvd. NE, Albuquerque, New Mexico. The Hearing Officer’s Report was filed with the Commission on October 5, 2017.

On November 20, 2017, a quorum of the Commission, having familiarized themselves with the record, including the Hearing Officer’s Report, transcript and exhibits, 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.”), references to exhibits are noted as (“Ex.”) and references to the Notice of Contemplation are noted as (“NCA”).

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

### I. PRELIMINARY MATTERS

Three preliminary matters were raised during the proceedings on September 8, 2017 and are resolved as follows:

1. Respondents renewed their Motion to Dismiss for lack of jurisdiction. On November 7, 2016, Respondents filed a Motion to Dismiss as time-barred for failure by the Commission to timely issue the NCA. On January 10, 2017, the hearing officer heard oral argument. The hearing officer reported to the Commission and the Commission deliberated the Motion. On January 23, 2017, the Commission unanimously voted to deny the Motion. A Decision and Order denying the Motion was issued on January 26, 2017. Respondents renewed their Motion to Dismiss at the September 8, 2017 hearing. During the November 20, 2017 meeting, the Commission reviewed Respondents oral Motion to Dismiss and unanimously voted to deny the Motion.
2. At the hearing, Respondents made an oral motion to dismiss the case for spoliation of the July 2, 2014 email. The Commission determined that the email was only transitory and not required to be retained by the Commission. NMSA 1978, Section 14-3-2. The Commission unanimously voted to deny the Motion.
3. On August 11, 2017, Respondents filed a Motion to Compel the prosecuting attorney to produce documents in response to a subpoena *duces tecum*. The prosecuting attorney served the Respondents with the requested documents the morning of the hearing. Respondents did not raise any issues of prejudice or harm as a result of the

untimely submission of the documents. Therefore, the Commission determined the Motion moot and took no action.

## II. FINDINGS OF FACT

### RESPONDENTS

1. Adam Trubow is licensed with the Commission as a qualifying broker, license number 16137. See NCA;
2. Patrick McBride is licensed with the Commission as an associate broker, license number 45040. See NCA;
3. Adam Trubow owns TAL Realty and has been a qualifying real estate broker in New Mexico since 2003. Tr. 114: 21-24;
4. Patrick McBride has worked for TAL Realty as a real estate broker since 2006. Tr. 91: 15-19, Tr. 101: 22-24;
5. TAL Realty engages in the business of purchasing distressed properties. Tr. 133: 2-4;
6. Neighborhood Value Protection ("NVP") is a holding company and subsidiary of TAL Realty. Tr. 139: 17-25;
7. Patrick McBride specializes in working with people and properties in the foreclosure process. Tr. 99: 4-6 and Ex. 11;

### COMMISSION'S INVESTIGATION OF THE COMPLAINT

8. On July 10, 2014, a Complaint was filed with the Commission against Adam Trubow and Patrick McBride ("Respondents") by Lisa Donham ("Donham"). Ex. 1;
9. The Donham complaint was forwarded to Jacque Moise's email address by the Office of the Attorney General ("OAG"). Tr. 25:15-24;
10. Ms. Moise states that she received the Complaint by email on July 10, 2014. Tr. 25: 25, Tr. 26: 1-5, 25, Tr. 27: 1-2, Tr. 165: 11-13, 166: 8-13 and Ex. 1;
11. Upon opening the email's attachment, Ms. Moise printed the Complaint, date stamped the Complaint and gave it to the administrative assistant. Tr. 26: 9-24, Tr. 166: 21-25 and Tr. 167: 1-5;

