

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

vs.

NO. 076-1812

GENA NOLAN, Principal Broker

LISA P. BRADLEY, Salesperson

LASHA LAWSON, Salesperson

MARTIN MESECKE, Broker

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 a complaint against Gena Nolan, Broker, Lisa Bradley, Salesperson, Lasha Lawson, Salesperson and Martin Mesecke, Broker. 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 Gena Nolan (sometimes hereinafter called "Respondent Nolan"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2019 Buse St., Tupelo, MS. Respondent Broker Nolan is the holder of a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, and, as such, she is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission.

II.

Respondent, Lisa P. Bradley (sometimes hereinafter called "Respondent Bradley"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2117 Reagan Cove, Tupelo, MS. Respondent Bradley is the holder of a resident salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and, as such, she is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission. At the time of this transaction, Respondent Nolan was the responsible broker for Respondent Bradley.

III.

Respondent, Lasha Lawson (sometimes hereinafter called "Respondent Lawson"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 4348 North Gloster St. Tupelo, MS. Respondent Lawson is the holder of a resident salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and, as such, she is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission. During this transaction, Respondent Mesecke was the responsible broker for Respondent Lawson.

IV.

Respondent, Martin Mesecke (sometimes hereinafter called "Respondent Mesecke"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2203 Longspur, Oxford, MS. Respondent Broker Mesecke is the holder of a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and, as such, he is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission.

V.

Mohamed Lahah and Tiffany Elgourani filed a formal written complaint against Broker Gena Nolan and Salesperson Lisa Bradley of Coldwell Banker Southern in Saltillo, MS for failure to return the full amount of their earnest money (\$1,000) due to a loan denial from the lender. Complainants stated that they signed a contract offer on a house in Tupelo, MS, with a loan approval contingency, and submitted \$1,000 as earnest money, held by Respondent Gena Nolan for Coldwell Banker. Complainants also agreed to pay for a home inspection and a survey. A few days prior to closing, the Complainants received a denial notice from their initial choice of lender (Renasant Bank) stating they were denied for any home financing. Respondent Gena Nolan did not return any earnest money for over a month. After repeated calls from the Complainants, Respondent Nolan finally returned \$500. Complainants assumed the other half of the earnest money was kept by Respondent Nolan and sent instead to the Complainants' surveyor, as the Complainants had requested of Respondent Nolan. A few days later, however, the Complainants received a visit from Blaine Holiday, with Holiday Land Surveying, demanding \$450 as payment for his services not yet paid for.

VI.

The Complainants immediately contacted their agent, Lasha Lawson, formerly with Crye-Leike in Tupelo, MS, who advised them to call Respondent Nolan at Coldwell Banker Southern because Respondent Nolan, as the broker for the sellers, was holding their earnest money. (Lasha Lawson's license file was later closed by request on 10/10/18. Lawson has since become relicensed, with a different broker.) The Complainants stated that Respondent Nolan refused to talk to them. Instead, the Complainants spoke with Respondent Nolan's

secretary, who revealed that the seller had been demanding that the earnest money be forfeited to him and, further, that the seller was threatening a civil action, so Respondent Nolan decided to halve the earnest money with the seller in order to keep him from filing a suit. Complainant didn't believe, correctly so, that Respondent Nolan had the authority to do that. The Complainants subsequently paid Mr. Holiday for the survey from other funds.

VII.

