

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

D-101-CR-2016- 00109

ENDORSE
First Judicial District Court
FEB 29 2016
Santa Fe, Rio Arriba &
Los Alamos Counties
Santa Fe, NM 87504-2298

STATE OF NEW MEXICO,

T. GLENN ELLINGTON

Plaintiff,

v.

PHIL A. GRIEGO,

Defendant.

CRIMINAL COMPLAINT AND REQUEST FOR SUMMONS

Crimes:

1. Ethical principles of public service – NMSA 1978, Sections 10-16-3(A), (B), and/or (C) (2011) and 10-16-17 (1993).
2. Ethical principles of public service – NMSA 1978, Sections 10-16-3(D) (2011) and 31-18-15 (2007).
3. Bribery and solicitation – Article IV, Sections 39 and 40 of the New Mexico Constitution.
4. Fraud – NMSA 1978, Section 30-16-6 (2006).
5. Fraud – NMSA 1978, Section 30-16-6 (2006).
6. Fraud – NMSA 1978, Section 30-16-6 (2006).
7. Perjury – NMSA 1978, Section 30-25-1 (2009).
8. Tampering with public records – NMSA 1978, Section 30-26-1 (1963).
9. Financial Disclosure Act – NMSA 1978, Sections 10-16A-3 (2015) and 10-16A-7 (1993).

The undersigned, under penalty of perjury, complains and states that on or between the 23rd day of September, 2013, and the 26th day of June 2014, in the County of Santa Fe, State of New Mexico, the above-named person did:

Investigation:

On or about March 14, 2015, State Senator Phil A. Griego vacated his Senate position after stipulating to the Senate Hearing Subcommittee of the Interim Legislative Ethics Committee that he violated the New Mexico Constitution, Senate Rule 26-1, and the Senate Oath of Ethical Conduct, all of which essentially required him to treat his office as a public trust, conduct himself in a manner justifying the confidence placed in him by the people, maintain the integrity and discharge ethically the high responsibilities of his office, and avoid any appearance of impropriety. On or about April 27, 2015, the New Mexico

Office of the Attorney General began a criminal investigation into the basis of that rule violation – whether Griego was unlawfully compensated as buyer's agent by Galisteo Street, Inc. ("GSI") for his role in the purchase of State-owned property.

On or about May 12, 2015, Special Agent Stanley Gloria, Office of the Attorney General, submitted a request to New Mexico Energy, Minerals, and Natural Resources Department ("EMNRD") pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 14-2-12 (1993), for records relating to the sale of 139-141 East De Vargas Street, Santa Fe, New Mexico 87501.

Undersigned, Special Agent Mark A. Pinto, Office of the Attorney General, thereafter conducted interviews and reviewed records as part of my investigation.

Summary of events:

On or about September 17, 2012, GSI entered into a 25-year lease with EMNRD for State-owned property located at 139-141 East De Vargas Street. GSI agreed to pay for all maintenance of the property, and to spend \$250,000.00 in renovations and upgrades. The lease also provided GSI the right to buy at appraised market value if EMNRD decided to sell. EMNRD decided to sell approximately one year after the lease agreement. The sale of this property required legislative approval. Griego, after being contacted by EMNRD Deputy Cabinet Secretary Brett Woods, initiated the legislative process by contacting another legislator to sponsor the resolution.

On or before September 23, 2013, Griego agreed to assist GSI in the purchase. Griego himself presented HJR 8 to the Senate Rules Committee on or about February 18, 2014. Griego then stood silent the next day as inaccurate and incomplete information regarding the lease and sale were discussed on the Senate floor. Griego continued influencing the legislative process through final review by the Capitol Buildings Planning Commission, the final step in permitting the sale. The sale closed on or about June 26, 2014.

Griego, functioning as GSI's agent, earned over \$50,000.00 in commissions – a fact never disclosed to State employees or legislators. Griego also hid the transaction from his then-current qualifying broker, John J. Mahoney, thus depriving Mahoney of his agreed-upon 20% share of Griego's commissions. Griego also misrepresented circumstances of the transaction to the qualifying broker he sought out after cutting ties with Mahoney, Phillip J. Garcia (aka Felipe Joseph Garcia), such that Garcia was due a substantially greater commission than what Griego gave Garcia. Per Article IV, Section 28 of the New Mexico Constitution, Griego's unlawful interest in the contract could still result in an action to invalidate the contract. The New Mexico Real Estate Commission could also pursue civil penalties that include forcing Griego to disgorge the commission he received. NMSA 1978, Section 61-29-17.2 (2011).