12. The Donham Complaint filed with the Commission against Adam Trubow and Patrick McBride was improperly forwarded to Jacque Moise's email address by the Office of the Attorney General. Investigators are not employees designated by the Commission to accept complaints against real estate brokers. Once Ms. Moise opened the email she immediately printed the complaint, date stamped it July 10, 2014 and forwarded the complaint to the proper Commission employee for processing of the complaint. The proper date to determine receipt of the Complaint by the Commission is the date stamp of July 10, 2014. See January 26, 2017 Decision and Order;
13. The administrative assistant opened the Complaint in the Commission's computer system and assigned it to an investigator. Tr. 27: 3-15;
14. Complaints received by the Commission are randomly assigned to one of three investigators on a rotating basis by the administrative assistant. Tr. 25: 1-6;
15. Jacque Moise was the first investigator from the Commission to be assigned the Donham complaint. Tr. 27: 16-17;
16. Ms. Moise's primary responsibility as a Commission investigator was to investigate complaints. Tr. 24: 24-25;
17. Ms. Moise gathered information necessary to conduct the investigation, maintained the file and added information as she received it. Tr. 27: 18-25, Tr. 28: 1-13, Tr. 37: 5-12 and Tr. 41: 3-25;
18. As part of her investigation, Ms. Moise spoke with Lyn Carter, who was an expert on Mortgage Foreclosure and an instructor certified by the New Mexico Real Estate Commission, about the Mortgage Foreclosure Consultant Fraud Prevention Act on August 11, 2014. Tr. 35: 9-15, Tr. 38: 13-25, Tr. 39: 1-10, Tr. 59: 17-24 and Ex. Respondents' Ex. 7;
19. As part of her investigation, Ms. Moise spoke with David Kramer at the OAG about the Donham Complaint on September 26, 2014. Tr. 29: 2-24 and Ex. 2;
20. Ms. Moise retired and left her position with the Commission on December 31, 2014. Tr. 167: 6-8;
21. Greg Valdez handled the investigation of the Donham Complaint after Ms. Moise left the Commission. Tr. 42: 20-22;
22. Greg Valdez was responsible for writing the Broker "B" summary of the investigation that was presented to the Commission. Tr. 49: 8-22, Tr. 87: 1-25, Tr. 88: 1-24 and Ex. 3;

23. Greg Valdez subsequently left the Real Estate Commission. Lyn Carter, was hired as the chief investigator for the Commission. Mr. Carter reviewed the file for the purpose of testifying at this hearing. Tr. 48: 4-8, Tr. 63: 3-65, Tr. 64: 1-16, Tr. 63: 21-25 and Tr. 64: 1-3 and 8-16;
24. The file contained a letter dated April 6, 2011 that was signed by Donham and that was presumably sent to the Commission by the OAG when forwarding the Complaint to the Commission. Tr. 66: 1-25, Tr. 67, Tr. 66: 6-11 and Ex. 1;
25. The letter states that Donham had the property listed by a broker for six months prior to being contacted by TAL Realty. Tr. 67: 14-25, Tr. 68: 1-5 and Ex. 1;
26. The letter states that at the time she was contacted by TAL Realty with a reference to Adam Trubow as the point of contact, Donham was approximately \$40,000 upside down on her mortgage. Tr. 67: 2-6 and Ex. 1;
27. The letter indicates that Donham believed that the Respondents were negotiating a short sale with her lender. Tr. 153: 2-13 and Ex. 1;
28. The letter indicates that Donham believed that the Respondents were acting as her agent. Ex.1;
29. The letter states that TAL Realty contacted Donham at her out of state residence. Tr. 68: 1-5 and Ex. 1;
30. The file did not contain a listing agreement between TAL Realty and Donham that would allow TAL Realty to list the property for sale. Tr. 52: 17-20, Tr. 52: 24-25, 53: 1 and Tr. 74: 8-10;
31. The file did not contain a purchase agreement between NVP and Donham for the purchase of the property by NVP. Tr. 52: 20-21, 53: 3-5 and Tr. 74: 8-10;
32. Because there was no listing agreement or purchase agreement, the broker duties were not disclosed to the seller. Tr. 53: 22-25 and Tr. 54: 1-6;
33. The file did include a transfer of the "warranty deed" which normally indicates a sale of property. Tr. 72: 18-24 and Ex. 3 and Respondents' Ex. 22;
34. The warranty deed was signed by Donham on December 20, 2010. Ex. 3 and Respondents' Ex. 22;
35. The warranty deed transferred ownership of the property to NVP without disclosing the mortgage note. Ex. 3;