On 1/31/19, the MREC received a statement from Martin Mesecke, then Managing Broker at Crye-Leike in Tupelo, regarding this complaint. Mesecke acknowledged that Lasha Lawson (his former agent with Crye-Leike) had submitted a purchase agreement on behalf of the buyer, Mohamed Lahah, for the purchase of a property located at 5134 Coonewah Trail in Tupelo, owned by the sellers, Gregory and Britney Listenbee. The property was listed by Coldwell Banker Southern in Tupelo, and the listing agent was Respondent Lisa Bradley. The contract was executed on or about 6/26/18 with an expected closing date of 8/8/18. Earnest money in the amount of \$1,000, consisting of two money orders of \$500 each, was made payable to Coldwell Banker, representing the sellers. Shortly before the closing date, Mesecke was notified that Renasant Bank had denied the loan application of the buyer, Mohamed Lahah. Shortly thereafter, a copy of the lender's denial and a request that the buyer's earnest money be returned in full was issued by the buyers' agent. Mesecke, after learning that the buyers had only received half of the earnest money submitted, called Respondent Gena Nolan about why they only received half (\$500) of the earnest money. Respondent Nolan told him that she was compensating her clients, the sellers, \$500 of the buyers' earnest money because of the sellers' being inconvenienced in the transaction. The Complainants, however, state that Respondent

Mesecke initially told them that he had nothing to do with them (*his clients*) getting their earnest money back, because Coldwell Banker was holding those funds. Respondent Mesecke made no mention of the contract extension request from Respondent Bradley that went unanswered by his then agent, Respondent Lawson.

VIII.

Salesperson Lisa Bradley was the sellers' agent. She acknowledged that the Complainants signed a contract to purchase a property that she had listed, located at 5134 Coonewah Trail in Tupelo, MS on 7/5/18, with a closing date of 8/8/18. Respondent Bradley said that, contrary to the Complainants' statement, the sellers moved out several days prior to the scheduled closing date, rather than a week after the closing date. After the sellers had moved out, Respondent Bradley was informed by the lender that Mohamed Lahah, Complainant, had a financing issue, but not to worry because this was something that could be easily taken care of. Respondent Bradley said that at some point in time, however, the Complainant, Mr. Lahah, decided to go to another lender. Respondent Bradley claimed that she immediately contacted the sellers about the Complainants changing lenders and sought to extend the closing. Respondent Bradley then asked the buyers' agent, Respondent Lasha Lawson, to get the buyers to sign a contract extension to extend to 8/22/18. *Respondent Bradley stated that she never received a response or a signed contract extension from Respondent Lasha. Respondent Bradley stated that she then contacted her broker, Respondent Nolan, informed her of what was going on and then contacted Lasha's broker, Respondent Martin Mesecke.* Mesecke contacted the buyers and reported back to Respondent Bradley that the buyers were going to use a different lender. Respondent Bradley said she was later told that Renasant Bank had issued a denial letter to

the prospective buyer. Respondent Bradley further stated that the sellers had spent a great deal of time, energy and money on moving out before closing, and were obviously upset when the transaction failed to close. Respondent Bradley spoke with Respondent Lawson about the earnest money and was under the impression that Respondent Lawson had also discussed this with the buyers. Respondent Bradley stated that she was unaware that the Complainant/buyers had an issue with the 50/50 split of the earnest money.

XI.

Broker Gena Nolan stated that she received *notification* of the transaction after the buyers decided to switch lenders, *which was near the end of the transaction*. The Sellers' agent was informed by the buyers' agent that the buyer had a financing issue but that it should be no problem since the buyers were putting down a large sum of money for this purchase. Respondent Nolan said the next information that the sellers' agent received was that the buyers had decided to switch lenders, which would push the closing date later by another couple of weeks. Respondent Nolan said that her salesperson, Respondent Bradley, told her clients, the sellers, who then made the necessary arrangements and moved out of the house within the time frame of the closing date that had been scheduled. Respondent Nolan stated that the next thing the selling side was told was that they would be receiving the denial letter from the buyer's original lender and the buyers were not going through with the transaction. Respondent Nolan stated that the sellers became upset at this point because they had already moved out. The sellers were then out the moving expenses and so felt like they were due the earnest money. The buyers' agent, Respondent Lasha Lawson, was contacted by Respondent Lisa Bradley, letting her know that the sellers were upset. Respondent Nolan asked Respondent Bradley to see if the buyers were agreeable to splitting the earnest money, instead of interpleading it into a court, which could cause all parties to be out additional costs.