Additional details supporting the charges are further articulated throughout this document.

Background of Phil A. Griego:

Griego was a Democratic New Mexico State Senator representing District 39 (covering parts of San Miguel, Santa Fe, Mora, Taos, Los Alamos, and Sandoval counties) from 1997 until his resignation on or about March 14, 2015. At the time of his resignation, Griego was the chairman for the Senate Corporation and Transportation Committee. Griego was a city councilman in Santa Fe from 1984 to 1995. Griego served as mayor pro-tem of Santa Fe from about 1985 to 1993.

Griego graduated from Antioch School of Law in Washington, D.C., and at one point worked for U.S. Senator Pete Domenici. In 1983, Griego started Lawyers Title of Santa Fe. He was CEO of American Surety Title Company in Santa Fe from 1999 to 2003. Griego is a licensed real-estate broker (license number 17003, issued January 25, 2006) and has attended real-estate education courses required to maintain licensure. Publicly available records show that since 2005, Griego has attended 24 real-estate education sessions and has accumulated 154 credit hours of training. One such training course, attended on or about April 25, 2013, included a discussion on disclosure requirements by brokers. Griego has testified as an expert witness in at least one real-estate case, a case resulting in a multi-million dollar verdict.

Legislative background:

During the 2014 regular legislative session – the same session in which the unlawful conduct herein described occurred – Griego sponsored 19 pieces of legislation. One of those bills (SB 124, “Real Estate Foreign Broker Licensure”) set rules for out-of-state real-estate brokers wanting to transact business under New Mexico qualifying brokers. He introduced similar legislation in 2013. For further reference, Griego sponsored two bills relating to real-estate transactions in 2013 (both dealing with brokers), one in 2012, and four in 2011.

Griego introduced six joint resolutions in the years before and after the joint resolution at issue here, which Griego had another legislator introduce. Two of these joint resolutions (SJR 14 in 2006, “Labor Department Land Sales”, and SJR 6 in 2015, “Las Vegas Property Transfer”) were proposals to sell or transfer State-owned land. Two more (SJR 11 in 2006, “Corrections Dept. Employee Land Lease”, and SJR 10 in 2008, “Penitentiary System Wastewater System Lease”) were proposals to lease or transfer State-owned property. Introduction of these joint resolutions demonstrates a knowledge of the legislative process.

History of 139-141 East De Vargas Street:

The property at issue is a 4,762-square-foot office building located at 139-141 East De Vargas Street, Santa Fe, New Mexico 87501. The building is located on the north side of De Vargas Street, a small, one-way street connecting Don Gaspar Avenue on the west to Old Santa Fe Trail on the east, in the Business Capitol District, a sub-district known as the Barrio de Analco. It is a single building located on a single-city lot, and appears to have been a residence or two prior to 1960. The building appears to have been built in

phases, or is comprised of two buildings joined into one. The building is believed to be over 100 years old, and is considered to be in fair-to-average condition for its age.

In 1960, the Commissioner of Public Lands conveyed this property to the State Parks Division. State Parks used the property as office space until it consolidated its Santa Fe office space and vacated the property. The building stood unoccupied for several years. When the decision was made to vacate, EMNRD issued a public notice requesting offers to lease the building. It received none. In February 2012, EMNRD again issued public notice requesting offers to lease with terms open to negotiation. GSI was the sole entity to submit an offer.

Galisteo Street, Inc.:

GSI is a domestic, for-profit corporation in good standing with its principal place of business in Santa Fe. GSI was incorporated in 1990 and is owned by the Seret family – Ira (father and President), Sylvia (mother and Secretary), Ajna (son and Vice President), and Sharif (son and Treasurer). Ira has purchased property in Santa Fe for a number of years, including converting condominiums into a high-end hotel, The Inn of the Five Graces. The Inn of the Five Graces is located on the south side of East De Vargas, directly across from the property at issue. The Serets also operate a textile and decorating business in Santa Fe, Seret and Sons Rugs and Tapestries, Inc.

2012 lease of 139-141 East De Vargas by EMNRD to GSI:

From February to September 2012, GSI and EMNRD negotiated the lease. Negotiations were long and drawn out due to a split in EMNRD as to whether the property should be leased or sold. Ira, Sharif, and Mariana Geer (GSI's attorney) were involved in negotiations. Sharif stated the process was bogged down by bureaucracy and the parties often disagreed. The lease was signed on or about September 17, 2012, seven months after GSI's offer.

