

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

**IN THE MATTER OF:**

**CARL SCHMIDT,  
License No.: 16467**

**Case Number: 10-12-02-124-A**

**Respondent.**

**and**

**JEFFREY A. ZANK,  
License Nos.: 17593 and 18617**

**Case Number: 10-12-02-124-B**

**Respondent.**

**FINAL DECISION AND ORDER**

**THIS MATTER** came before a quorum of the New Mexico Real Estate Commission (hereinafter "Commission") at a regular meeting held on September 17, 2012, and a special meeting held on September 24, 2012, for a decision in the above-referenced case. An evidentiary hearing on the merits of the allegations contained in the Notice of Contemplated Action (hereinafter "NCA") for case numbers 10-12-02-124-A and 10-12-02-124-B, was held before Peter Parnegg, Commissioner and duly appointed hearing officer. The three-day hearing was held in the large conference room of the Regulation and Licensing Department, located at 5200 Oakland Ave. NE, Albuquerque, New Mexico, 87113 on August 16 and 17, 2012, and in the conference room of the Attorney General's Office, located at 111 Lomas Blvd. NW, Albuquerque, New Mexico, 87102 on August 22, 2012. Sally Galanter, Esq., Assistant Attorney General and administrative prosecutor for the Commission, appeared in this matter on behalf of the Commission. Respondent Carl Schmidt ("Schmidt") was present and represented by Ira

Robinson, Esq. Respondent Jeffrey A. Zank ("Zank") was present and represented by Dennis Hill, Esq.

The Commission, having familiarized itself with the record of the proceedings, including the Hearing Officers' Report, hereby makes the following findings:

#### **FINDINGS OF FACT**

The Commission, having familiarized itself with the record of the proceedings, including the Hearing Officer's Report ("Report"), hereby makes the following findings of fact:

The Hearing Officer's Recommended Findings of Fact, numbered one (1) through eighty (80), were adopted in their entirety at the Commission's regular meeting held on September 17, 2012. A copy of the Hearing Officer's Report is attached hereto.

#### **CONCLUSIONS OF LAW**

Based on these findings of fact, the Commission hereby makes the following conclusions of law:

The Hearing Officer's Recommended Conclusions of Law, numbered one (1) through thirteen (13), were adopted in their entirety at the Commission's special meeting held on September 24, 2012. The Hearing Officer's Recommended Conclusions of Law regarding Respondent Zank, numbered one (1) through two (2), which are included in the Report in the section titled "I. In the Matter of Jeffrey A. Zank," were adopted in their entirety at the Commission's special meeting held on September 24, 2012. The Hearing Officer's Recommended Conclusions of Law regarding Respondent Schmidt, numbered one (1) through two (2), which are included in the Report in the section titled "II. In the Matter of Carl Schmidt," were adopted in their entirety at the Commission's special meeting held on September 24, 2012.

**ORDER**

**IT IS THEREFORE ORDERED**, with respect to Respondent Zank, as follows:

1. Respondent Zank shall pay the Commission a **FINE** in the amount of \$2,000. Payment shall be made to the Commission within thirty (30) days from the signing of this Final Decision and Order.
2. All licenses held by Respondent Zank shall be **SUSPENDED** for a period of ninety (90) days. This suspension shall be effective from the date of the signing of this Final Decision & Order.
3. Respondent Zank shall **PAY** the Commission half of the reporting and transcription costs incurred for this hearing. Payment shall be made to the Commission in the form of a cashiers check, in the amount of \$2,321.60, within thirty (30) days from the signing of this Final Decision and Order.

**IT IS FURTHER ORDERED**, with respect to Respondent Schmidt, as follows:

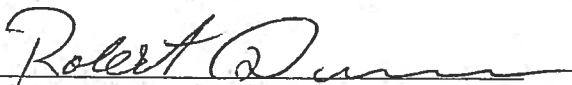
1. All licenses held by Respondent Schmidt are hereby **REVOKED**. This revocation shall be effective from the date of the signing of this Final Decision & Order.
2. Respondent Schmidt shall **PAY** the Commission half of the reporting and transcription costs incurred for this hearing. Payment shall be made to the Commission in the form of a cashiers check, in the amount of \$2,321.60, within thirty (30) days from the signing of this Final Decision and Order.

This Final Decision and Order shall be served upon Respondent Schmidt and Respondent Zank in accordance with law. Pursuant to Section 61-1-17 of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -29, a person aggrieved by a final decision or order of the Commission may appeal the decision to district court by filing a notice of appeal with proof of service in district court within thirty (30) days of the date of this Final Decision and Order.

