

**IN THE STATE OF MISSISSIPPI  
BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION**

**MISSISSIPPI REAL ESTATE COMMISSION**

**vs.**

**CASE # 043-1808**

**PHILIP J. GATTUSO, JR., Principal Broker**

**RESPONDENT**

**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 a Complaint against Philip J. Gattuso, Broker. The Commission was advised that there has been an agreement reached resolving the issues brought forward in this complaint. By entering into this Agreed Order, the Respondent does agree to waive his right to a full hearing and his right to appeal to any circuit court. The Commission does, then, hereby find and order the following:

1.

Respondent Philip J. Gattuso, Jr., sometimes hereinafter "Respondent" or "Gattuso" is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 5267 Old Hwy 11, Hattiesburg, MS. Respondent Gattuso 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

2.

In August of 2018, this office received a sworn statement of complaint from Marla Mathis of 300 S. 21<sup>st</sup> Ave., Hattiesburg, MS 39401 as to Philip J. Gattuso, Jr., Principal Broker of Southern Property Group LLC, 5267 Old Highway 11, Hattiesburg, MS 39402. Respondent Gattuso represented the sellers of the property, Mr. & Ms. Duhe. Mathis' sister, Michele Mathis, represented Marla as a buyer's agent. Michelle Mathis' Salesperson license file is closed. This transaction at issue closed on 12/31/2013 and Stephen Thomas, Esq. was the closing attorney.

3.

The Complainant purchased the home and property located at 300 S. 21<sup>st</sup> Avenue, Hattiesburg. The MLS listing printout provided to her by her agent, Michelle Mathis, (MLS# 90616) showed 2.64 acres and was comprised of lots numbered 1 through 12.

4.

Included with the complaint was a copy of a contract for sale and a seller's counteroffer. The purchase offer was handwritten, listed only the street address as the property sought, and made no mention of lots 1 through 12, as stated on the MLS in agent Mathis' possession. This MLS document was what agent Mathis and the Complainant based the purchase offer on. The Complainant signed her offer on 11/6/2013. A seller's counteroffer was accepted by the Complainant on 11/8/2013. This counteroffer had the address for sale specified as 300 S. 21<sup>st</sup> Avenue but only showed lots 8 through 12. At closing, the Warranty Deed delivered to the Complainant described the property as lots 8 through 12. Investigation revealed, however, that the Complainant intended and offered to buy, and the sellers intended and accepted to sell, all 12 of the lots.

5.

4 years later, in December of 2017, the Complainant noticed a "For Sale" sign in her backyard area with a telephone number for SKL Investments Inc. Shortly thereafter, she received a letter from SKL Investments stating that they had property for sale in her area and was offering to sell this "adjacent" property to her. The Complainant then called the closing attorney Thomas, Regions Bank and Respondent Gattuso. Several weeks passed with no response from anyone. When closing attorney Thomas became aware of the Complainant's frustration and anger over the possibility of her losing what she thought was her property over a clerical error, this closing attorney said he believed the matter could be rectified by having the sellers sign a quitclaim deed for lots 1 through 7, which was done. By the time the quitclaim was received, however, the lots had become subject to, and were sold in tax sales for the years 2013-2016.

6.

When the Complainant took the Quitclaim deed to Chancery Court to be filed, she saw that the taxes for lots 1-7 had been paid for 4 years by 4 different businesses. Complainant Mathis then spoke with Melanie Priscock of SKL Investments and was able to buy the properties back, so she has recovered ownership of the lots 1-7 that she originally thought she was paying for, but at an additional cost of back taxes and interest accrued on said tax sales.

7.

The Complainant was advised that the mistake fell on listing broker Gattuso, and that if he would not correct the error, then to file against his E&O carrier. The Complainant contacted Respondent Gattuso and explained the steps and expenses she took to correct the matter and asked if he was taking responsibility for the error. Gattuso refused to give her his insurance carrier information and told Mathis to "get in line" to file a claim or lawsuit against him.

8.

In addition to the sales contract and warranty deed, the Complainant included copies of 3 pages of the PCDS, a solicitation letter from SKL Investments, and a quitclaim deed dated May 8, 2018 from William & Alison Duhe conveying lots 1 through 7 of the disputed property to Complainant Mathis. Also included was a copy of a letter addressed to Gattuso, the closing attorney's office, Rice Insurance, Williams Insurance, and SKL Investments, stating her notice to file a claim against Gattuso's insurance carrier.

9.