The parties agreed to a 25-year lease with an option to extend another 25 years. The lease contained a "right of first purchase" provision, which stated that if EMNRD decided to sell, GSI could purchase at appraised value. The lease was structured as a "triple net" lease, which meant GSI would be responsible for all property expenses, with the exception of taxes and structural footings. GSI was thus responsible for all utilities, insurance, maintenance, repair, and replacement of the premises, "including but not limited to all building structural elements, the roof, windows, parking lots, sidewalks, exterior doors, lighting, cooling system, heating system, plumbing, lighting fixtures, interior doors, and flooring."

GSI expressly committed to spend a minimum of \$250,000.00 "in renovations and upgrades to the Premises." This agent confirmed GSI spent \$199,122.77 in renovations and upgrades to the property during the lease period. This agent further confirmed EMNRD spent no money on maintaining the property from the time it vacated the property to the time it sold the property.

2014 sale of 139-141 East De Vargas by EMNRD to GSI:

In 2013, EMNRD decided to sell the property. Sometime in the fall of 2013, Woods contacted Griego, EMNRD's legislative contact, to start the sale process. The sale would require legislative approval pursuant to NMSA 1978, Section 13-6-3 (2003), because the sales price would exceed \$100,000.00.

Reports on 139-141 East De Vargas:

When EMNRD decided to sell, EMNRD employee Tommy Mutz drafted a bill analysis, dated January 29, 2014. The legislation's sponsor is listed as Representative Jim R. Trujillo, and is titled "Disposal of Santa Fe Surplus Land." The analysis is brief and states the property is no longer used by EMNRD, is under a 25-year lease, and notes the revenue generated by the lease. The analysis does not state property condition or lease terms.

Similarly, Charlene Cerny, an analyst for the Legislative Finance Committee, drafted a Fiscal Impact Report ("FIR") dated February 5, 2014. The FIR notes proceeds from the sale would be "indeterminate ... but ... likely significant." It mentions the income generated by the lease versus the sales proceeds and current loss or gain of revenue from State Parks Division. In the "Significant Issues" section, the FIR states the property is currently leased to GSI but "it is not known at this time whether the tenant(s) will remain in the building once it has been put on the market, whether they might be potential buyers, or how long the property will take to sell." The FIR also states that while the lease provides revenue to State Parks Division, "such revenues might be offset by maintenance requirements of the historic building over time." As stated above, the State spent no money on maintaining the property during the lease period, and all maintenance costs were the responsibility of GSI.

House hearing on HJR 8:

In September 2013, Griego approached Trujillo following a meeting of the Revenue Stabilization and Tax Policy Committee. Trujillo recalls this meeting because Griego was not a member of that Committee. Griego asked Trujillo to help EMNRD sell the De Vargas property. Griego stated he was too busy with his own legislation to introduce the resolution, and the property was costing EMNRD more money to maintain than it was receiving from the lease. On or about January 13, 2014, Trujillo contacted Legislative Council Services to start the process of drafting the resolution permitting the sale.

The second session of the 51st Legislature convened on or about January 21, 2014. On or about February 8, 2014, the House Health, Government, and Indian Affairs Committee reviewed House Joint Resolution 8 ("HJR 8", entitled "Disposal of Santa Fe Surplus Land"), the resolution to sell the De Vargas property to GSI. HJR 8 was only briefly discussed amongst Committee members. It is unknown if Griego was present. The Committee gave unanimous recommendation that HJR 8 pass with a referral to the House Judiciary Committee.

For background purposes, joint resolutions are formal legislative declarations concerning some subject the Legislature either cannot control or does not wish to control by law. They do not require action by the Governor. They are often used to express the will of the Legislature, such as approving the sale, trade, or lease of State-owned real property.

On or about February 12, 2014, the House Judiciary Committee gave unanimous recommendation that HJR 8 pass. HJR 8 was on the agenda, but it does not appear it was discussed. It is not known if Griego was present.

On or about February 14, 2014, HJR 8 passed the House by a vote of 70-0. Upon my investigation, Trujillo, in sponsoring HJR 8, relied upon the facts contained in the FIR, as well as statements by Woods regarding maintenance costs outweighing the lease income. As stated above, the FIR is brief and incorrectly indicates the State is responsible for maintenance costs.