36. NVP filed the warranty deed with the Bernalillo County Clerk's office on December 27, 2010. Ex. 12 and Respondents' Ex. 22;
37. Listing agreements and purchase agreements for the purchase of property are important documents that explain the terms of the transaction. Without them, it is difficult to determine how the warranty deed and the assignment of redemption rights are to be used. Tr. 53: 6-19;

### **THE BUSINESS MODEL**

38. TAL Realty's business model is a complicated business model. Tr. 173: 10-11, Tr. 200: 21-25, Tr. 201: 1-25 and Tr. 202: 1-5;
39. TAL Realty's business model consists of TAL Realty locating distressed property and acquiring the property via assignment of rights of redemption or deed in order to gain ownership of the property without having obligations to the lender. Tr. 91:21-25 and Tr. 92: 1-2, Tr. 100: 21-24, Tr. 113: 10-11 and Tr. 115: 22-23;
40. Respondents' business is to purchase debt positions and to negotiate payoffs that are less than the amount owed on the mortgage note or to take assignment of the position. Negotiating a lower payoff is one in the same as a short sale. Tr. 144: 9-22;
41. TAL Realty only purchases abandoned homes that do not have an assignment of rents clause attached the mortgage note. Tr. 162: 8-9, Tr. 172: 6-12, Tr. 184: 20-25 and Tr. 185: 1;
42. TAL Realty collects data from foreclosure public notices, by driving by properties to determine whether the property is abandoned, looking up expired listings on the MLS and pulling up court records to locate the case number in order to identify the defendants, the plaintiff and the judgment amount. Tr. 93: 9-25, Tr. 94:4-6, Tr. 116:10-17 and Ex. 6;
43. The MLS is also used to determine comparable property values in the neighborhood of the property subject to the foreclosure action. Tr. 94: 17-25, Tr. 95: 1-25, Tr. 118: 19-21, Tr. 157: 1-5 and Exs. 7-9;
44. The MLS is also used to determine short-sale offers for other properties in the neighborhood to determine where to start negotiations for the subject property with the lender. Tr. 157: 17-24 and Exs. 7-9;
45. Accessing the MLS requires a real estate license. Tr. 94: 7-13;

46. The intent of the business model is to acquire documents, specifically the right of redemption, which does not require a separate contract between the parties. Tr. 103: 9-25, Tr. 104: 1-2 and Tr. 113: 6-11;
47. Respondents inform potential sellers that they are licensed real estate brokers, but that they only deal principal to principal. Respondents maintain they don't represent people in real estate transactions. Tr. 146: 16-25 and Tr. 147: 1-13;
48. During telephone conversations, Respondent McBride typically explains that TAL Realty purchases distressed property and that the ultimate goal is to obtain the deed and the assignment of the right of redemption, for the sole purpose of making an offer to the bank, and if accepted, then TAL Realty would have the deed and they would be the deed owners without a mortgage lien on the property. Tr. 100: 13-24, Tr. 117: 20-25 and Tr. 118: 1-4;
49. Also during telephone conversations, Respondent McBride explains that if TAL Realty is unsuccessful at purchasing the property from the bank, they would hope that the bank at auction would bid a specified amount less than the judgment and then TAL Realty could execute its right of redemption. Tr. 100: 24-25, Tr. 101: 1-3, Tr. 117: 20-25 and Tr. 118: 1-4;
50. Transfer of ownership of the property is accomplished with the transfer of warranty deed and is transferred without the assumption of the mortgage note. Tr. 100: 16-24, Tr. 116: 14-17, Tr. 119: 17-24, Tr. 120: 1-6 and Tr. 131: 18-24;
51. Obligation to pay the mortgage note remains with the original seller. Tr. 120: 1-4, Tr. 144: 6-22, Tr. 172: 17-25 and Tr. 173: 1-2;
52. Respondents use two separate entities, NVP to take ownership of the property, and TAL Realty to take ownership of the right of redemption for the purpose of avoiding a merger of interests and competing positions involving judicial actions. This also gives the appearance that the entities are negotiating at arms-length. Tr. 118: 5-11, Tr. 131: 18-24. Tr. 133:12-23, Tr. 139: 22-25, Tr. 13921-25 and Tr. 140: 1-2;
53. When negotiating the short sale, Respondents draft a purchase agreement in the name of TAL Realty as the buyer and list the seller as the "owner of record" and submit the purchase agreement to the bank as a bona fide offer to purchase the property despite knowing that NVP is the owner of record. Tr. 109: 7-22, Tr. 123: 3-6 and Ex. 4;
54. The NVP as "owner of record" does not sign the purchase agreement. Tr. 54: 15-19;

