

Broker Liable for Damage Caused by Recommended Roofer

Court finds that a broker's recommendation of a vendor who destroyed house was breach of reasonable care.

April 30, 2024

 Being a Broker, Risk Management, Insurance, Fraud, Negligence & Liability, Legal, Agency



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Takeaways

- Prior to making recommendations of vendors, implement vetting practices requiring confirmation in writing of licensure/accreditation status and liability insurance coverage.
- Avoid hiring third party vendors directly for work being performed at a consumer's property. Instead, act as an intermediary by introducing the third party vendor to the property owner.
- Always recommend multiple trusted professionals to clients for their own selection.
- Evaluate your client agreements to include a clear and explicit delegation of duties in investigating and evaluating third party contractors.
- Be sure to comply with your state's laws regarding duties owed to clients and consumers, including the duty of reasonable care, broadly defined as conduct meeting standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

On December 19, 2022, the Court of Appeals in New Mexico affirmed a verdict assigning liability in the amount of \$143,188.60 against a broker and their brokerage who were found negligent for the broker's recommendation of an uninsured and unlicensed

roofer who negligently destroyed his clients' home. Despite not being involved in the work, the broker's recommendation of the roofer without confirming insurance status or licensure status was deemed a breach of the broker's duty of reasonable care.

In 2016, a New Mexico couple ("Homeowners") entered a listing agreement with a New Mexico licensee ("Broker") to sell their Albuquerque, New Mexico home. The agreed terms of the listing agreement defined the contractual relationship as a "transaction brokerage relationship," defined by New Mexico statute as where a broker provides services but does not owe fiduciary duties to their client.

Soon after, Homeowners entered into a contract with a buyer, but an inspection revealed problems with the roof. Homeowners could not find an available roofer, but then Broker volunteered to "take care of it" and found a roofer to perform the work. Broker recommended the roofer to Homeowners, but Broker never confirmed the roofer's licensure or insurance status. Based on the recommendation, the Homeowners entered an agreement with the roofer. During the repairs, the roofer's work triggered a fire that completely destroyed the home.

Homeowners and their insurance company ("Plaintiffs") sued Broker and their brokerage ("Defendants") for damages caused by the fire,

alleging claims of professional negligence and breach of contract in recommending the uninsured and unlicensed roofer.

The district court conducted a bench trial to determine whether Broker, as a transaction broker, owes the duty of reasonable care to Homeowners as an intermediary; and whether the recommendation of the roofer was a breach of that duty that led to Plaintiffs' damages. The court held that regulations established by the New Mexico Real Estate Commission imposed the duty of reasonable care on transaction brokers, even without an agency agreement and despite the New Mexico statute defining the transaction broker relationship as non-fiduciary.

During trial, each party presented expert witness testimony regarding the professional standards of practice for brokers recommending vendors for home repairs. Plaintiffs' expert witness testified that recommending licensed and insured vendors is a universal standard; and if a broker does not have information about a vendor's licensure or insurance status, then the standard was to disclose that lack of information to the clients. Defendants' expert witness testified there is no statute, code, regulation, or standard requiring New Mexico transaction brokers to research the license or insurance status of a potential vendor. Additionally, a representative of Defendant

brokerage testified that the brokerage had an expectation to only recommend licensed and insured vendors.

In the trial's conclusion, the court found Broker breached the duty of reasonable care in recommending the roofer and determined that they were 45% at fault for the damage caused by the fire, awarding damages, attorneys fees and prejudgment interest to Plaintiffs.

Defendants appealed to the Court of Appeals of New Mexico, raising three main arguments: 1) Broker did not owe a duty of reasonable care to investigate the roofer's licensure and insurance status based on the transactional brokerage relationship and the duties outlined in the listing agreement; 2) No causation connection existed between the alleged lack of insurance and licensing to the negligence by the roofer; and 3) The listing agreement did not permit the award of attorney's fees based on Defendants' negligence.

In addressing Defendants' first argument, the Court of Appeals considered the transaction broker's role as a non-fiduciary intermediary while analyzing the New Mexico Real Estate Commission Rules that all brokers, including transaction brokers, owe a duty of reasonable care to consumers. The Court of Appeals reasoned the lack of an agency relationship did not alter the transaction broker's duty of reasonable care, agreeing with the district court's finding that



transaction brokers have a duty of care to disclose the licensing status of contractors recommended for repairs.

Additionally, Defendants argued they should be absolved of liability because the listing agreement placed the vendor investigation responsibilities solely on Homeowners. The court disagreed. While the listing agreement clearly obligated Homeowners to independently investigate contractors recommended, the listing agreement was silent as to Defendants' duties, therefore, the agreement could not limit or extinguish Broker's duty of reasonable care as established by the New Mexico Real Estate Commission.

Next, Defendants argued the lack of license or insurance was not the reason the home was destroyed; therefore, Defendants could not legally be found negligent for recommending the roofer. In disagreeing with Defendants, the Court of Appeals focused on Homeowners' testimony that they would not have hired the roofer had they known his licensure and insurance status. Additionally, the district court found causation was supported because licensure is a competence indicator, and vendor insurance provides a remedy for property owners if the vendor causes damage. The Court of Appeals held it was reasonable for the district court to conclude that the fire and resulting damages were a natural and continuous result from Broker's roofer recommendation.

Defendants also argued the district court's award of attorney fees to Plaintiffs was unwarranted based on language in the listing agreement entitling the prevailing party to attorney fees if "any aspect" of the agreement resulted in litigation. Defendants contended that the language of the agreement limited awards of attorney's fees to contractual disputes, not for disputes based on negligence. The Court of Appeals agreed with the district court's analysis that evidence supported a connection between the listing agreement and the dispute, affirming the award of attorney's fees. The listing agreement was the basis for the parties' relationship; the impetus for Broker to seek and recommend the roofer; and the Commission rules were incorporated into the agreement.

The district court's judgment was affirmed.

LM Ins. Corp. v. I Do Albuquerque, 527 P.3d 685 (N.M. App. 2022) [↗](#)



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