

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 028-1804

BARON C. BURKES, BROKER
ERIC ENTREKIN, SALESPERSON

RESPONDENTS

AGREED ORDER

This cause came before the Mississippi Real Estate Commission, sometimes hereinafter "Commission," pursuant to the authority of Miss. Code Ann. §§73-35-1, *et seq.*, as amended, on two complaints against Baron C. Burkes, Broker, and Eric Entekin, Salesperson and the Commission was advised that there has been an agreement reached among the parties resolving the issues brought forward in this complaint. By entering into this Agreed Order, the Respondents waive their rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent Baron C. Burkes, sometimes hereinafter "Respondent Burkes" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 302 Old West Point Road, Starkville, MS 39759. Respondent Burkes is the holder of a real estate broker's license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended and, as such, he is subject to all provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. Respondent Burkes is the responsible managing broker for Respondent Eric Entekin.

II.

Respondent Eric Entrekin, sometimes hereinafter “Respondent Entrekin,” is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 3806 Oakdale Ave. Meridian, MS 39305. Respondent Entrekin is the holder of a real estate salesperson’s license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended and, as such, he is subject to all provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

III.

The Commission received a complaint against Respondent Entrekin regarding his conduct in the purchase of open land in the Meridian, MS area. Thereafter, the Commission opened its investigation of the matter.

IV.

On 4/5/18, the Bennetts purchased 29 acres of land in Meridian, MS. The buyers had communicated with Respondent Eric Entrekin, a salesperson with Tom Smith Land & Homes Branch Office in Starkville. Prior to purchasing the land, the Bennetts advised Entrekin that they wanted to put a manufactured home on the land so that they would have a place to stay when they moved to Meridian. Respondent Entrekin advised the Bennett that mobile homes are supposed to be in certain *zones*. The Bennetts asked if the land they were purchasing could have a mobile home on it. The Bennetts claim that Respondent Entrekin said, “I don’t see why not since you would basically be in your own little community”. The Bennetts later received a text message from Respondent Entrekin stating that the seller was 99 percent sure there were no *restrictive covenants* that he (seller) was aware of. This information led the Bennetts to believe it was okay for them to proceed with the purchase and move a mobile home onto the land without any issues.

V.

After closing, the Zoning Dept. told the Bennetts that they would have to file to re-zone the land, a process of 1-2 months. Upon informing Entekin of this, the Bennetts claim Respondent Entekin said they shouldn't have called the zoning department first, but just gone ahead and then ask for forgiveness, if confronted. The Bennetts were opening a furniture store the first week in June of 2018 and so had to stay in a motel until resolution of the zoning issue, costing them a great deal of money. The Bennetts said all this happened because Respondent Eric Entekin did not do his due diligence and verify whether a mobile home could be placed on the property. Respondent Entekin told the Bennetts that it was not his place to make sure that a mobile home could be placed on the land. The Bennetts stated that they would not have purchased this land otherwise.

VI.

Respondent Entekin's response states that the Bennetts first contacted him by texting him on 3/3/18, stating they were looking for land in Meridian where they could build a house, ride 4-wheelers, and hunt. Respondent Entekin then sent a map link of the subject property and explained that it had recently been clear-cut and replanted in loblolly pine. On 3/5/18, Entekin resent the map link and explained how to locate the property. Entekin said he provided all the information to the property to make it easier for them to locate it and to understand the status for replanting the loblolly pines. No WWREB form was provided or even discussed at that time.

VII.

Respondent Entekin pointed out that there was a deeded *easement* on this property and suggested that the Bennetts contact the city *zoning* department with any questions about that. Entekin thought the Bennetts had satisfied themselves regarding placing a mobile home on the property. Respondent Entekin admits that after the closing, Ms. Bennett called about the need to get a variance to place a trailer on the property, a one to two-month process.

VIII.

