

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

IN THE MATTER OF:

Brian Ortiz  
Broker License Nos. 19100 and 17556

NMREC Case No. 14-04-03-031

Respondent.

**AMENDED 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, Brian Ortiz (“Respondent”). A hearing in this matter commenced on August 22, 2016 before Commissioner Kurstin Johnson as Hearing Officer. The Respondent appeared personally at the hearing and appeared *pro se*. Rebecca Branch, Assistant Attorney General, appeared as Administrative Prosecutor. Lori Chavez, Assistant Attorney General, Commission Counsel, was present to advise the Hearing Officer as necessary. A public meeting with deliberations was held on September 19, 2016 before the Commission. The Commission reviewed the evidence against the Respondent, as well as the Hearing Officer’s Report. The Commission voted to adopt the Hearing Officer’s Report, imposing its Order as stated below. All references below are to the August 22, 2016 hearing transcript (“Tr.”), unless otherwise indicated.

**Procedure**

1. On April 18, 2016, the New Mexico Real Estate Commission issued a Notice of Contemplated Action to Respondent Brian Ortiz. *See* Commission’s Administrative Record.
2. The Commission issued the NCA based on a complaint filed with the Commission by Marja Springer (“Complainant”) on April 17, 2014. *See* Commission’s Administrative Record.

3. Respondent requested a hearing in accordance with the Uniform Licensing Act (“ULA”) upon receipt of the NCA from the Commission. *See* Commission’s Administrative Record.
4. The Commission issued a Notice of Hearing informing Respondent that the hearing would take place on August 22, 2016 beginning at 10:00 a.m. at the Real Estate Commission, 5500 San Antonio Drive NE, Albuquerque, NM. *See* Commission’s Administrative Record.
5. The hearing in this matter convened on August 22, 2016 before Commissioner, and duly appointed Hearing Officer, Kurstin Johnson and began at 10:00 AM. *See* Tr. 4:8-10 and 18-20.
6. Respondent personally appeared at the hearing and appeared *pro se*, in defense of the allegations contained in the NCA. *See* Tr. 5:19-21 and 6:11-15.

#### Findings of Fact

1. Complainant filed a complaint with the Commission against Respondent on April 17, 2014 alleging that (a) Respondent misrepresented the property and (b) failed to disclose adverse material facts about the property’s electrical and plumbing systems. *See* Commission’s Administrative Record: NCA dated April 18, 2016

2. Complainant testified that she was looking for a turnkey home that was safe and did not need money for additional repairs to bring the home up to code. *See* Tr. 13: 3-15 and 16: 16-22.

3. Respondent was remodeling a vacant house close to where Complainant’s daughter lived. The Respondent had a “for sale” sign in front of the home. The Complainant arranged for a viewing of the home. *See* Tr. 11:6-12.

4. During the showing of the home, the Complainant asked the Respondent whether the plumbing and electrical were to code. The Respondent stated that the plumbing and electrical were “redone” and “updated” during the remodel and that the cooler was only a year old. *See* Tr. 13: 4-13, 14: 2 and 22-25, 15: 1-4, 12-21, 35: 24-25 and 36: 1-2, 40: 12-19, 84: 11-19, 85: 12-13, 92: 13-14, 96: 8-16.

5. Respondent represented to the Complainant that the plumbing was “redone” with new plumbing in the laundry room and small bathroom. Complainant believes new PVC pipes were used in the repair of the plumbing. *See* Tr. 14: 22-25 and 15: 1-4.

6. Respondent represented to the Complainant that the electricity was redone. *See* Tr. 16: 11-18.

7. Respondent stated that he was referring to fixtures when discussing electrical work performed. *See* Tr. 70: 6-10, 84: 13-14.

8. Complainant testified that later, after the offer had been made, she became aware that Respondent had a construction company whose employees had completed the improvements to the home prior to the sale of the home. *See* Tr. 19: 25, 20: 1-19, 40: 5-11, 99: 24-25, 100: 1-16, 112: 19-24.

