

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

IN THE MATTER OF:)	
)	
MARY LACKEY)	NMREC CASE NOS. 13-06-06-067
BROKER LICENSE No.: 18793 AND 47114)	
)	
Respondent.)	

DEFAULT ORDER

THIS MATTER, having come before the Real Estate Commission (the “Commission”), on Monday, May 15, 2017, the Commission finds the following:

1. A Notice of Contemplated Action (“NCA”) was issued by the Commission on April 28, 2015.
2. The NCA was sent certified mail return receipt (No. 7010 0290 0000 2545 6445) to the licensee’s address on file with the Commission on April 28, 2015.
3. The certified return receipt was signed by Danny Lackey on May 12, 2015 and returned to the Commission on May 18, 2015.
4. The NCA was issued to the Respondent in compliance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 *et seq.*
5. The NCA informed the Respondent of her right to a hearing and that the Respondent must respond to the Commission in writing requesting a hearing within twenty (20) days after service of the NCA. NMSA 1978, Section 61-1-4(D).
6. The NCA informed the Respondent that failure to respond to the NCA will result in the Commission taking the contemplated action. NMSA 1978, Section 61-1-4(E).
7. Respondent did not mail a request for hearing within the time and manner required by NMSA 1978, Sections 61-1-4(D) and (E).

8. The Commission has the authority, pursuant to NMSA 1978, Section 61-29-12 to:

(A) Refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representation obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

(1) Made a substantial misrepresentation;

(5) failed, within a reasonable time, to account for or remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(10) violated a provision of Chapter 61; Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of 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.

(B) 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 with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico. Regulation 16.61.12.8 NMAC.

Part 16 – Qualifying Broker: Affiliation and Responsibilities 16.61.16.9 NMAC
Responsibilities:

F. maintain full and complete records wherein the qualifying broker . . . in real estate related matters processed through the brokerage. The required records shall be available to the commission or any duly authorized commission representative . . . In the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

Part 19 – Broker Duties and Brokerage Relations 16.61.19.8 NMAC 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 . . . disclosure of the following 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;
- F. Prompt accounting for all money or property received by the broker . . .

Part 24 Property Management 16.61.24.12 NMAC Reports and documents to Owners:

- C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases shall be provided to owner upon request.
- D. Final statement after termination. Final accounting of property management trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

Part 24 Property Management 16.61.24.13 NMAC Management Agreements:

- A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.
- B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:
 - (1) Duties to be provided by the brokerage;
 - (2) Disclosure of all fees to be charged to owner; and
 - (3) Disclosure of all fees to be charged to tenant that are retained by the brokerage.

9. The Commission's Decision and Order are final and not subject to judicial review.

NMSA 1978, Section 61-1-4(E).

IT IS THEREFORE ORDERED THAT Respondent's broker licenses 18793 and 47114 are hereby revoked;

IT IS FURTHER ORDERED THAT Respondent may not reinstate her broker license until the NCA has been answered and resolved.

President Gretchen Koether is designated by the Commission to sign this Order on behalf
of the Real Estate Commission

IT IS SO ORDERED.

**REAL ESTATE COMMISSION
OF NEW MEXICO**

Signed: 5-15-17


President Gretchen Koether