

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

IN THE MATTER OF:

CAROL RICKERT-ASBURY
License No. 11690

NMREC CASE NO. 15-11-05-112

Respondent.

FINAL DECISION AND ORDER

THIS MATTER came before the New Mexico Real Estate Commission at a special meeting on March 19, 2018 for a Decision and Order. A hearing was held on January 10, 2018, before the designated hearing officer, Kurstin Johnson, 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 February 9, 2018 pursuant to NMSA 1978, Section 61-1-7(A). Upon review of the record, including the transcript and exhibits, the Commission voted an affirmative vote of 3-0 with one abstention, to adopt the hearing officer’s report, and those findings of fact are incorporated by reference, and renders the following Decision and Order:

I. CONCLUSIONS OF LAW

- A. Respondent is a licensed New Mexico 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. 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;
 - (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 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; 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;
 - C. performance of any and all written agreements made with the customer or client;
 - F. prompt accounting for all money property received by the broker;
- 16.61.19.8(A), (B), (C) and (F) NMAC;
- E. (A) Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:
- (1) previous balance;

- (2) funds deposited by category;
 - (3) funds disbursed by category; and
 - (4) ending balance.
- (B) Additional reports may be provided as set forth in the property management agreement.
- (C) Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, including but not limited to criminal background checks and credit reports.
- (D) Final statement after termination. 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(A), (B), (C) and (D) NMAC;

- F. (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.

16.61.24.13(A) and (B) NMAC;

- G. There shall be a signed written tenancy agreement for each property or rental unit. Tenancy agreements shall include, but not be limited to, the following:
- (A) Name of tenant;
 - (B) Property address or legal description including unit number (if unit number is applicable);
 - (C) Rent amount;
 - (D) Security deposit and other deposit amounts;
 - (E) When and where rent is to be paid;
 - (F) Date possession began;
 - (G) Date possession ends;
 - (H) All fees charged tenant; and
 - (I) How payments are to be applied to outstanding charges.

16.61.24.14(A), (B), (C), (D), (E), (F), (G), (H) and (I) NMAC;

- H. The property management brokerage shall maintain office records of all properties managed for others.
- (A) Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.
 - (B) Retention. All property management records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.
 - (C) Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.
 - (D) The qualifying broker is responsible for the maintenance and safekeeping of all property management records.

16.61.24.15(A), (C) and (D) NMAC;

- I. 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);
- J. The Commission may impose fines, costs, education requirements or any other penalty authorized by NMSA 1978, Section 61-1-3;
- K. 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);
- L. The preponderance of the evidence reveals that Respondent did not provide the client with broker duties in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.19.8 NMAC;
- M. The preponderance of the evidence reveals that Respondent failed to provide prompt statements/reports to the owner in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.24.12(A) and (B) NMAC;
- N. The preponderance of the evidence reveals that Respondent failed to provide the client with the signed management agreement in violation of NMSA 1978, Section 61-29-12(A)(10) and (11), 16.61.24.12(C) and 6.61.24.13(A) and(B) NMAC;
- O. The preponderance of the evidence reveals that Respondent failed to make all requested records readily available to the Commission in violation of NMSA 1978, Section 61-29-12(A)(10) and (11) and 16.61.24.15 (C) NMAC.

I. ORDER

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

- A. Respondent pay a fine in the amount of five thousand dollars (\$5,000.00) within sixty (60) days after the date this Decision and Order is received by the Respondent. 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.
- B. Respondent shall pay the cost of the disciplinary proceedings in this matter in the amount of nine hundred eighty-four dollars and sixty-five cents (\$984.65) 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 may be combined with payment of the fine ordered in paragraph A of this Order.
- C. Respondent shall receive a Letter of Reprimand from the Commission that shall become part of the Respondent's licensing file and be a matter of public record.
- D. Respondent shall successfully complete for no continuing education credit twelve hours of Commission approved courses in property management including one course related to Commercial Property Management. The continuing education courses shall be completed within ninety (90) days of the receipt of this Decision and Order by the Respondent. Respondent shall provide to the Commission's Administrative Secretary a certificate of course completion to document compliance with this term of the Decision and Order.
- E. Respondent's 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 the Respondent 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 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.

IT IS SO ORDERED.

For the New Mexico Real Estate Commission

4/2/18
Date


Commissioner Kristin Johnson
President