

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

JOHN "JACK" PISERCHIA
LICENSE No. 17707

Respondent.

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NMREC CASE NO. 11-06-03-048

ORDER TO SHOW CAUSE

TO: John "Jack" Piserchia
1380 Rio Rancho Drive, #270
Rio Rancho, New Mexico 87124

PLEASE TAKE NOTICE that you, John "Jack" Piserchia are hereby ordered to personally appear before the Real Estate Commission ("Commission") at the Regulation and Licensing Department, located at 5500 San Antonio Drive, N.E., Albuquerque, N.M. on the 25th day of September, 2017, at the hour of 9:30 AM, to show cause, why your license should not be immediately revoked for your failure to comply with the Order entered against you by the Commission dated November 21, 2011 and attached hereto.

**FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE IMMEDIATE
REVOCATION OF YOUR LICENSE IN NEW MEXICO.**

IT IS SO ORDERED.

REAL ESTATE COMMISSION
OF THE STATE OF NEW MEXICO

9-5-17

DATE



Gretchen Koether

President

New Mexico Real Estate Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of this foregoing Order to Show Cause was sent by Certified U.S. Mail, Return Receipt Requested to:

**John "Jack" Piserchia
1380 Rio Rancho Drive, #270
Rio Rancho, New Mexico 87124**

Certified Mail to Respondent No.: _____ Date: _____
Return Receipt Requested

Certified Mail to Respondant's Counsel No.: _____ Date: _____
Return Receipt Requested

STATE OF NEW MEXICO
BEFORE THE REAL ESTATE COMMISSION

IN THE MATTER OF:

John (Jack) Piserchia
License No. 17707

Respondent.

NMREC Case No. 11-06-03-048

DECISION AND ORDER

This matter comes before the New Mexico Real Estate Commission ("Commission") upon the filing of a Notice of Contemplated Action ("NCA") against the Respondent, John (Jack) Piserchia ("Respondent"). A hearing in this matter commenced on August 25, 2011 before Commissioner Peter Parnegg, as Hearing Officer. The Respondent appeared personally at the hearing, proceeding *pro se*. David Tourek, Assistant Attorney General, appeared as Administrative Prosecutor. Zachary Shandler, Assistant Attorney General, Commission Counsel, was present to advise the Hearing Officer as necessary. All references below are to the August 25, 2011 hearing transcript ("Tr."), unless otherwise indicated. The Commission issues the following Decision and Order:

Findings of Fact

Procedural Findings

1. The Commission issued a NCA to Respondent under NMREC Case No. 10-08-11-088. The Commission re-issued a NCA to Respondent under NMREC Case No. 11-06-03-048. See AG Hearing Exhibit 1.

2. The Commission issued the NCA based on a complaint filed with the Commission by Danielle Aleman ("Complainant") in August 18, 2010. See AG Hearing Exhibit 1 at 0006-12.
3. The Commission issued a Notice of Hearing informing Respondent that the hearing would take place on August 25, 2011 beginning at 10:00 a.m. at the Real Estate Commission, 5200 Oakland Ave. NE, Albuquerque, NM. See AG Hearing Exhibit 3.
4. The hearing in this matter convened on August 25, 2011 before Commissioner, and duly appointed Hearing Officer, Peter Parnegg.
5. Respondent personally appeared at the hearing, proceeding *pro se* in defense of the allegations contained in the NCA.

Substantive Findings

6. Respondent is licensed by the Commission as a real estate broker in the State of New Mexico. See AG Hearing Exhibit 1 at 0054.
7. In June 30, 2010, Respondent entered into a RANM Property Management Agreement ("Management Agreement") with Complainant who was in the process of renting her home on Montford Street, NW in Albuquerque, New Mexico. See AG Hearing Exhibit 1 at 0015.
8. The rent for the house was to be \$1,250 per month with a \$1,250 deposit. See AG Hearing Exhibit 1 at 00041.
9. The Management Agreement provided a 30% rental fee from the first month rent to Respondent. It provided an 8% management fee from the subsequent rent(s) to Respondent. See AG Hearing Exhibit 1 at 00016.

10. The Management Agreement provided a 50%/50% split for late charges and returned check fees. *See* AG Hearing Exhibit 1 at 00057.
11. The Management Agreement was silent on how to handle "hold money" or "holding deposits."
12. In July 7, 2010, a potential tenant ("KM") paid a deposit of \$1,250. *See* Respondent's Hearing Exhibit 2 at 00008.
13. Respondent took those funds and set up a trust account at Compass Bank. *See* AG Hearing Exhibit 4.
14. Compass Bank set up the account under the name "J & M Realty." Tr. P. 88, line 10.
15. The name was later changed to "J & M Realty-PMT-Montford." Tr. P. 87, line 18.
16. Compass Bank has had troubles properly titling accounts in their systems. Tr. P. 89, line 2.
17. The account was new so Compass Bank provided Respondent with temporary checks without pre-printed information. Respondent wrote in "J & M Realty" or "J + M Realty PMT Montford" in the upper left hand corner. *See* Respondent's Hearing Exhibit 2 at 00003, 00008.
18. In mid-July, KM informed Respondent that she would not rent the house.
19. On July 18, 2010, Respondent wrote Check # 93 to KM. It was for only \$625. *See* AG Hearing Exhibit 4.
20. Respondent chose this amount with the rationale that KM should only get one half of the deposit back because her actions had delayed the procurement of rental income for the property during the month of July. *See* AG Hearing Exhibit 1 at 00043, Respondent's Hearing Exhibit 2 at 00005, 00006.