Griego did not disclose any financial interest in HJR 8 to Woods or anyone at EMNRD, to any House committee, to Trujillo, nor to any House members. Nor did Trujillo state he was sponsoring HJR 8 for Griego.

Senate Rules Committee hearing on HJR 8:

On or about February 18, 2014, the Senate Rules Committee reviewed HJR 8. This agent reviewed a publicly available video recording of this hearing. Griego sat alone before the Committee to present HJR 8. He stated he was presenting the measure for Representative Trujillo.

Griego twice stated to the Committee that the property was costing EMNRD more money to maintain than the lease was worth:

GRIEGO: This is a building that has cost Energy and Minerals a, their half of a lease, it is costing more money to maintain the building because it's over 50 years old and they are a part of the lease and they'd like to sell it.

February 18, 2014, Senate Rules Committee beginning at 2:16:50.

GRIEGO: They entered into a lease with the Park that, it's been quite a while, and the money that they're paying on the lease is not allowing Parks Division to maintain the building, it's costing them more to maintain, what they'd like to do, hopefully, they'd like to do with the money they make off the sale is put it back in the Parks Division so they could spend it on parks.

Id. at 2:17:50.

Griego fielded only one question, from Senator Gerald Ortiz y Pino, as to whether the property was located near The Inn of the Five Graces. Griego appears to possess a

working knowledge of the existing lease between GSI and EMNRD, knowing at least that it has existed for some time (incorrectly stating it has been in place for “ten or twelve years”) and that the Inn has remodeled the property.

The Committee recommended passage of HJR 8 by unanimous vote with a referral to the Senate Finance Committee. The Senate Finance Committee never reviewed HJR 8, as the measure was instead put to vote in front of the Senate.

Griego did not disclose to the Rules Committee the lease provisions favorable to the State, nor did he disclose any financial interest in HJR 8.

Senate hearing on HJR 8:

Trujillo approached Senator Carlos Cisneros to present HJR 8 in the Senate. Cisneros agreed to present HJR 8 “out of respect for Trujillo.” Cisneros often asked Trujillo to present legislation in the House, and Trujillo, in return, often asked Cisneros to present legislation in the Senate. Cisneros had no prior contact with Griego regarding HJR 8. On or about February 19, 2014 – the day after Griego presented HJR 8 to the Rules Committee and one day before the legislative session was to end – Cisneros presented HJR 8 to the Senate.

This agent reviewed a publicly available video recording of the February 19th Senate hearing. It should be noted Griego appears present for most of the Senate proceedings that day, and Griego himself stood, introduced, and capably answered questions regarding HB 51 (“Right to Farm Nuisance Changes”), a bill he did not sponsor.

Approximately four hours into the session, Griego was orally recognized by Senator Michael Sanchez to introduce HJR 8 to the Senate. Griego yielded to Cisneros. Cisneros introduced HJR 8 by explaining “most importantly, the maintenance and upkeep of the building, you can tell, since it was built in 1960, is extraordinary, so it is in the best interests of the Department to just simply dispose of the property.” Griego, seated nearby, failed to correct Cisneros that the current lessee was responsible for maintenance costs.

After these introductory remarks, Senator Peter Wirth questioned Cisneros. The property at issue lies in Senate District 25, Wirth’s district. Cisneros could not provide complete and true answers to Wirth, as he, like Trujillo, was relying solely on the FIR and the text of HJR 8 (neither of which mentioned the conditions of the lease; that the lease provided a steady stream of money to EMNRD; that GSI was a buyer already lined up; that the lease required GSI to pay all maintenance costs; and that GSI expressly committed to spending a minimum of \$250,000.00 in renovations and upgrades). Cisneros appears to be reading directly from the documents, exhibiting little independent knowledge of the building, its location, the existing lease, the sale, or even whether a land grant existed that would have nullified the sale.

Importantly, Cisneros repeatedly misstated to Wirth that maintenance costs under the lease made the sale desirable:

CISNEROS: The building is so old and requires extensive maintenance and repair that it is in the best interests of the Department to simply sell it at market value and use that money for the Department for recreational purposes.

February 19, 2014, Senate Floor Session beginning at 4:06:12.

CISNEROS: ... the cost of maintenance and maintaining the building is much more than the lease so it is in the best interest of the Department to simply sell it and capture the asset via money and invest it in recreational facilities.