Respondent Entrekin finally sent the Bennetts an email, without a message, with a WWREB form, the contract for the sale and purchase, and a summary document on March 12, 2018, almost 10 days after the "first substantive meeting". That WWREB form had already been checked as "customer". Respondent Entrekin had already sent a text message to the Bennetts stating that these forms were being sent by email. The Bennetts were to sign electronically and return them to Respondent Entrekin. Yet Respondent Entrekin, in his complaint response, stated that, upon filling out the WWREB, it was explained to the Bennetts that they were a "Customer" and therefore had no representation. Respondent Entrekin claims the Bennetts understood and signed, checking the "Customer" box. These documents, however, were docu-signed, revealing remote execution.

XIV.

An agency may be created by implied agreement. This occurs when the parties act as though they have mutually consented to an agency, even if they have not entered into a formal agency agreement. While neither the real estate professional nor the represented party may have consciously planned to create an agency relationship, they can create one unintentionally, inadvertently, or accidentally by their actions. If the existence of an agency relationship becomes the focus of a legal action, the real estate professional may be in a lose-lose position. If an agency relationship can be shown to have been intended, legal responsibilities may be imposed on the real estate professional even in the absence of a written agency agreement. The intent of the parties to create an agency relationship can be inferred from the actions of the sales associate.

XV.

Even though real estate professionals are required to disclose their agency status, consumers often find it difficult to understand the complexities of the law of agency. Buyers can easily assume that when they contact a real estate sales associate in order to be shown a property, the real estate sales associate becomes their agent, even though, under the listing contract on the property, the real estate sales associate (through the broker) legally represents the seller. An implied agency with the buyer can result if the words and conduct of the sales associate do not dispel this assumption, which may lead to the creation of an undisclosed dual agency.

XVI.

Respondent Baron Burkes provided a response letter declaring that all documents and actions of Respondent Entekin were reviewed and determined to be valid and that the complaint has no merit. This is obviously after receiving notice of the complaint, as opposed to the result of direct supervision required by Rule 3.1. This also overlooks the WWREB violation.

XVII.

The above and foregoing described acts and omissions of the Respondents constitute violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, §§73-35-1, *et seq.*, Miss. Code Ann., and the Rules and Regulations of the Commission, and, more specifically, §73-35-21(1)(n), and Commission Rules 3.1A and 4.2 G(5) which provide, in relevant parts:

§73-35-21(1)(n) Any act or conduct, whether of the same or a different character than hereinabove specified, which constitutes or demonstrates...incompetency... or improper dealing...

Rule 3.1 A It shall be the duty of the responsible broker to instruct the licensees licensed under that broker in the fundamentals of real estate practice, ethics of the profession and the Mississippi Real Estate License Law *and to exercise supervision of their real estate activities for which a license is required.*

Rule 4.2 (G) (5) Reasonable skill, care and diligence - the agent must perform all duties with the care and diligence which may be reasonably expected of someone undertaking such duties.

DISCIPLINARY ORDER

THEREFORE, by agreement, understanding and consent, the Commission ORDERS discipline as follows:

As to Baron C. Burkes, Broker, the Commission orders that his license incur a one (1) month suspension, held in abeyance, followed by five (5) months of probation; contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent upon his completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during the first thirty (30) days after Respondent Burkes signs this order. Said education is to be completed in a classroom environment, rather than through Distance Education. Further, these classes will be courses approved by this Commission, be in addition to the regular hours of continuing education already required of licensees for license renewal and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Evidence of completion of these classes is to be provided to this Commission.

As to Eric Entrekin, Salesperson, the Commission orders that his license incur a one (1) month full suspension, with 2 more months of suspension held in abeyance, followed by nine (9) months of probation, with both contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and upon him completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during the first thirty (30) days after Respondent Entrekin signs this order. Said education is to be completed in a classroom environment, rather

than through Distance Education. Further, these classes will be courses approved by this Commission, be in addition to the regular hours of continuing education already required of licensees for license renewal and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the 3RD day of July, 2019.

MISSISSIPPI REAL ESTATE COMMISSION



BY:

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

AGREED:

Baron C. Burkes
Baron C. Burkes, Broker

DATE:

7/2/19

AGREED:

Eric Entrekin
Eric Entrekin, Salesperson

DATE:

7/3/19