55. Respondents intend to avoid disclosing NVP's ownership of the property to the lender in order to avoid "muddying the waters" with a bank and hampering the negotiation process. Tr. 145: 5-21 and Tr. 146: 12-15;
56. Banks generally do not respond to purchase agreements or negotiate a purchase without a signature from the seller. Tr. 110: 5-21, Tr. 119: 12, Tr. 143: 6-9, Tr. 143: 19-25 and Tr. 144: 1-4;
57. Banks do not negotiate a discount on the note if the property is unoccupied. Tr. 125: 16-19 and Tr. 143: 10-11;
58. Respondents attempt to negotiate with the bank to discount the amount owed on the mortgage note in order to purchase the property at a lower cost. If successful, TAL Realty pays NVP and owns the property free and clear of the mortgage note. Tr. 100: 16-24 and Tr. 119: 16-25;
59. Respondents normally do not do short sales. Tr. 144: 6-9;
60. Properties acquired after purchasing redemption rights but prior to foreclosure are rented. Tr. 113: 18-24, Tr. 114: 2-4, Tr. 134: 24-25, and Tr. 135: 1-9;
61. Respondents rent the properties, collect rent, and do not pay on the mortgage note subject to foreclosure proceedings. Tr. 111: 15-20, Tr. 112: 4-25, Tr. 113: 15-22, Tr. 114: 2-4, Tr. 160: 8-25 and Tr. 161: 1-2;
62. The purpose of renting the properties is to collect rent and to have the property occupied. If the property is not occupied, the bank will not negotiate a discount on the mortgage note. Tr. 111: 15-20, Tr. 112: 4-25, Tr. 113: 15-22, 114: 2-4, Tr. 125: 16-19, Tr. 126: 1-7, Tr. 143: 10-12 and Ex. 12;
63. After foreclosure proceedings, some of the properties are rented, and others are speculative real estate investments which TAL Realty sells. Tr. 135: 18-25, Tr. 136: 1-3, Tr. 141: 4-6, Tr. 147: 14-16, Tr. 156: 20-23, Tr. 157: 1-2 and Tr. 162: 14-17;
64. If Respondents are unable to negotiate a discount on the mortgage note, TAL Realty exercises its right of redemption at the foreclosure auction, and if TAL Realty is successful at purchasing the property for less than is owed on the mortgage note, TAL Realty obtains ownership of the property and NVP is left owing nothing on the property. However, the mortgage note deficiency remains the responsibility of the original seller, in this case Donham. Tr. 100: 16-24, Tr. 120: 1-6, Tr. 136: 11-25 and Tr. 1-12;
65. 80% of TAL Realty's holdings are residential properties. Tr. 141: 7-8;



66. Only one property is currently being rented for \$800 per month. The rest of the properties are vacant. Tr. 159: 5-13;
67. NVP currently holds less than ten properties. Tr. 140: 17-21;
68. TAL Realty has approximately 20 holding companies holding 40-50 properties. Tr. 139: 25, Tr. 140: 1-2 and 8-11 and 22-25 and Tr. 141: 1-3;
69. The business model targets people in dire straits. Tr. 104: 3-5, Tr. 120: 8-21, Tr. 151: 5-7, Tr. 173: 25, Tr. 174: 1, Tr. 203: 20-25, Tr. 204: 1 and Ex. 11;
70. Respondent Trubow taught Respondent McBride the business model. Tr. 101: 13-25 and Tr. 102: 1-9;