Id. at 4:07:14.

Cisneros also responded incorrectly to Wirth's question whether the sales process would be competitive:

WIRTH: This will be a competitive process, correct? There's no buyer that's already lined up and this will be open to any Santa Fean that wants to come in and purchase this?

CISNEROS: Absolutely. Madam President, it's in the market, at market value, whatever that would be.

Id. at 4:08:40. Cisneros concluded Wirth's questioning by incorrectly commenting for the fourth time on the State's responsibility for maintenance costs under the lease:

CISNEROS: Again, expensive to maintain and repair, more so than the value, in some cases, of the lease so for the Department it is in their best interest to simply dispose of the property.

Id. at 4:09:36. Griego, seated nearby for this entire line of questioning, did not attempt to answer Wirth's questions, nor did he correct Cisneros's incomplete and inaccurate responses.

When HJR 8 was presented for vote, the instructions were that all present would be shown to have voted in the affirmative, except those voting negative by a show of hands. Griego was present for these instructions. Three senators (Daniel A. Ivey-Soto, Michael S. Sanchez, and William E. Sharer) voted against HJR 8. In violation of Senate Rule 7-1, which requires every senator present to remain in the chamber during session unless excused or "necessarily prevented", Griego stepped just outside chamber doors when votes were cast. Griego's abrupt departure from the vote is an early indicator to this agent that Griego knew he had a conflicting interest in the vote while he was functioning as a legislator, but hoped not voting on the measure would alleviate that conflict.

Griego immediately returned when the negative votes were announced, taking papers from Cisneros. Senate Rule 7-6 requires a senator wanting to be excused from voting to make a brief statement explaining his reasons for desiring to be excused; one cannot simply exit quietly. A present senator is obligated to vote unless excused. Senate Rule 21-3.

In a subsequent media interview, Griego stated he voted in favor of HJR 8, but that his vote made no difference. Voting on HJR 8, legislation Griego had a personal and pecuniary interest in, violated Senate Rule 7-5. It is likely Griego's vote was counted despite his short absence because he did not follow Senate Rule 7-1, and because he was present and voted for Senate Memorial 36 ("Valle de Oro Wildlife Refuge Funding") and House Bill 157 ("School Transportation Training Fund"), legislation up for vote immediately before and after HJR 8.

Griego never disclosed any interest in HJR 8 to the Senate, nor did Cisneros state he was presenting HJR 8 for Griego.

Griego disassociates with John J. Mahoney:

During the time in question, Griego worked as an "associate broker." NMSA 1978, Section 61-29-2(A)(3) (2014). Per 16.61.17.8 NMAC, an associate broker is required to affiliate with a qualifying broker to engage in real-estate brokerage business, and may only affiliate with only one qualifying broker at a time. An associate broker is under a strict duty not to engage in any real-estate activities on their own behalf or for another qualifying broker outside the knowledge of the original qualifying broker. 16.61.17.9 NMAC. A qualifying broker is subject to additional business formation, licensure, and educational requirements not applicable to associate brokers. Sections 61-29-2(A)(14) and 61-29-9(C) (2013). An associate broker's license must show the name of the qualifying broker by whom the associate is engaged, and the qualifying broker must prominently display this license at the qualifying broker's place of business. Sections 61-29-11(B), (E) (2013). "The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker." Section 61-29-11(B).

Griego was an associate broker under qualifying broker John J. Mahoney, operator of John J. Mahoney & Associates, Inc. (license number 2652, issued June 28, 1977) from on or about May 6, 2013, until on or about February 25, 2014. Mahoney and Griego had a written contract dated June 26, 2012, whereby Mahoney would receive 20% of any commission Griego received on any real-estate transaction.

At some point prior to February 26, 2014 (bearing in mind the legislative session ended six days earlier), while still working as an associate under Mahoney, Griego entered into negotiations with Ira Seret regarding the sale of 139-141 East De Vargas. Griego never told Mahoney he was working on a real-estate transaction on the De Vargas property or with the Serets or GSI, in violation of 16.61.17.9(E) NMAC, which provides that an associate shall not engage in real-estate activities on his own behalf outside the

knowledge of his qualifying broker. Mahoney stated that up to that point, Griego kept him apprised of Griego's business activity. The two of them also had several discussions regarding potential conflicts arising in unrelated instances.