9. The Complainant made an offer on the home. *See* Tr. 11: 15-17.

10. Respondent typed the offer including naming A & R Inspection Company and Warranty in the purchase agreement. Respondent testified that because he would be double ending the transaction, he made sure to dot all the I's and cross the T's. He sent the contract to the Complainant via DocuSign signing program for her signature. *See* Tr. 46: 12-19, 81: 4-12, 107: 13-19, 108: 8-22, 121: 10-13, and Exhibit 3 page 10.

11. Respondent testified he did not suggest a sewer line scope as part of the inspection. *See* Tr. 107:23-25 and 108: 1-2.

12. Complainant approved the recommendation by Respondent to have A&R Inspections inspect the home because she did not know anyone else to suggest. *See* Tr. 18: 6-13, 39: 11-25 and 40: 1-4.

13. At some point, Complainant noticed that the air conditioner did not look a year old. Whether she noticed or whether the inspector noticed was not agreed upon by the parties. *See* Tr. 35: 15-25, 36: 1-14, 37: 11-25, 40: 12-25, 41:1-3, 54: 14-20, 85: 16-19, 92: 13-16.

14. Complainant stated that at the time the Respondent showed her the home, he told her the air conditioner was a year old. Complainant states when she reviewed the Seller Disclosure Statement, which she received about two to three weeks after the contract was signed, the Seller stated the air conditioner was 18 years old. Disclosure stated "AC to be replaced" *See* Tr. 36: 10-13, 37: 11-25, 40: 17-25, 41: 1-2 and Exhibit 4, page 8.

15. Respondent failed to provide the Complainant with a copy of the Seller Disclosure Statement in a timely manner. *See* Tr. 53: 3-6.

16. Respondent states his sub-contractor told him the air conditioner was a year old. Once Respondent learned the real age, he replaced the air conditioner. *See* Tr. 36: 5-8, 85: 12-17, 115: 7-10 and 20-22.

17. The inspection revealed minor problems unrelated to any plumbing problems, but including something about the floors not being level. *See* Tr. 17: 25, 18: 1-3 and 20-25, 19: 1-9.

18. Based on the inspection report, repairs were negotiated, including a request to level the floors and the transaction proceeded to close. *See* Tr. 19: 19-24 and Exhibits 5, 7 and 9.

19. According to the testimony of both parties, Respondent had the repairs done by his sub-contractors that he hired through his construction company Del Rey Construction. *See* Tr. 19:25, 20: 1-19, 40: 8-11, 53: 21- 23, 82: 5-7, 112: 19-25, and 116: 5-12.

20. Respondent acknowledged that his sub-contractors did the work prior to the listing the home and also for the Complainant's requested repairs without his supervision, without permits and that he knew they were unlicensed. He acknowledged that he knew he should have pulled a permit for the roof, the water heater and the faucets and that he did not do so, nor did he instruct his sub-contractor to do so. *See* Tr. 80: 17-22, 99: 24-25, 100: 1-25, 101: 1 and 12-25, 102: 1-12, 103: 1-9, 109: 4-25, 112: 6-25, 113: 1-25; 114: 1-16; 116: 9-19; 118: 4-25, 119: 1-3.

21. Respondent acknowledged that he knew that one of the sub-contractors went under the house to perform repairs to the floors. *See* Tr. 114: 1-16.

22. It was later discovered that the beams under the floor had been cut and supported by cinder block in order to level the floor. The Respondent acknowledged that his sub-contractor leveled the floor, but he had no knowledge as to how he did the work. *See* Tr. 31: 14-24, 114: 1-16.