### **THE TRANSACTION WITH DONHAM**

71. Respondents followed their business model when seeking to acquire Donham's property. Tr. 93: 9-25, Tr. 94: 1-25 and Tr. 95: 1-25;
72. Respondents determined Donham's property was abandoned and that Donham "simply wanted money". Tr. 117: 4-15 and Tr. 150: 17-18;
73. Respondents located Donham through Facebook. Tr. 96: 22-25 and Tr. 97: 1;
74. The terms of the agreement between Donham and TAL Realty were negotiated first through Facebook messages and then through emails. Tr. 68: 18-24, Tr. 69: 1-2, Tr. 74: 10-13, Tr. 99: 14-21 and Exs. 10-11;
75. Several Facebook messages identified "Patrick McBride" as acting on behalf of "TAL Realty, Inc." Tr. 99: 7-13 and Ex. 11;
76. On November 4, 2010, Respondent McBride sent a Facebook message to Donham stating that he was trying to contact her regarding her Brookville property, and that TAL Realty was interested in purchasing the property. Tr. 98: 16-25, Tr. 141: 22-24 and Ex. 11;
77. In Facebook correspondence with Donham, Respondent McBride referred Donham to TAL Realty's website [www.talrealty.com](http://www.talrealty.com). Ex. 11;
78. In Facebook correspondence, Respondent McBride informed Donham that she was "in the very beginning stages of the foreclosure process" and that Respondent McBride "specialized in working with people and properties in the foreclosure process". Tr. 99: 1-6 and Ex. 11;
79. This statement was false. Donham was toward the end of the foreclosure process and the sale of the property was imminent. Tr. 124: 5-15;

80. In Facebook correspondence with Donham, Respondent McBride informed Donham that “[t]his will require little effort on your behalf and will not have a negative effect or tie you to the property further.” Ex. 11;
81. This statement is false. Allowing a property to go into foreclosure has considerable negative effects on the homeowner, including potentially the seller owing deficiencies. Alternatives such as short sales or deeds in lieu are options that may better benefit the homeowner because these procedures extinguish the deficiency amounts. The general public would not know or understand these options nor the ramifications. A licensed individual would have an advantage over a member of the public.
82. In Facebook correspondence with Donham, Respondent McBride informed Donham that he needed a “deed, authorization form, and assignment of redemption. These forms would allow me to speak with the bank to negotiate a short sale or purchase of the property from the bank after foreclosure sale.” Ex. 11;
83. Respondent Trubow testified that without the documents, the Respondents would not been able to open a discussion with the bank to negotiate a short sale for the property. Tr. 119: 3-12;
84. Respondent McBride had approximately 10 telephone conversations with Donham. Tr. 100: 6-10;
85. Respondent McBride did not have a specific recollection of his conversations with Donham except for the conversation where he explained redemption rights. Tr. 101: 8-12 and Tr. 104: 12-18;
86. When corresponding with Donham by email, Respondent McBride used the email address Pat@TALRealty.com. Tr. 97: 7-15 and Ex. 10;
87. On November 30, 2010, Respondent McBride explained in an email to Donham that the purpose for the conveyance of the deed for the property to NVP was to hold the title during the “short sale process.” Ex. 10;
88. In December 2010, the authorization form signed by Donham stated “Please authorize Mr. Patrick McBride and Mr. Adam Trubow to discuss my current financial records and mortgage. Please accept this letter as written authorization and my permission for Mr. McBride and Mr. Trubow to obtain any written reinstatement and payoff quotes.” Tr. 30: 7-25 , Tr. 107: 23-25, Tr. 108: 1-5 and Ex. 1;
89. On December 20, 2010, Ms. Donham assigned her redemption rights to TAL Realty for one dollar on December 20, 2010. Tr. 31: 6-9 and 19-22 and Ex. 1;