On or about February 13, 2014, Griego signed a License Transfer Application to transfer his license from Mahoney to another qualifying broker, Phillip J. Garcia (aka Felipe J. Garcia), operator of Excalibur Asset Management LLC ("EAM"). Garcia also signed the Application on February 13, 2014; Mahoney did not sign. Griego told Mahoney he was leaving because he received a better commission split elsewhere. Not knowing about the De Vargas negotiations, Griego thus left Mahoney under good terms. Once Mahoney learned of the De Vargas sale some months later in the media, Griego told Mahoney he recused himself from voting and made proper disclosures to the Capital Buildings Planning Commission.

Griego appears to be currently associated again with Mahoney, having re-associated with him on or about September 3, 2015.

Griego associates with Phillip J. Garcia:

On or about February 13, 2014, Griego sought work as an associate broker under longtime friend Garcia (license number 12090, issued February 6, 1991) and EAM. This agent reviewed publicly available licensee details, which show Griego associated with Garcia on or about February 26, 2014, with the association expiring on or about September 2, 2015.

EAM is a small property management company with an Albuquerque office. Garcia appears to be EAM's only working employee. Garcia likely believed his arrangement with Griego was short term, as EAM does not have the profile or infrastructure of larger qualifying brokers. Garcia was not actively involved in buying and selling real estate, and had limited knowledge regarding real-estate transactions outside of that required for licensure. Shortly after meeting with Griego, Garcia traveled to Hawaii and remained there during the course of this transaction.

Griego told Garcia he was working on a deal with Ira Seret, and that he had a falling out with his prior qualifying broker, Tom Keesing (not Mahoney), over a commission dispute and "needed to make a living." Garcia was unaware of Griego's association with Mahoney.

Garcia and Griego orally agreed Garcia was to receive 20% of the commission for selling the De Vargas property. The only additional communication between Griego and Garcia regarding the property was in April 2014 when Griego advised Garcia the sale was complete. Griego never told Garcia about any potential conflicts of interest, such as that the property sold was State owned. On or about June 26, 2014, Garcia received only \$2,704.68 – 5% of the commission (Griego received \$51,389.07 for his share), which included New Mexico gross-receipts tax.

On or about April 1, 2014, Griego met with Tish Trujillo, escrow officer with Southwestern Title and Escrow, to inquire how his commission would be paid. Regulations require commissions be paid to a qualifying broker, who then pays an associate broker, unless otherwise stated in writing. 16.61.17.9(G), (I) NMAC. There was no such alternate agreement here. Griego's contact with Trujillo evinces effort to insure he was paid directly, ensuring Garcia (and, by extension, Mahoney and the State) remained unaware of Griego's actual commission.

Buyer's Agency Agreement:

Ira Seret stated to this agent that based on his experience with EMNRD during the 2012 lease-negotiation process, he did not trust the State to readily comply with lease conditions. One of the lease conditions was the "right of first purchase" provision. Geer advised Ira that Griego would be able to successfully broker the sale without subjecting the Serets to another long, contentious negotiation. Ira did not know Griego. Ira places trust and confidence in Geer, and took her advice without hesitation. Ira states he expected Griego to act lawfully and ethically in brokering the sale.

On or about March 17, 2014, Ira signed the Buyer's Agency Agreement, which included a commission of \$50,000.00 to EAM for the completed sale. Griego thereafter picked up the Agreement and faxed it to Garcia. On March 24, 2014, Garcia signed the Agreement and faxed it back to Griego. Griego then delivered it to Geer. Griego did not provide this document to EMNRD or anyone associated with the Legislature.

It should be noted Griego was present at the office of property appraisers Hippauf & Associates, Inc. on March 13, 2014, presumably functioning as GSI's agent, to pick up the appraisal. Geer stated Griego should not have been doing any work prior to both the buyer and seller signing the Buyer's Agency Agreement. Any work done prior to signing was both unauthorized by GSI and contrary to law, as all agency relationships must be in writing. NMSA 1978, Section 61-29-10.1 (2004).

Real Estate Commission regulations outline the duties Griego owed to GSI, including "honesty and reasonable care"; compliance with all laws, rules, and regulations; and written disclosure of any potential conflicts of interest. 16.61.19.8 NMAC. Griego would have been required to disclose his conflict of interest to the State's broker, if the State had associated with one. Id.