**IT IS SO ORDERED.**

FOR THE NEW MEXICO  
REAL ESTATE COMMISSION

DATE: Sept 24, 2012

  
Robert Dunn, President

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

IN THE MATTER OF: )  
 )  
CARL SCHMIDT ) NMREC CASE NO. 10-12-02-124-A  
BROKER LICENSE NUMBER: 16467 )  
 )  
Respondent. )

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**NOTICE OF CONTEMPLATED ACTION**

**TAKE NOTICE THAT IF YOU DO NOT REQUEST A HEARING WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS NOTICE OF CONTEMPLATED ACTION, ALL LICENSES ISSUED TO YOU BY THE REAL ESTATE COMMISSION WILL BE REVOKED. SUCH ACTION WILL BE FINAL AND NOT BE SUBJECT TO JUDICIAL REVIEW. NMSA 1978 §61-1-4 (E) (2003).**

1. Respondent, CARL SCHMIDT, (“Respondent”), is licensed under the Real Estate License Law, NMSA 1978, §61-29-1 through §61-29-29, and, as such, was subject to the jurisdiction of the New Mexico Real Estate Commission (“Commission”) at the time of the violations alleged in this Notice of Contemplated Action and is currently subject to the jurisdiction of the Commission. NMSA 1978, §61-29-1 (2005).
2. Respondent is hereby notified that the Commission has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, constitutes sufficient justification and cause for the denial, suspension, restriction or revocation of the license of the Respondent named above pursuant to NMSA 1978, §61-29-12 (2005).
3. **Authority:** Action is contemplated to suspend or revoke Respondent’s license and/or to impose other disciplinary measures pursuant to the following statutes and

regulations:

Carl Schmidt  
New Mexico Real Estate Commission  
Case No. 10-12-02-124-A  
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A. **Statutes:** The New Mexico Real Estate License Law, NMSA 1978, §61-29-1 through §61-29-29, empowers the Commission to “possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce rules to carry out the provisions of that article.” NMSA 1978, §61-29-4 (2005). More specifically, the Commission is empowered to “suspend, revoke, limit or condition a license” if a licensee in performing any actions specified by Chapter 61, Article 29 NMSA 1978 commits any violations as enumerated in NMSA 1978, §61-29-12 (2005). Such action may also include the imposition of fines, costs, educational requirements or any other penalty authorized by NMSA 1978, §61-1-3 (1993) and may be subject to all costs of disciplinary proceedings pursuant to NMSA 1978, §61-1-4(G) (2003).

It is alleged that Respondent has violated the following statutes:

**NMSA 1978, §61-29-1 (2003) Prohibition.**

It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as an associate broker or a qualifying broker within this state without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in this state, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

**NMSA 1978, §61-29-12 (2005) Refusal, suspension or revocation of license for causes enumerated.**

A. 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 NMSA 1978, an applicant or licensee has:

(1) made a substantial misrepresentation;

(2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) failed, within a reasonable time, to account for or to remit any money coming into licensee's possession that belongs to others...

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(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;

**B. Regulations:** 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 (01/01/2002 as amended through 01/01/2006).

It is alleged that Respondent has violated the following regulations:

**16.61.6.8 NMAC ( 08/05/1997 as amended through 01/01/2006) Requirements**

Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the broker applicant(s). Such license shall bear the name of the qualifying broker or brokers who have qualified the corporation, partnership or association as a real estate brokerage and the trade name under which the corporation, partnership, or association will conduct real estate brokerage activity. Thereupon the qualifying broker shall be entitled to perform all acts of a real estate broker under the trade name of the real estate brokerage as registered with the commission...

**16.61.16.9. NMAC (01/01/2002 as amended through 12/31/2008) Responsibilities.**

The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

(E) (5) the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than three (3) years. In the case of a property manager, all records shall be retained for the full term of any agreement and for three (3) years from the close of the transaction.

**16.61.29.8 NMAC (01/01/2002 as amended through 01/01/2006 ) Registration and use of trade name.**

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct real estate brokerage business under a different trade name must execute a new trade name registration form with the commission...

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.



**16.61.32.8 NMAC (01/01/2002 as amended through 01/01/2007) Advertisements.**

A. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange, or rent, including short-term rentals or advertising real estate services, shall at a minimum, use in such advertising the trade name and New Mexico brokerage office telephone number as registered with the commission. Additional telephone numbers may be used in such advertising.

...

E. All real estate advertising shall be a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the brokerage are included in the brokerage's advertising, such information shall be presented in such a manner that will not confuse or mislead the public.