90. On December 20, 2010, Ms. Donham conveyed the warranty deed for the property to Neighborhood Value Protection LLC. Tr. 31: 10-18 and Ex. 1;
91. Donham was paid \$500 for the assignment of the warranty deed and authorization form. Exs. 1 and 11;
92. The purchase agreement dated April 1, 2011, shows TAL Realty as the buyer and that the seller of record was "the owner of record", who in fact was NVP. Respondents submitted the purchase agreement to the lender for the purpose of negotiating a short sale. Tr. 54: 9-19, Tr. 56: 19-25, Tr. 57: 1-25 and Exs. 4, 10 and 11;
93. Generally, a lender requires the seller to sign the purchase agreement when parties are negotiating a short sale. Tr. 54: 21-25 and Tr. 55: 1-5;
94. The purchase agreement included the disclosure of broker duties. On page two paragraph 5 of the disclosure, buyer states that the buyer's broker does not have a material interest or relationship of a business, personal, or family nature in the transaction. Tr. 58: 12-21, Tr. 123: 16-25, Tr. 124: 1-4 and Ex. 4;
95. That statement was false because TAL Realty was the qualifying brokerage and Respondent Trubow owned both TAL Realty and NVP who were the buyer and the seller in the transaction. The false statement concerning the relationship between the buyer and seller could reasonably mislead the lender as to the relationship between the buyer and the seller. Tr. 59: 9-16 and Tr. 124: 1-3;
96. The purchase agreement was signed by Amy Ackroyd as the acting broker for TAL Realty. TAL Realty is identified as a "realtor" on the agreement. Tr. 58: 22-25, Tr. 59: 1 and Ex. 4;
97. The next line on the purchase agreement states "If the brokerage or qualifying broker has a material interest or relationship of a business, personal, or family nature in the transaction, that interest or relationship must be disclosed." No such disclosure was contained in the Commission's file. Tr. 59: 1-8 and Ex. 4;
98. Donham owed \$235,000 on the property. Tr. 155: 17;
99. Respondents estimated that Donham's property was worth approximately \$185,000. Tr. 149: 18-23;
100. Respondents offered to purchase the home for 32% below the estimated value of the home in the amount of \$125,000.00. Tr. 86: 18-25 and Ex. 4;

101. Negotiations with the lender failed. Tr. 183: 11-25, Tr. 183: 2-10 and Tr. 196: 13-15
102. Respondent Trubow placed renters into Donham's home in early 2011, but did not inform the lender or the Donham that renters were placed in the home. Tr. 125: 8-15;
103. Respondents collected \$18,900 in rent between January 2011 and October 2012 for Donham's property. Tr. 126: 1-9 and Ex. 12;
104. Respondents spent approximately \$9,146.66 on repairs, costs and attorney fees for Donham's home. Tr. 126: 17-25, Tr. 127: 1-25, Tr. 128: 1-25, Tr. 129: 1-25, Tr. 130: 1-15 and Ex. 12;
105. After payment of all expenses, NVP netted \$9,753.34. Ex. 12;
106. On March 31, 2011, Donham discovered there were renters living in her house. Donham had a family member call the Respondents and asked that the property be deeded back to her. Tr. 63: 2-8 and Ex. 1;
107. On October 10, 2013, Respondent NVP executed a special warranty deed transferring the property back to Donham. Tr. 62: 2-10, Tr. 121: 1-19 and Ex. 5;
108. Respondents retained the right of redemption to the property. Tr. 153: 23-25;
109. Respondents believed they would recover the expenses incurred for the property through their right of redemption once the foreclosure was final. Tr. 154: 5-12;
110. Respondent McBride expressly avoided using language that explicitly defined his relationship as a broker with Donham. Tr. 52: 20-21, 53: 3-25, Tr. 54: 1-6, Tr. 74: 8-10, Tr. 107: 4-13, Tr. 108: 7-13 and Exs. 10 and 11;
111. Donham reasonably believed that the Respondents were acting on her behalf as real estate brokers. Tr. 153: 2-13 and Exs. 1, 10 and 11;
112. Donham ultimately sold her property in lieu of deed to the bank which allowed Donham to avoid foreclosure and relieved her of all indebtedness to the lender on the mortgage note. Tr. 154: 18-21.

