

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

IN THE MATTER OF:

MARYBELLE SPEARS
Unlicensed

NMREC CASE NOS. 15-10-07-099,
15-10-10-102, 15-10-11-103, 15-10-12-104,
15-10-13-105, 15-11-02-109, 15-11-03-110,
15-11-06-113, 15-11-11-118, 15-12-03-122,
16-02-07-015

Respondent.

DEFAULT ORDER

THIS MATTER, having come before the Real Estate Commission (the "Commission"), on Monday, November 20, 2017, the Commission finds the following:

1. A Notice of Contemplated Action ("NCA") was issued by the Commission on October 6, 2017.
2. The NCA was sent certified mail return receipt (No. 7016 2710 0000 3046 4340) to the Respondent's address on file with the Commission on October 6, 2017.
3. The certified return receipt for the envelope containing the NCA was returned signed by "Wendy" to the Commission on October 11, 2017.
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 is "expressly vested with the power and authority to make and enforce rules to carry out the provisions of [Chapter 61, Article 29 NMSA 1978]. NMSA 1978, Section 61-29-4. The Commission can "impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978. NMSA 1978, Section 61-29-17.2. Such action may include the imposition of fines, costs or any other penalty authorized by NMSA 1978, Sections 61-1-3 and 61-29-17.2 and may be subject to payment of all costs of disciplinary proceedings pursuant to NMSA 1978, Section 61-1-3.2.
9. 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;
 - (2) Pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise
 - (5) Failed, within a reasonable time, to account for or to 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; . . .
 - (10) Violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission; and
 - (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. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to

the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.

10. It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978, NMSA 1978, Section 61-29-1.
11. Violation of any provisions 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, and other penalties as provided by law, commission rules, or policies.
16.61.12.8 NMAC.
12. A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. 16.61.16.8 NMAC,

13. 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;
- C. Performance of any and all written agreements made with the customer or client;
- F. prompt account for all money or property received by the broker.

16.61.19.8 NMAC

14. Trust accounts must be reconciled monthly. 16.62.23.8(D).

15. Commingling of trust account funds is not permitted. Commingling shall include, but is not limited to, the following actions: (1) wrongful deposits as described in this section; (2) wrongful disbursements as described in this section. 16.61.23.11(C).

16. In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.

A. This account shall only contain funds derived from the management of property for others.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.223.11D NMAC. 16.61.24.11 NMAC.

17. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement. 16.61.24.12 (D) NMAC.

18. The qualifying broker is responsible for the maintenance and safekeeping of all property management records, 16.61.24.15(D) NMAC.

19. The Commission's Decision and Order are final and not subject to judicial review. NMSA 1978, Section 61-1-4(E).

IT IS FURTHER ORDERED THAT Respondent Marybelle Spears may not apply for or receive a New Mexico real estate broker or associate 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:

11-30-2017


President Gretchen Koether