4. **Evidence:** The general nature of the allegations and the evidence before the Commission is summarized as follows:

Complainant, Diane Bock is the owner of an Albuquerque single family residence located at 10405 Borrego Creek Dr. N.W. On May 27, 2010, Complainant entered into an agreement with Gold Key Properties, LLC located at 2901 Juan Tabo N.E. #113, Albuquerque, New Mexico 87112, to manage her real property for rental. Gold Key Properties, LLC was owned and managed by Associate Broker, Denise L. Davies.

On April 28, 2010, Jeffery A. Zank, filed with the commission and became the Qualifying Broker ("QB") for Gold Key Properties and Management, LLC, a Property Management Company, responding to an advertisement. Associate Broker ("AB") Davies was to serve as the operational property manager in dealing with day to day questions of tenants and owners. In April 2010, QB Zank established an office at Gold Key and though mid-November 2010 reviewed files and contracts associated with Gold Key's property management accounts.

Carol Ross was the Qualifying Broker initially registering the brokerage with the Real Estate Commission, registering it as Gold Key Properties. AB Davies created the limited liability company with the name, Gold Key Properties & Management, llc on March 2, 2009. QB Zank obtained his Qualifying Broker license for Gold Key Properties & Management. The property management agreement with Complainant lists the management company as "Gold Key Properties, LLC." The independent contractor agreement wherein Jeffery A. Zank contracted to be the Qualifying Broker lists the brokerage as "Gold Key Properties & Management LLC" ("Gold Key").

On June 24, 2010, AB Davies as Gold Key entered into a one year residential lease on Complainant's home.

In August 2010, AB Davies, hired a leasing agent, who allegedly stole files and money from the Gold Key's office. QB Zank discovered that the leasing agent had apparently stolen money, property management files and leasing agent's personnel file from Gold Key. When questioning AB Davies about the theft, QB Zank was notified that AB Davies had engaged the services of Respondent, an attorney, to represent Gold Key in reference to the theft by the leasing agent. On September 28, 2010 a police report as to the theft was filed with the Albuquerque Police Department.

On October 30, 2010, Complainant received a letter from Respondent enclosing her October rent payment and notifying her that AB Davies would no longer be servicing her account. The letter notified Complainant that Gold Key was a "wholly owned subsidiary of CJ Enterprises Inc." The letter indicates that Respondent is the President CEO of CJ Enterprises Inc. and provides an address of 7410 Montgomery Blvd. NE. Suite 202, Albuquerque, New Mexico 87109. CJ Enterprises Inc. is not registered with the New Mexico Real Estate Commission.

On November 5, 2010, Complainant wrote Respondent acknowledging receipt of his letter, and his personal communications with her, notifying her that his company is now servicing her property pursuant to the property management agreement with Gold Key. Complainant notified Respondent that she wanted to terminate the property management agreement based on AB Davies' failure to timely make rental payments to her. Complainant requested that Respondent provide her the damage deposit, the pet fee and the rent for November. QB Zank was unaware of Respondent's involvement.

On November 16, 2010, QB Zank went to the Gold Key's office at 2901 Juan Tabo NE and discovered that all furniture, files, equipment etc had been removed. QB Zank attempted to contact AB Davies by calling AB Davies' personal cell phone. The phone call was answered by Respondent. QB Zank then attempted to contact AB Davies through her email account requesting an explanation as to the office being emptied and the files moved. Respondent answered the email and notified QB Zank that all future communications for AB Davies should go through him, that AB Davies had directed him to notify QB Zank that his services were no longer needed and for QB Zank to notify the commission that he was no longer needed as the Qualifying Broker. QB Zank notified the commission the following day. QB Zank accepted the directive based on his information that Respondent was an attorney acting on behalf of AB Davies. Respondent misled persons into believing that he was an attorney in good standing in New Mexico.

On November 21, 2010, Respondent negotiated with Complainant in regard to her desire to terminate the property management agreement notifying her that he would deduct funds owed to Gold Key. Respondent represented himself to be the property manager indicating that he would determine the monies to be deducted and that he was entitled to the benefit of the property management agreement. Respondent's email notified

Complainant that AB Davies was being replaced with a "team of Professional Property Managers" and that while the "name would remain the same but the personnel and scope of services greatly expanded" to include "two qualifying brokers, one fulltime real estate attorney, seven experienced real estate agents and an in-house Mortgage broker association." Respondent told Complainant that she would have to negotiate a new agreement with the tenants and listed multiple issues involved in Complainant caring for her property. Respondent never provided copies immediately to Complainant when she requested. Respondent had to hire an attorney to independently request the information. Respondent's attorney requested all documentation previously requested yet received only a copy of the rental agreement. Respondent offered to settle with Complainant by paying her \$1000.00. Respondent ultimately terminated the agreement based on Complainant's repeated requests.