### III. CONCLUSIONS OF LAW

- A. Respondents are licensed New Mexico real estate brokers 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 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);
- F. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3;

- G. 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);
- H. The Complaint was received by the Commission on July 10, 2014 and the NCA issued on July 8, 2016 was timely issued within the two year statute of limitations. NMSA 1978, Section 61-1-3.1(A);
- I. The preponderance of the evidence reveals Donham reasonably believed that the Respondents were acting on her behalf as real estate brokers and not in the capacity of a principal to principal/seller-buyer relationship in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11);
- J. The preponderance of the evidence reveals that Respondents made false statements to Donham concerning the status of her home's foreclosure in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11);
- K. The preponderance of the evidence reveals that Respondents made false statements to Donham concerning the effect that the transfer of the deed for the property and selling of her redemption rights would have on her liability for the mortgage note in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11);
- L. The preponderance of the evidence reveals that Respondents made false statements concerning the necessity of transferring the deed and redemption rights for the property to Respondents in order for the Respondents to engage in short sale negotiations with Donham's lender in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11);
- M. The preponderance of the evidence reveals that Respondents made false statements or intentionally omitted material information on their purchase agreement sent to the lender for the purpose of negotiating the short sale in violation of NMSA 1978, Sections 61-29-12(A)(1) and (11);
- N. The preponderance of the evidence reveals that Respondents made false statements concerning the relationship between TAL Realty and NVP in violation of NMSA 1978, Sections 61-29-12(A)(1), (2) and (11);
- O. The preponderance of the evidence reveals that Respondents made a bad faith effort and demonstrated incompetency when negotiating the short sale with the lender in violation of NMSA 1978, Section 61-29-12(A) (11);
- P. The preponderance of the evidence reveals that Respondents failed to provide Broker Duty Disclosures in violation of NMSA 1978, Section 61-29-12(A)(10) and 16.61.19.8(A) and (B) NMAC;

- Q. The preponderance of the evidence reveals that Respondents demonstrated bad faith, untrustworthiness, fraud and dishonesty when placing renters into Donham's home without informing the lender that renters were placed in the home in violation of NMSA 1978, Section 61-29-12(A) (11);
- R. The preponderance of the evidence reveals that Respondents demonstrated bad faith, untrustworthiness, fraud and dishonesty when placing renters into Donham's home without informing Donham that renters were placed in the home in violation of NMSA 1978, Section 61-29-12(A) (11);
- S. The preponderance of the evidence reveals that Respondents' business model targets financially vulnerable homeowners and takes advantage of the lack of homeowners' knowledge of the sale of real estate and foreclosure process to the homeowners' detriment demonstrating bad faith, dishonesty and untrustworthiness in violation of NMSA 1978, Section 61-29-12(A)(11).

#### IV. ORDER

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

- A. Respondents' licenses be revoked;
- B. Respondents pay a civil penalty of five thousand dollars (\$5,000.00) each for a total of ten thousand dollars (\$10,000.00) to the Commission within 30 days of the Respondents' receipt of the signed 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; and
- C. Respondents pay the cost for the disciplinary proceedings in the amount of eight hundred and three dollars and ninety-nine cents (\$803.99) for the January 10, 2017 hearing and two thousand four hundred ninety-one dollars and forty-seven cents (\$2,491.47) for the September 8, 2017 hearing for a total of three thousand two hundred ninety-five dollars and forty-six cents (\$3,295.46). Respondents shall pay the cost of the disciplinary proceedings to the Commission within 30 days of the Respondents' receipt of the signed 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.

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.

**NEW MEXICO REAL ESTATE  
COMMISSION**

11-2-6-17  
Date

Gretchen Koether  
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 No. 14-07-04-060 before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee's Attorney, Clinton W. Marrs, at his address on file, as shown by the records of the office of the New Mexico Real Estate Commission this 6th day of December 2017.

GERMELYN VIVAR

Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization

[Signature]  
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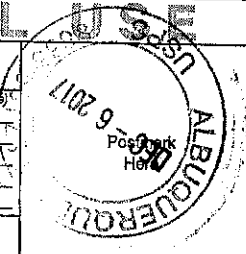
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**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

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 No. 14-07-04-060 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 6th day of December 2017.

GERMELYN VIVAR

Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization



Signature

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**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

I, Germelga 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. 14-07-04-060 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 6th day of December 2017.

GERMELYN VIVAR


Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization

[Signature]  
Signature

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