23. Cover Page II paragraphs 3 and 5 of the purchase agreement states that the transaction would be an "In House" Transaction and that Respondent was working with the Seller as a Transaction Broker via a written agreement. The box for "Dual

Representation Disclosure and Consent" was also checked which states" the Brokerage is representing both Buyer and Seller by means of written agreements with each of them, without creating Dual Agency. If there are two written agreements, Buyer and Seller hereby consent to this dual representation." Respondent also disclosed on this page a "working relationship with the Seller". See Exhibit 3.

24. A "Buy & Fix Buy and Sell Agreement" was signed between the Respondent and the Seller of the subject property. The document stated Seller purchased the home for \$45,000 and agreed to provide \$80,000 to Respondent to make improvements. If the work exceeded \$80,000, Respondent would make up the difference. The agreement stipulated the Seller would make \$15,000 and if this did not occur within a certain time frame Respondent would owe 12% interest on the \$80,000. See Exhibit 12.

25. Respondent testified that he did not disclose the "Buy & Fix Buy and Sell Agreement" with the Seller to the Complainant because it was nobody's business. See Tr. 97: 5-25.

26. Respondent testified that he disclosed a "Business Relationship with Seller" in the contract. See Tr. 97: 5-13, 104: 8-25, 105: 1-21.

27. Respondent stated he did not have a Buyer Broker Agreement signed with the Complainant. See Tr. 105: 15-21.

28. Respondent testified he never owned the home but that he had a partnership with the Seller. See Tr. 102: 19-21.

29. Complainant testified that she did not recall that any explanation was given by the Respondent as to his role in the transaction representing both the seller and the buyer. See Tr. 48: 6-12.

30. Both the Complainant and the Complainant's daughter testified that the problems with the plumbing began immediately after moving into the home with discovery of no hot water within 24 hours of taking possession. See Tr. 21: 2-7, 58: 22-25, 59: 1-5 and 17-25, 72: 16-21, 78: 10-12.

31. Complainant's daughter notified Respondent of the problem with the hot water. Respondent sent someone to fix the problem. She was told the water heater had been plumbed wrong. *See* Tr. 60: 4-10, 76: 3-9.

32. The daughter testified that she still had plumbing problems with water gurgling and sewage backing up into shower and tub. There was a lingering odor of sewage permeating the home. Witness testified she was afraid to turn the gas stove on for fear of an explosion from methane gas. *See* Tr. 25: 21-25, 59: 1-5 and 17-22, 60: 11-16, 62: 15-24, 63: 3-5 and 22-25, 64: 1-7.

33. The daughter testified that she told Respondent she was having plumbing problems. She states Respondent told her to call A & R Inspections for warranty work. *See* Tr. 76: 11-15.

34. The daughter testified that she called the warranty company to come out. The company came out three times. The first time they charged her \$250 and the second and third times \$50 each time. They could not fix the problem. The daughter testified that A & R Inspection said that there was a possible blockage in the pipes and that the lines needed to be scoped with a camera. A & R Inspection does not have sewer line scopes. *See* Tr. 24: 17-24, 60: 20-25, 61: 1-8, 76: 3-25, 77: 1-2.

35. Complainant testified that she called Reddi Plumbing who scoped the pipes with a camera and discovered that there was a blockage in the pipes because the pipes had been incorrectly connected thereby causing water to leak underneath the home. *See* Tr. 25: 3-15, 27: 5-17, 49: 16-22 and Exhibit C.

36. Reddi Plumbing informed the Complainant that the PVC pipe under the house was obviously new and incorrectly installed but the pipe outside the home was old. It was the connection to the old pipe where the break was found. *See* Tr. 26: 14-25, 27: 1-9, 49: 19-22.

37. Complainant stated the plumber put lime under the house and the crawl space dried out after the repair of the sewer issues. *See* Tr. 23: 14-18, 31:10-12.

38. Complainant stated the plumber was there for 6 days. Holes were dug and the patio torn apart in order to repair the pipes. Reddi Plumbing invoiced Complainant \$6,541.82 for repairs. *See* Tr. 23: 14-16, 24:5-7, 25: 11-13, 27: 11-17, 49: 9-15, 62: 1-11, 73:23-25, 74: 1-9 and Exhibit C.