On November 22, 2010, Respondent sent an additional email to Complainant explaining how he calculated the fee and asking her to reconsider her decision to terminate reiterating the services that his property management team could provide her.

On November 25, 2010, Respondent wrote a letter to Complainant's tenant requesting that the tenant send the rent to him representing himself as the property manager, President and CEO of Gold Key. The letter notified the tenant that AB Davies had retired and that she had turned over "all management and operations to a new group of professional managers." Respondent directed that all future rent payments were to be made to Respondent's address providing his phone number and email address. The tenant paid the November rent payment to Respondent. QB Zank was never notified by AB Davies as to any transfer of accounts to Respondent or as to any involvement of Respondent other than as AB Davies' attorney. Respondent held himself out to be the person authorized to act on behalf of AB Davies and her property management company. Once QB Zank had returned his license to the Real Estate Commission, at the directive of Respondent, there was no Qualifying Broker for Gold Key. Respondent did not register with the Real Estate Commission to become the Qualifying Broker for Gold Key. Respondent failed to provide documentation, when requested by the Commission's representative, as to his authority from AB Davies to represent Gold Key and/or AB Davies in the property management transactions.

Respondent received a request from Complainant's attorney by letter dated November 30, 2010, requesting immediate termination of the property management agreement based on "gross negligence" and seeking documentation previously requested by Complainant including the lease, the bills related to actual charges, explanation of charge that was already billed, explanation of a charge for a bill paid by Complainant, explanation for the non-timely tender of rent within the agreement time period, and immediate payment of pet fee and security deposit.

On December 14, 2010, Complainant's attorney notified the Commission that Respondent provided him a copy of the lease but refused to assign the lease to

Complainant or furnish her the other sought documentation and give her the monies requested.

On December 20, 2010, Respondent answered the allegations. As of December 20, 2010, Respondent stated that Gold Key is "operated by its manager, DENISE DAVIES." Respondent provided, in support of this claim, the registration with the PRC (Public Regulation Commission). Respondent stated, "DENISE DAVIES was, at all times material hereto, and still is, associated with and licensed under Real Estate Broker, JEFFREY ZANK." While acknowledging having provided AB Davies some legal advice in an individual capacity, Respondent stated that he "has no affiliation, association, connection or relationship whatsoever with GOLD KEY PROPERTIES & MANAGEMENT LLC, or DENISE DAVIES or JEFFREY ZANK." Respondent further stated "CARL SCHMIDT, is not and never has been an agent or employee of DENISE DAVIES, GOLD KEY PROPERTIES & MANAGEMENT LLC or JEFFREY ZANK for any purpose whatsoever." Respondent denied being a party to or an agent of any party to the property management agreement between Gold Key and Complainant and stated he had no legal or fiduciary obligation to Complainant. Respondent, while indicating he was not an employee, agent, or qualifying broker to Gold Key also acknowledged that the complaint was premature as Gold Key had 45 days to reconcile an account upon written notice of termination claiming that the time had not yet run for providing reconciliation.

While Respondent told Commission investigator on December 17, 2010 that he was in the process of taking over the properties and switching them to his own brokerage company, on February 17, 2012 he notified the investigator that the takeover had not worked out but that he had ended up with most of Gold Key Properties' accounts. The Commission, through its investigator, requested documentation that would establish Respondent's authority to act on behalf of Gold Key and AB Davies. Respondent failed to furnish any documentation.

On February 10, 2011, Complainant notified the Commission that QB Zank paid her damages in full. Respondent never paid any funds to Complainant.

5. The general nature of the evidence is contained in the attached exhibit, Bates-Stamped 001-196.

6. By engaging in the above-referenced conduct, Respondent violated

NMSA 1978, §61-29-1, NMSA 1978, §61-29-12. Regulation 16.61.6.8 NMAC, Regulation 16.61.16.9.E (5) NMAC, Regulation 16.61.29.8 NMAC and Regulation 16.61.32.8 NMAC.

7. The formal hearing, if requested, will be conducted pursuant to NMSA 1978, §§ 61-1-1 through 61-1-33 (2004) of the New Mexico Uniform Licensing Act. Pursuant to NMSA 1978, § 61-1-8 the licensee is specifically advised as follows:

**NMSA 1978, §61-1-3 Opportunity for licensee or applicant to have hearing.**

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action, which would result in:...

- E. suspension of license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
  
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board;

**NMSA 1978, §61-1-8 (1981) Rights of person entitled to hearing.**

A. A person entitled to be heard under the Uniform Licensing Act [NMSA 1978, § §61-1-1 to 61-1-31] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.