Capitol Buildings Planning Commission Review of HJR 8:

HJR 8 contained a provision whereby the property could not be sold "until the sale has been reviewed by the capitol buildings planning commission." HJR 8 did not give the Capitol Buildings Planning Commission ("CBPC") authority to reject the deal; but if HJR 8 was never "reviewed" by the CBPC (and was, for example, tabled or not heard), the sale could not have occurred. Meetings of the CBPC to discuss the sale took place on or about April 9, 2014, and June 23, 2014, after HJR 8 had passed the House and Senate.

April 9, 2014 meeting:

On or about April 9, 2014, Woods presented HJR 8 to the CBPC. Woods provided CBPC members with a spiral notebook containing: (1) an appraisal dated March 21, 2014, prepared by Hippauf & Associates; (2) an engagement letter between GSI and Hippauf; (3) a letter from New Mexico Taxation and Revenue Department approving the appraiser; (4) a warranty deed; (5) a flood map; (6) a lease agreement between GSI and EMNRD; (7) a discounted cash-flow analysis; and (8) a summary of the appraiser's qualifications.

Woods advised the CBPC the building should be sold because it has structural issues and needs significant repair work, and because the building is unsuitable for EMNRD's needs. Woods noted the building was currently leased by GSI for 25 years with an additional 25-year renewal option. Woods said GSI has the right of first purchase, and that the property was appraised at \$500,000.00. The CBPC informed Woods it required a sales agreement to "review" the sale. The CBPC requested the subject be brought before it at a future meeting to review a signed sales agreement. The "review" (a necessary precursor to the sale) was postponed or tabled to a later date.

Following the meeting, Griego sought Representative W. Ken Martinez, co-chairman of the CBPC, at Martinez's office in the Capitol Building. Griego asked Co-Chairman Martinez to immediately reconvene the meeting. Griego did not disclose his financial interest in the sale. Griego summoned Woods to Co-Chairman Martinez's office in a further effort to influence Martinez into reconvening to complete review of HJR 8. When Martinez refused, Griego uttered words to the effect that Co-Chairman Martinez was "screwing up" Griego's deal.

While departing Co-Chairman Martinez's office, Griego met Raul Burciaga, Director of the Legislative Council Service ("LCS"). The LCS is a statutorily created agency that serves all legislators by drafting legislation and conducting legal research. NMSA 1978, Section 2-3-8 (1955). Per the State's website, LCS's "overriding mission is to be as helpful to each legislator as possible." According to Burciaga, Griego wanted to know when the next meeting of the CBPC could be scheduled. Burciaga replied he had to accommodate a number of schedules, and it would take time to schedule the next meeting. Griego asked to be contacted by e-mail regarding the CBPC's next meeting. On or about May 26, 2014, Burciaga sent the schedule to Griego.

EMNRD and GSI enter into purchase agreement

Sometime near April 22, 2014, Griego delivered a Purchase Agreement from Geer to EMNRD. Griego did not disclose to EMNRD that he was acting as buyer's agent. On or about April 22, 2014, Woods signed the Agreement. Griego took the Agreement from EMNRD to Geer, still not disclosing to EMNRD his financial interest. On or about April 22, 2014, Ira signed the Agreement.

On or about April 30, 2014, Woods signed an Amendment to the Purchase Agreement. Again, Griego delivered the Amendment from EMNRD to Geer, again not disclosing his financial interest to EMNRD. Ajna signed the Amendment on or about April 30, 2014.

June 23, 2014 meeting:

On or about June 23, 2014, the CBPC met again. Neither Griego nor Woods was present. Sharif and Geer were present. The meeting lasted a little over two hours. HJR 8 was only part of the agenda.

EMNRD General Counsel Bill Brancard presented HJR 8 for review. Brancard explained the last time the CBPC met, the parties had not entered into a purchase agreement. They now had a signed purchase agreement. GSI paid all expensed related to the purchase. The initial appraisal of \$500,000.00 had been adjusted to \$570,000.00. Accordingly, EMNRD and GSI negotiated and agreed upon the price of \$570,000.00 (EMNRD, not knowing Griego was acting as GSI's broker, contacted Ira directly to negotiate this change).

CBPC membership were concerned with aspects of the sale – GSI chose the appraiser, the property could fetch more on the open market, and the building was within the Capitol campus where there was already a shortage of office space. Senator Mary Kay Papen and Co-Chairman Martinez expressed initial disapproval of the sale. Nevertheless, the motion to deem HJR 8 “reviewed” passed the CBPC, opposed only by Co-Chairman Martinez. The motion noted the CBPC reviewed the sale with specific concerns or objections. Two senators, Papen and Stuart Ingle, were among those voting for the sale.

