

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

IN THE MATTER OF:

**JAMES KYLE BERRY
BROKER LICENSE No.: 48223**

INACTIVE

Respondent.

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NMREC CASE NO. 15-07-06-074

DEFAULT ORDER

THIS MATTER, having come before the Real Estate Commission (the "Commission"), on Monday, September 25, 2017, the Commission finds the following:

1. A Notice of Contemplated Action ("NCA") was issued by the Commission on July 12, 2017.
2. The NCA was sent certified mail return receipt (Nos. 7015 0920 0002 0652 8502 and 7015 0920 0002 0652 8984) to the Respondent's address on file with the Commission on July 13, 2017 and to Respondent's home address on August 11, 2017.
3. The envelope containing the NCA sent to Respondent's address on file with the Commission certified return receipt mail 7015 0920 0002 0652 8502 was returned unopened to the Commission on August 11, 2017. On the envelope was a USPS label stating "return to sender attempted --unclaimed--unable to forward". The certified return receipt 7015 0920 0002 0652 8984 for the envelope containing the NCA sent to Respondent's home address on August 11, 2017, was not returned back to the Commission.
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 his 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 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; 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.

Title 16, Chapter 61, Part 12, of the New Mexico Administrative Code delineates the procedures for disciplinary actions by the Commission in regard to persons acting in the capacity of a real estate broker in New Mexico. The regulation provides that "violation of any provision 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. Regulation 16.61.12.8 NMAC.

16.61.19.8 NMAC Broker duties; disclosure. Before the time a broker generates or presents any written document that has the potential to become an express written agreement 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 provision of this section.

9. The Commission's Decision and Order are final and not subject to judicial review.

NMSA 1978. Section 61-1-4(E).

IT IS THEREFORE ORDERED THAT Respondent James Kyle Berry's broker license 48223 is hereby revoked;

IT IS FURTHER ORDERED THAT Respondent James Kyle Berry may not reinstate his broker license until the NCA has been answered and resolved;

IT IS FURTHER ORDERED THAT Respondent James Kyle Berry 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: _____

9-25-17



President Gretchen Koether