The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

8. Unless the foregoing evidence is explained or rebutted at a formal hearing, it constitutes justification and cause for the Real Estate Commission to take the contemplated action as stated herein. A revocation of licenses issued by the Real Estate Commission and held by you, or other remedies available to the Commission against unlicensed persons, will occur unless you request a formal hearing by mailing a certified, return receipt requested letter requesting a hearing within twenty (20) days after service of this Notice of Contemplated Action to:

**Melinda Archuleta, Administrative Secretary**  
**New Mexico Real Estate Commission**  
**5200 Oakland Ave, N.E., Suite B**  
**Albuquerque, New Mexico 87113**

Dated this 2<sup>nd</sup> day of May, 2012

  
Wayne W. Ciddio  
Executive Secretary  
New Mexico Real Estate Commission  
Telephone: (505) 222-9829

Prepared by:

Sally Galanter

Sally Galanter  
Assistant Attorney General  
Administrative Prosecutor  
111 Lomas Blvd N.W. Alb, NM 87102  
Telephone: (505) 222-9807  
Facsimile: (505) 222- 9006

**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

**Return Receipt Request No:**

I, Melinda Archuleta, do hereby certify that I mailed, via certified mail return receipt requested, a true and correct copy of the above provided Notice of Contemplated Action in NMREC CASE NO. 10-12-02-124-A before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee at his last know address of record, as shown by the records of the New Mexico Real Estate Commission this 2nd day of May, 2012.

Melinda Archuleta  
Print the Name of Individual Certifying Service

Administrative Secretary  
Title/Organization

Melinda Archuleta  
Signature

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

IN THE MATTER OF: )  
 )  
JEFFREY A. ZANK ) NMREC CASE NO. 10-12-02-124-B  
BROKER LICENSE NUMBER: 17593 )  
AND 18617 )  
Respondent. )

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**NOTICE OF CONTEMPLATED ACTION**

**TAKE NOTICE THAT IF YOU DO NOT REQUEST A HEARING WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS NOTICE OF CONTEMPLATED ACTION, ALL LICENSES ISSUED TO YOU BY THE REAL ESTATE COMMISSION WILL BE REVOKED. SUCH ACTION WILL BE FINAL AND NOT BE SUBJECT TO JUDICIAL REVIEW. NMSA 1978 §61-1-4 (E) (2003).**

1. Respondent, JEFFREY A. ZANK, ("Respondent"), is licensed under the Real Estate License Law, NMSA 1978, §61-29-1 through §61-29-29, and, as such, was subject to the jurisdiction of the New Mexico Real Estate Commission ("Commission") at the time of the violations alleged in this Notice of Contemplated Action and is currently subject to the jurisdiction of the Commission. NMSA 1978, §61-29-1 (2005).

2. Respondent is hereby notified that the Commission has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, constitutes sufficient justification and cause for the denial, suspension, restriction or revocation of the license of the Respondent named above pursuant to NMSA 1978, §61-29-12 (2005).

3. **Authority:** Action is contemplated to suspend or revoke Respondent's license and/or to impose other disciplinary measures pursuant to the following statutes and

regulations:

Jeff A. Zank  
New Mexico Real Estate Commission  
Case No. 10-12-02-124-B  
Notice of Contemplated Action  
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A. **Statutes:** The New Mexico Real Estate License Law, NMSA 1978, §61-29-1 through §61-29-29, empowers the Commission to “possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce rules to carry out the provisions of that article.” NMSA 1978, §61-29-4 (2005). More specifically, the Commission is empowered to “suspend, revoke, limit or condition a license” if a licensee in performing any actions specified by Chapter 61, Article 29 NMSA 1978 commits any violations as enumerated in NMSA 1978, §61-29-12 (2005). Such action may also include the imposition of fines, costs, educational requirements or any other penalty authorized by NMSA 1978, §61-1-3 (1993) and may be subject to payment of all costs of disciplinary proceedings pursuant to NMSA 1978, §61-1-4(G) (2003).

It is alleged that Respondent has violated the following statutes:

**NMSA 1978, §61-29-12 (2005) Refusal, suspension or revocation of license for causes enumerated.**

A. 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 NMSA 1978, an applicant or licensee has:

(8) failed, if a qualifying broker, to place as soon after receipt as is practically possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated,

at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission...