39. Complainant hired Winn Home Inspections to do a home inspection. She stated Winn found the electric fuse box was "hot" and that it needed to be inspected by an electrician. *See* Tr. 28: 1-4, 12-14 and 16-18, 65: 13-16, 66: 4-6 and Exhibit E.

40. Complainant states she hired Nicol Electric who informed her that she needed a whole new electrical panel. Nicol Electric discovered the problem through a visual inspection of the panel. *See* Tr. 29: 8-25, 30: 1-7.

41. Complainant was invoiced by Nicol Electric for \$4,419.10 for a new panel. *See* Tr. 29: 2-3 and Exhibit B.

42. Complainant testified that she had an on-going problem with cracks and gaps on and around the floors and floor boards. As soon as the cracks and gaps were repaired, they would reappear. *See* Tr. 33: 17-21, 66: 10-25, Exhibit E.

43. Complainant states she hired a contractor to remodel one of the bathrooms. After going under the home, the contractor sent the Complainant an email stating that the conditions in the crawl space were "horrendous" and that every floor joist that was pocketed into the entire east and west exterior cinderblock system had been cut off just inside the stem wall and raised and supported by random cinder blocks, bricks and two-by-sixes. The contractor suggested the Complainant hire a structural engineer. *See* Tr. 31: 11-25, 50: 5-17, 67: 7-8.

44. Complainant hired a structural engineer to inspect the structural integrity of the house. The structural engineer recommended that the floor supports be repaired. *See* Tr. 33: 1-2, 50: 22-25, 51: 1-2 and Exhibit E.

45. Complainant states she hired a general contractor to stabilize the foundation. The general contractor performed the repairs that included inserting rod iron bars into the house and extending out into the driveway as well as extending outside the east and west side of the house. The contractor also supported the east and west side of the house with additional wooden supports. Complainant paid the general contractor \$8,025.00 for the repairs. *See* Tr. 33: 8-25, 34: 1-15, 51: 3-25.

46. Respondent failed to advise the Complainant to have the appropriate inspections done, failed to disclose conflict of interest, and failed to orchestrate the repairs on behalf of both parties with reasonable care. *See* Tr. 47: 14-25, 48: 1-17, 53: 3-6, 76: 13-17, 77: 13-25, 78: 1, 86: 18-25, 87: 1, 97: 5-25, 98: 1-9, 103: 4-25, 104: 1, 105: 15-21, 107: 22-25 and 108: 1-6, 112: 6-2, 113:1-25 and Exhibit 12.

### Conclusions of Law

1. Sec. 61-29-12 A (1) NMSA 1978 authorizes the commission to take an action against a licensee's license if the licensee has made a substantial misrepresentation.
2. Sec. 61-29-4 NMSA 1978 gives the Commission the power and authority to make and enforce rules to carry out the provisions of the Real Estate License Law, including:

Parts 16.61.19.8 (A), (G) 1,2,3, and (H); Broker Duties; disclosure, of the Commission Rules, (A) Honesty and Reasonable Care, (G) Written Disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but limited to (1) any written brokerage relationship the broker has with any other party to the transaction, (2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction (3) other brokerage relationship options available in New Mexico, (H) written disclosure of any adverse material facts actually known by the associate broker.

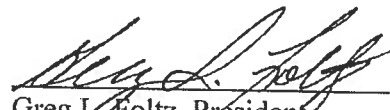
### ORDER

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

1. Respondent's real estate broker's license shall be suspended for one (1) year beginning two weeks after the date of entry of this decision and order; and
2. Respondent shall pay a five thousand dollar (\$5,000) fine, payable to the Commission, within thirty (30) days from the date of entry of this decision and order.

New Mexico Real Estate Commission



Greg L. Foltz, President  
On behalf of the Commission

Date: October 5, 2016



**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.