

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

IN THE MATTER OF:)	
)	
CLARA ENCINIAS)	
Associate Broker No. 34000)	
)	
DEMECIA CSANYI)	NMREC CASE NO. 15-11-09-116
Broker License No: 7272)	
)	
)	
Respondents.)	

FINAL DECISION AND ORDER

THIS MATTER came before the New Mexico Real Estate Commission during a special meeting on March 19, 2018 for a Decision and Order. A hearing was held on February 28, 2018, before the designated hearing officer, Greg Foltz, for the Real Estate Commission (“Commission”) at the Regulation and Licensing Office located at 5500 San Antonio Drive NE, Albuquerque New Mexico. The hearing officer submitted her Hearing Officer’s Report to the Commission on March 15, 2018 pursuant to NMSA 1978, Section 61-1-7(A). Upon review of the record, including the transcript and exhibits, the Commission voted by an affirmative vote of 3-0 with one abstention to adopt the hearing officer’s findings of fact, and those findings of fact are incorporated by reference, and renders the following Decision and Order:

I. CONCLUSIONS OF LAW

- A. Respondent Encinias is a licensed New Mexico associate real estate broker 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. Respondent Csanyi is a licensed New Mexico qualifying real estate broker 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.
- 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:

- (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.

D. 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.

E. 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;
- D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:
 - (1) presentation of all offers or counter-offers in a timely, manner; and
 - (2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraph (1) and (2) of subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;
- G. written disclosure to their client or customer and to the 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.

16.61.19.8(A), (C), (D) and (G) NMAC.

- F. A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

(E) supervise all real estate related activities including advertising of real estate or real estate services conducted on behalf of others by associate brokers and qualifying brokers affiliated with the brokerage and execute and maintain current written employment or independent contract agreements with them. 16.61.16.9 (E) NMAC.

- G. 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).

- H. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3.

- I. Respondents shall bear costs of disciplinary proceedings unless excused by the Commission from paying all or part of the fees pursuant to NMSA 1978, Section 61-1-4(G).

- J. The preponderance of the evidence reveals that Respondent failed to exercise reasonable care when executing the extension and termination of the purchase agreement for the property that was the subject of the transaction in violation of NMSA 1978, Section 61-29-12(A) (10) and, 16.61.19.8(A) NMAC.

II. ORDER

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

- A. Respondent Encinias shall receive a Letter of Reprimand from the Commission that shall become a part of her licensing file and be a matter of public record.
- B. Respondent Encinias shall pay the cost of the disciplinary proceedings in the amount of five hundred seventy-seven dollars and eighty-three cents (\$577.83) 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 mailed to the Commission office at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn: Germelyn Vivar, Administrative Secretary.

C. Respondent Encinias' 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 Respondent Encinias up to and including revocation of all broker licenses held by the Respondent.

Kurstin Johnson, 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 Respondent 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.

For the New Mexico Real Estate Commission

4/2/18
Date



Commissioner Kurstin Johnson
President