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(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;

**B. Regulations:** 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 (12/31/2008).

It is alleged that Respondent has violated the following regulations:

**16.61.16.9. NMAC (01/01/2002 amended through 12/31/2008) Responsibilities.**

The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

D. supervise all real estate related activities to include advertising of real estate or real estate services conducted on behalf of others by associate brokers affiliated with the brokerage and execute and maintain current written employment or independent

contractor agreements with them; such agreement should specify the relationship and responsibilities of the associate broker and the qualifying broker, and the scope of authority of the associate broker to act on behalf of the brokerage;

E. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate matters processed through the brokerage;

F. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction;

G. receive and disburse all commissions, referral fees, and/or other considerations to any associate broker affiliated with the qualifying broker or any other entity entitled by law to receive same, including to a partnership, corporation, or limited liability company (llc) wholly owned by an associate broker and their spouse, or authorize and direct disbursement thereof, and maintain complete records thereof;...

I. not permit the use of the qualifying broker's license to enable an affiliated associate broker to establish and carry on transactions outside the knowledge and supervision of the qualifying broker;

#### **16.61.24.8 NMAC (08/15/1997 amended through 12/31/2008) Property Management**

##### **Trust Account.**

A. When maintaining six (6) or more individual rental units, a property management trust account shall be established by the qualifying broker to receive and hold funds for the benefit of his/her clients. The account shall indicate on the checks, deposit slips and bank records that the account is a "property management trust account." Records of this account must be kept under the qualifying broker's control as set forth herein.

4. **Evidence:** The general nature of the allegations and the evidence before the Commission is summarized as follows:

Complainant, Diane Bock is the owner of an Albuquerque single family residence located at 10405 Borrego Creek Dr. N.W. On May 27, 2010, Complainant entered into an

agreement with Gold Key Properties, LLC located at 2901 Juan Tabo N.E. #113, Albuquerque, New Mexico 87112, to manage her real property for rental. Gold Key Properties & Management, LLC was owned and managed by Associate Broker ("AB") Davies.

Carol Ross was the Qualifying Broker initially registering the brokerage with the Real Estate Commission, registering it as Gold Key Properties. AB Davies created the limited liability company with the name, Gold Key Properties & Management, llc on March 2, 2009. In April of 2010, Jeffrey A. Zank obtained his Qualifying Broker ("QB") license for Gold Key. The property management agreement with Complainant lists the management company as "Gold Key Properties, LLC." The independent contractor agreement wherein Respondent contracted to be the Qualifying Broker lists the brokerage as "Gold Key Properties & Management LLC", ("Gold Key").

On April 28, 2010, Respondent, filed with the commission and became the Qualifying Broker for Gold Key, responding to an advertisement. The Independent Contractor Agreement required Respondent to work diligently to ensure that Gold Key's business is in compliance with the New Mexico Real Estate Commission rules and regulations. AB Davies notified Respondent that she would comply with all laws and relating to Real Estate Brokers. AB Davies was to serve as the operational property manager in dealing with day to day questions of tenants and owners. In April of 2010, Respondent established an office at Gold Key and though mid-November 2010 reviewed files and contracts associated with Gold Key's property management accounts.

On June 24, 2010, AB Davies, as Gold Key's representative, entered into a one year residential lease for Complainant's home.

In August 2010, Respondent and AB Davies, met with a potential employee, Jennifer Chavez. She was applying for a leasing agent, position. She was hired as an independent contractor leasing agent. Respondent suggested to AB Davies that a background check be completed on the potential employee but did not ensure that such a background check was completed. AB Davies did not do a background check but hired Ms. Chavez as a leasing agent. Ms. Chavez allegedly stole files and money from the Gold Key's office. When Respondent discovered that the leasing agent had apparently stolen money, property management files and leasing agent's personnel file from Gold Key, he questioned AB Davies, who notified him that AB Davies had engaged the services of Carl Schmidt, an attorney, to represent Gold Key in reference to the theft by the leasing agent. On September 28, 2010 a police report as to the theft was filed with the Albuquerque Police Department.

In October 2010, AB Davies notified Respondent that she had to have some surgery and asked Respondent to watch over the office. She then notified Respondent shortly thereafter that she had returned to her duties. Unaware of any transactions or communications of AB Davies with Carl Schmidt, Respondent continued acting as Qualifying Broker for Gold Key, through November 16, 2010.

On October 30, 2010, Complainant received a letter from Carl Schmidt enclosing her October rent payment and notifying her that AB Davies would no longer be servicing her account and that the new account manager would be contacting her shortly. The letter notified Complainant that Gold Key was a "wholly owned subsidiary of CJ Enterprises Inc." The letter indicates that Carl Schmidt is the President CEO of CJ Enterprises Inc. and provides an address of 7410 Montgomery Blvd. NE. Suite 202, Albuquerque, New Mexico 87109. CJ Enterprises Inc. is not registered with the New Mexico Real Estate Commission. Respondent was wholly unaware that AB Davies was no longer servicing the account or property owners and tenants were being notified that AB Davies was not servicing the account. Respondent had no information of any changes to the property management team.