21. Respondent did not write a check to the Complainant regarding the deposit monies.
22. On July 21, 2010, Respondent wrote Check # 96 to his personal account for \$312.50 which represented one-half of the \$625 remaining from KM's deposit. *See* AG Hearing Exhibit 4.
23. Respondent chose this amount with the rationale that: (a) the Management Agreement was silent on how to handle deposits and (b) he had earned the right to retain the funds based on his time/efforts. *See* AG Hearing Exhibit 1 at 00009, 00052.
24. In mid to late July 2010, Respondent informed Complainant on his justification for keeping the KM's funds. *See* AG Hearing Exhibit 1 at 00025, 00032.
25. On July 29, 2010, Respondent wrote Check # 98 to his personal account for \$358.91. This figure was calculated from the remaining \$312.50 from KM's deposit plus reimbursement for sprinkler and timer house repair costs. *See* AG Hearing Exhibit 4.
26. In mid to late July 2010, a second tenant ("AP") signed a lease and paid \$1,250 deposit and \$1,250 rent. *See* AG Hearing Exhibit 1 at 00040.
27. Respondent took these funds and deposited them in the trust account. *See* AG Hearing Exhibit 4.
28. In late summer and early fall of 2010, Complainant and Respondent terminated their working relationship.
29. On August 25, 2011, Respondent provided the Compass Bank account statements approximately halfway through the hearing. Tr. P. 70, line 17.

Conclusions of Law

1. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding pursuant to NMSA 1978, Sections 61-29-1 to 61-29-29.

2. The Commission has complied with all notice and other procedural requirements of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to 61-1-33.
3. The usual standard of proof in an administrative proceeding for disciplinary action against a professional license is a preponderance of the evidence. *See Matter of D'Angelo*, 105 N.M. 391, 393, 733 P.2d 360 (1986), *cert. denied*, 479 U.S. 1065 (1987).
4. The Uniform Owner Resident Relations Act, NMSA 1978, Section 47-6-1 to -51 provides that a holding deposit is between an owner and a tenant.
5. The Uniform Owner Resident Relations Act should be used to interpret the silent provision regarding holding deposits in the Management Agreement.
6. Based on the above Facts #11, 21-25, Respondent violated Section 61-29-12(A)(5) & 16.61.24.8A NMAC because he failed to remit the holding deposit money that belonged to the Complainant.
7. Based on the above Facts # 19-25, 29, Respondent violated 16.61.19.8F NMAC because he failed to promptly account for all monies.
8. The prompt procurement of the Compass Bank document, as opposed to reliance on handwritten receipts, would have addressed many of the alleged violations in the NCA and Complainant's underlying allegations at a much earlier date.
9. Based on the above Facts #11, 19-25, 29 Respondent violated Section 61-29-12(A)(10) because he violated Commission statutes and regulations.
10. Based on the above Fact #17, the Commission could have, but did not, plead in its NCA that he specifically violated 16.61.24.8A NMAC on grounds that a property management trust account shall indicate on the checks, deposit slips and bank records that the account is a "property management trust account." Absent the Commission re-issuing an

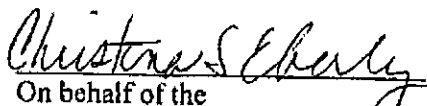
amended NCA at this time and imposing additional discipline for this charge, Respondent should in the future follow this regulation more strictly when hand-writing in the name on the trust account checks.

ORDER

Based on the testimony and evidence presented at the hearing, the foregoing findings of fact and conclusions of law, the Commission renders the following Order:

IT IS THEREFORE ORDERED THAT:

- (a) Respondent be fined three thousand dollars (\$3,000) payable to the New Mexico Real Estate Commission due no later than sixty (60) days after Respondent's receipt of this Order;
- (b) Respondent receive a letter of reprimand; and
- (c) Respondent complete for no continuing education credit a Commission-approved course in Uniform Owner Resident Relations Act and Trust Accounts to be completed due no later than ninety (90) days after Respondent's receipt of this Order.


On behalf of the
New Mexico Real Estate Commission

Date: 11-21-11

Notice of Right to Appeal

Pursuant to the provisions of NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA, a person aggrieved by this final Decision and Order may appeal the decision to District

Court by filing in District Court a notice of appeal within thirty (30) days from the date of this Decision and Order.

Certificate of Service

I certify that a true and correct copy of this Decision and Order was mailed to Respondent at Respondent's last address of record with the Commission on this _____ day of November 2011.

By: _____

Decision Order

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 John (Jack) Piserchia
 J & M Realty
 1380 Rio Rancho Drive #270
 Rio Rancho, NM 87124

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- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*John (Jack) Piserchia
 J & M Realty
 1380 Rio Rancho Drive #270
 Rio Rancho, NM 87124*

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
(X) J. Piserchia

B. Received by (Printed Name) *J. Piserchia*

C. Date of Delivery *11/27/04*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

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2. Article Number (Transfer from service label) 7010 0290 0000 2545 3086