On September 5, 2018 Respondent Gattuso sent an email to the Commission stating he had by now destroyed these transactional records and pointed out that the Complainant's agent wrote the handwritten offer with no legal description and with multiple blanks. Gattuso added that he was out of town during that time with newborn twins and that his staff was handling his transactions. At that time, Respondent Gattuso said he had 3 staff people that assisted in paperwork. Some were licensees he was obligated to supervise, under Commission rules.

10.

On September 6, 2018 this Commission received a letter from Gattuso with more information than his previous response. He stated that he did tell the Complainant to "get in line" after being threatened with a lawsuit over an incident that happened almost 5 years ago. He stated he did not recall receiving any emails or paperwork of any kind asking for assistance or help from him or his office. There was a previous listing for the same property that showed all 12 lots. He was unsure why the same description was not on the subsequent MLS listing, which was in effect when this sale closed.

11.

On November 1, 2018, Gattuso's staff emailed the Commission a copy of MLS # 90616, along with a copy of the Informational Statement and the PCDS for this transaction. The Informational Statement was signed and dated by the sellers on 8/17/2012. There was no signature from the listing agent as representing the sellers. The PCDS had unanswered questions pertaining to easements, rights of way, possible water damage, as well as whether there were problems with the walls, siding or windows. There was also an unanswered question as to how the amount of square footage was determined. These are Commission rule violations.

12.

Kevin Davis, with the Hattiesburg Area Association of REALTORS, was contacted on November 2, 2018 to see if there had been subsequent MLS listings. Mr. Davis acknowledged that MLS #90616, the listing that the Complainant included in the complaint, showed lots 1 through 12 in the description and had expired on 3/7/2013. Kevin said Respondent Gattuso relisted the property, effective 8/23/2013 through 2/20/2014, as MLS # 94244. The legal description in this second listing included only lots 8-12. The Complainant closed on the property while the second listing, of only lots 8-12, was in effect.

13.

Respondent Gattuso stated in a phone call to the Commission on November 7, 2018 that he did not know how lots 1-7 were dropped from the legal description on the second listing, as the Complainant made an offer to purchase all of the lots, and the sellers had intended to sell them all. Gattuso said that during that transaction time he had employees that assisted him in clerical and various other office duties. One of them was Salesperson Kimberly Gattuso (his ex-wife), and the other was Lisa Biglane, who also had an active Salesperson license at that time.

The above and foregoing actions and omissions of Respondent Gattuso constitute violations of the Rules and Regulations of the Mississippi Real Estate Commission, more specifically, M. C.

A. §73-35-21 and Commission Rules 3.1, 3.2, and 4.2G(5) which provide, in relevant parts:

**§73-35-21(1)** Grounds for refusing to issue or suspending or revoking license; hearing

(1) The commission may, upon its own motion and shall upon the verified complaint in writing of any person, hold a hearing for the refusal of license or for the suspension or revocation of a license previously issued, or for such other action as the commission deems appropriate. The commission shall have full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of: making a material misrepresentation in connection with a real estate transaction;

(d) Any misleading or untruthful advertising;

(n) Any act or conduct which constitutes or demonstrates bad faith, incompetency, etc...

**Rule 3.1** General Rules

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 Miss. Real Estate License Law and to exercise supervision of their real estate activities for which a license is required.

**Rule 3.2** Documents

A. A real estate licensee shall immediately (at the time of signing) deliver a true and correct copy of any instrument to any party or parties executing the same.

**Rule 4.2G** "Fiduciary Responsibilities" are those duties due the principal (client) in a real estate transaction...

(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 Philip J. Gattuso: 90 days of license suspension, beginning March 01, 2019, with 60 of those suspension days held in abeyance pending no further infractions and successful completion of 11 months of probation, leaving 30 days of full suspension from any real estate activities. Additionally, and within 60 days of Gattuso signing this order, Gattuso is to complete eight (8) hours of mandatory continuing education consisting of four (4) hours in agency; two (2) hours in license law; and two (2) hours in contract law. All courses must be those already approved by the Commission prior to being taken and be administered by a Mississippi approved CE provider in a classroom setting (not online). This mandatory continuing education would be in addition to any other continuing education previously taken as well as any required for renewal of his license and, further, cannot be the same continuing education courses from the same provider previously completed for the renewal of his license during the last two (2) renewal periods. Written evidence of satisfactory completion of the courses shall be promptly furnished to the Commission.

So Ordered this the 15<sup>th</sup> day of MARCH, 2019.

**MISSISSIPPI REAL ESTATE COMMISSION**



BY: *Robert E. Praytor*  
**ROBERT E. PRAYTOR, Administrator**

AGREED: *Philip J. Gattuso*  
Philip J. Gattuso, Broker

DATE: January 14<sup>th</sup>, 2019