On November 5, 2010, Complainant wrote Carl Schmidt acknowledging receipt of his letter, and his personal communications with her, notifying her that his company is now servicing her property pursuant to the property management agreement with Gold Key. Complainant notified Carl Schmidt, not Respondent or AB Davies, that she wanted to terminate the property management agreement based on AB Davies' failure to timely make rental payments to her and requesting that payments owed her be now paid to her. At this point, Respondent was totally unaware of any involvement by Carl Schmidt in Gold Key's management of the rental properties.

In early November, Respondent began receiving calls from property owners, tenants and vendors as to monies due and owed. On November 16, 2010, Respondent went to the Gold Key's office at 2901 Juan Tabo N.E. and discovered that all furniture, files, equipment etc had been removed. Respondent attempted to contact AB Davies by phone calling AB Davies' cell phone. The phone call was answered by Carl Schmidt. Respondent then attempted to contact AB Davies by email requesting an explanation as to the office being emptied and the files moved. The email was responded to by Carl Schmidt who notified Respondent by email, that all future communications for AB Davies should go through him, that AB Davies had directed him to notify Respondent that his services were no longer needed and for Respondent to notify the commission that he was no longer needed as the Qualifying Broker. Respondent notified the commission the following day. Respondent accepted the directive based on his information that Carl Schmidt was an attorney acting on behalf of AB Davies. Respondent was not part of any subsequent actions by Gold Key, AB Davies or Carl Schmidt in regard to Complainant or any other property owners or tenants.

On November 21, 2010, Carl Schmidt negotiated with Complainant in regard to her desire to terminate the property management agreement notifying her that he will deduct funds owed to Gold Key. Carl Schmidt represented himself to be the property manager indicating that he would determine the monies to be deducted and that he was entitled to the benefit of the property management agreement. Carl Schmidt's email notified Complainant that AB Davies was being replaced with a "team of Professional Property Managers" and that while the "name would remain the same but the personnel and scope

of services greatly expanded” to include “two qualifying brokers, one fulltime real estate attorney, seven experienced real estate agents and an in-house Mortgage broker association.”

On November 22, 2010, Carl Schmidt sent an additional email to Complainant explaining how he calculated the fee and asking her to reconsider her decision to terminate reiterating the services that his property management team could provide her. He also offered \$1000.00 to settle the dispute with Complainant in regard to rent owed and other charges. Carl Schmidt, not AB Davies or Respondent, ultimately terminated the agreement based on Complainant’s repeated requests.

On November 25, 2010, Carl Schmidt wrote a letter to Complainant’s tenant requesting that the tenant send the rent to him representing himself as the property manager, President and CEO of Gold Key. The letter notified the tenant that AB Davies had retired and she had turned over “all management and operations to a new group of professional managers.” Carl Schmidt directed that all future rent payments were to be made to his address providing his phone number and email address. The tenant paid the November rent payment to Carl Schmidt. Respondent was never notified by AB Davies as to any transfer of accounts to Carl Schmidt or as to any involvement of Carl Schmidt other than as AB Davies’ attorney. Carl Schmidt did not pay Complainant for the November rent payment or for any of the other payments owed to Complainant.

After Respondent’s notification to the board that he was turning in his license as qualifying broker for Gold Key, there was no qualifying broker for Gold Key, licensed with the New Mexico Real Estate Commission. When the Commission contacted Respondent and requested documentation and explanation of the complaint, Respondent timely responded and accepted responsibility for his part in the issues that were raised in the complaint although indicating that he faithfully fulfilled his duties while Qualifying Broker for Gold Key.

On December 20, 2010, Carl Schmidt answered the allegations. As of December 20, 2010, Carl Schmidt stated that Gold Key is “operated by its manager, DENISE DAVIES.” Carl Schmidt provided, in support of this claim, the registration with the PRC (Public Regulation Commission). Carl Schmidt stated, “DENISE DAVIES was, at all times material hereto, and still is, associated with and licensed under Real Estate Broker, JEFFREY ZANK”. While acknowledging having provided AB Davies some legal advice in an individual capacity, Carl Schmidt stated that he “has no affiliation, association, connection or relationship whatsoever with GOLD KEY PROPERTIES & MANAGEMENT LLC, or DENISE DAVIES or JEFFREY ZANK.” Mr. Schmidt further stated “CARL SCHMIDT, is not and never has been an agent or employee of DENISE DAVIES, GOLD KEY PROPERTIES & MANAGEMENT LLC or JEFFREY ZANK for any purpose whatsoever.” Mr. Schmidt denied being a party to or an agent of any party to the property management agreement between Gold Key and Complainant and stated he had no legal or fiduciary obligation to Complainant. Mr. Schmidt, while indicating he was not an employee, agent, or qualifying broker to Gold Key also stated that the

complaint was premature as Gold Key had 45 days to reconcile an account upon written notice of termination claiming that the time had not yet run for providing reconciliation.