Final sale of 139-141 East De Vargas:

The sale closed three days after the CBPC reviewed HJR 8. On or about June 26, 2014, Woods signed the closing statement at the offices of Southwestern Title and Escrow. According to Tish Trujillo, Griego was present as associate broker. Woods does not recall Griego being present. That same day, Ira signed at Southwestern Title and Escrow. Griego's presence was not noted during this signing. Also on or about June 26, 2014, Griego picked up his commission check, check number 781911, in the amount of \$51,389.07, payable to Phil Griego.

Throughout the entirety of this transaction, Griego never delivered to the State (through EMNRD, the Legislature and its various committees, or the CBPC) a copy of Buyer's Agency Agreement. This violated 16.61.33.9 NMAC, which requires a broker to “assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction ...” Nor did Griego ever orally disclose his interest to anyone associated with the State.

Financial disclosure statements

The Financial Disclosure Act requires legislators to file each January with the Secretary of State a financial disclosure statement. NMSA 1978, Sections 10-16A-3(A), (D) (2015).

Disclosures are made on a standardized form containing boxes wherein legislators must list all sources of gross income of more than \$5,000.00. Section 10-16A-3(C)(2). The form explains that income sources include real-estate operations. The form states that it is signed under penalty of perjury.

Griego signed his 2015 Financial Disclosure Statement (covering the 2014 calendar year) on or about February 2, 2015, while Griego was still a legislator. The form was received by the Secretary of State on or about February 2, 2015. The form states he was employed in 2014 by EAM as an associate broker. The form does not contain, as the plain language of Section 10-16A-3(C)(2) requires, any information on salary or commissions earned in 2014. Griego lists only one source of income – “Rental” for “124 Siringo Rd.” Moreover, there is a catch-all portion at the end of the form directing the writer to “[p]rovide whatever other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts”. Griego notes only that he rents an office at “1040 Don Diego St.” in Santa Fe, paying \$400.00 per month. He, again, makes no mention of the commission he received.

For additional reference, this agent reviewed Griego’s financial disclosure statements from 2013 and 2014. These statements also appear to lack complete income disclosures. Griego filed an amendment in 2014 (on or about September 17, 2014, about 83 days after he received the commission check) in which he changed his employer (from Carlisle Solutions Group to “J.J. Mahony and Assoc LLC”) and explained where he maintained an office and how rent was paid. Again, he did not report any income over \$5,000.00, including the commission check he received June 26, 2014.

On or before January 4, 2016, this agent attempted to speak with Griego regarding this criminal matter. Griego, through his attorney Diego Zamora, declined to speak with me.

Charges:

And therefore, based on the foregoing, I charge Phil A. Griego with violating these laws:

1. Ethical principles of public service – NMSA 1978, Sections 10-16-3(A), (B), and/or (C) (2011) and 10-16-17 (1993).
2. Ethical principles of public service – NMSA 1978, Sections 10-16-3(D) (2011) and 31-18-15 (2007).
3. Bribery and solicitation – Article IV, Sections 39 and 40 of the New Mexico Constitution.
4. Fraud upon the State of New Mexico and/or the New Mexico State Legislature – NMSA 1978, Section 30-16-6 (2006).
5. Fraud upon John J. Mahoney and/or John J. Mahoney & Associates, Inc. – NMSA 1978, Section 30-16-6 (2006).
6. Fraud upon Phillip J. Garcia and/or EAM – NMSA 1978, Section 30-16-6 (2006).
7. Perjury for filing a false 2015 Financial Disclosure Statement – NMSA 1978, Section 30-25-1 (2009).
8. Tampering with public records – NMSA 1978, Section 30-26-1 (1963).

9. Violation of Financial Disclosure Act – NMSA 1978, Sections 10-16A-3 (2015) and 10-16A-7 (1993).

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

A handwritten signature in black ink, appearing to read 'Mark A. Pinto', written over a horizontal line.

Mark A. Pinto, Complainant
Special Agent,
New Mexico Office of the Attorney General

CASE INFORMATION

OAG file no.:	201504-00072
Metro/Mag. Court no.:	n/a
LEA/RPT no.:	n/a
DOB:	08 / 05 / 1948
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Arrest no./date:	n/a