Respondent notified the Commission's investigator that AB Davies did not give him access to the bank accounts. Gold Key managed approximately 50 properties. AB Davis wrote the checks for all of the accounts and made the deposits into the accounts. Respondent did not have control of the trust account as required pursuant to the New Mexico Real Estate Commission's rules and regulations.

In his response dated January 25, 2011, and submitted and signed by his attorney, Respondent stated that Carl Schmidt negotiated the termination of Complainant's property management agreement without his knowledge. Respondent stated that Carl Schmidt was the negotiator and the person in control of Complainant's property management file who refused to pay the fees she was entitled to upon termination of the agreement. Respondent was unaware of any request for documentation or explanation of funds not reimbursed. Respondent was unaware that AB Davies was not timely submitting rental payments to complainant and was unaware of any complaint as to untimely payments until receipt of the complaint. While Respondent was Qualifying Broker, Complainant received copies of all bills and statements. Respondent acknowledged that AB Davies would have received any request for bills and/or documentation as she was the operational property manager. Such requests should have been made a part of the property management file. Respondent did not have copies of water bills etc in order to respond to the complaint however he acknowledged that Complainant should not have been double billed for charges and should have, upon termination, been paid the monies she had requested. Respondent paid Complainant all the funds he determined she was entitled.

Respondent failed to properly supervise AB Davies while he was qualifying broker for Gold Key and failed to create and maintain control of a trust account of funds required to be maintained in a trust account. However, Respondent accepted financial responsibility not only to Complainant for her financial losses but also accepted financial responsibility for another property owner, who suffered a financial loss due to the actions of Gold Key employees. On February 10, 2011, Complainant notified the Commission that Respondent had paid her damages in full.

5. The general nature of the evidence is contained in the attached exhibit, Bates-Stamped 001- 196.

6. By engaging in the above-referenced conduct, Respondent violated

NMSA 1978, §61-29-12, Regulation 16.61.16.9 NMAC and Regulation 16.61.24.8 NMAC.

7. The formal hearing, if requested, will be conducted pursuant to NMSA 1978, §§ 61-1-1 through 61-1-33 (2003) of the New Mexico Uniform Licensing Act. Pursuant to NMSA 1978, § 61-1-8 the licensee is specifically advised as follows:

**NMSA 1978, §61-1-3 (1993) Opportunity for licensee or applicant to have hearing.**

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action, which would result in:...

- E. suspension of license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
  
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board;

**NMSA 1978, §61-1-8 (1981) Rights of person entitled to hearing.**

A. A person entitled to be heard under the Uniform Licensing Act [NMSA 1978, § §61-1-1 to 61-1-31] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued



pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.


The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

8. Unless the foregoing evidence is explained or rebutted at a formal hearing, it constitutes justification and cause for the Real Estate Commission to take the contemplated action as stated herein. A revocation of licenses issued by the Real Estate Commission and held by you, or other remedies available to the Commission against unlicensed persons, will occur unless you request a formal hearing by mailing a certified, return receipt requested letter requesting a hearing within twenty (20) days after service of this Notice of Contemplated Action to:

**Melinda Archuleta, Administrative Secretary  
New Mexico Real Estate Commission  
5200 Oakland Ave, N.E., Suite B  
Albuquerque, New Mexico 87113**

Dated this 2nd day of May, 2012

  
Wayne W. Ciddio  
Executive Secretary  
New Mexico Real Estate Commission  
Telephone: (505) 222-9829

Prepared by:

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**CERTIFICATE OF SERVICE BY CERTIFIED MAIL**

**Return Receipt Request No:**

I, Melinda Archuleta, do hereby certify that I mailed, via certified mail return receipt requested, a true and correct copy of the above provided Notice of Contemplated Action in **NMREC CASE NO. 10-12-02-124-B** before the Real Estate Commission of the State of New Mexico to the Respondent/Licensee at his last known address of record, as shown by the records of the New Mexico Real Estate Commission this 2nd day of May, 2012.

Melinda Archuleta

Print the Name of Individual Certifying Service

Administrative Secretary

Title/Organization

Melinda Archuleta

Signature