Respondent Nolan said her clients, the sellers, were agreeable with this and that they had already picked up their check. Respondent Nolan said her receptionist received a phone call from an appraiser wanting to collect for an appraisal he had done on the subject property. Nolan told the receptionist that the appraiser should contact the Crye-Leike office because that payment was not the responsibility of Coldwell Banker or their clients/sellers. Respondent Nolan said the appraisal was done far in advance of the scheduled closing because Respondent Lawson had instructed the buyers to do so and Respondent Nolan stated that this was an unnecessary expense for the buyers. Respondent Nolan said she would not have split the earnest money 50/50 had she not had the verbal ok from the buyers' agent.

X.

The above and foregoing described acts of all of the Respondents constitute violations of M.C.A. §§73-35-1, et seq. and MREC Administrative Rules, in particular:

§ 73-35-21. 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:

(c) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(f) *Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others or commingling of monies belonging to others with his own funds. Every responsible broker procuring the execution of an earnest money contract or option or other contract who shall take or receive any cash or checks shall deposit, within a reasonable period of time, the sum or sums so received in a trust or escrow account in a bank or trust company pending the consummation or termination of the transaction. "Reasonable time" in this context means by the close of business of the next banking day;*

(n) Any act or conduct, whether of the same or a different character than hereinabove specified, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing. However, simple contact and/or communication with any mortgage broker or lender by a real estate licensee about any professional, including, but not limited to, an appraiser, home inspector, contractor, and/or attorney regarding a listing and/or a prospective or pending contract for the lease, sale and/or purchase of real estate shall not constitute conduct in violation of this section.

Rule 3.1 General Rules

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. (emphasis added)

Rule 3.4 Earnest Money

A. *The responsible broker is responsible at all times for earnest money deposits.* Earnest money accepted by the broker or any licensee for which the broker is responsible and upon acceptance of a mutually agreeable contract is required to deposit the money into a trust account prior to the close of business of the next banking day. The responsible broker is required to promptly account for and remit the full amount of the deposit or earnest money at the consummation or termination of transaction. A licensee is required to pay over to the responsible broker all deposits and earnest money immediately upon receipt thereof. *Earnest money must be returned promptly when the purchaser is rightfully entitled to same* allowing reasonable time for clearance of the earnest money

check. In the event of uncertainty as to the proper disposition of earnest money, the broker may turn earnest money over to a court of law for disposition. Failure to comply with this regulation shall constitute grounds for revocation or suspension of license.

B. When the broker is the agent for the seller and for any reason the seller fails or is unable to consummate the transaction, the broker has no right to any portion of the earnest money deposited by the purchaser, even if a commission has been earned. The entire amount of the earnest money deposit must be returned to the purchaser and the broker should look to the seller for compensation.

C. Accurate records shall be kept on escrow accounts of all monies received, disbursed, or on hand. All monies shall be individually identified as to a particular transaction. Escrow records shall be kept in accordance with standard accounting practices and shall be subject to inspection at all times by the Commission. Monies received in a trust account on behalf of

clients or customers are not assets of the broker; however, a broker may deposit and keep in each escrow account or rental account some personal funds for the express purpose of covering service charges and other bank debits related to each account.

Rule 4.2

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

(1) *'Loyalty' - the agent must put the interests of the principal above the interests of the agent or any third party.*

(2) *'Obedience' - the agent agrees to obey any lawful instruction from the principal in the execution of the transaction that is the subject of the agency.*

(3) *'Disclosure' - the agent must disclose to the principal any information the agent becomes aware of in connection with the agency.*

(4) *'Confidentiality' - the agent must keep private information provided by the principal and information which would give a customer an advantage over the principal strictly confidential, unless the agent has the principal's permission to disclose the information.*

This duty lives on after the agency relationship is terminated.

(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.*

(6) *'Full accounting' - the agent must provide a full accounting of any money or goods coming into the agent's possession which belong to the principal or other parties.*

DISCIPLINARY ORDER

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

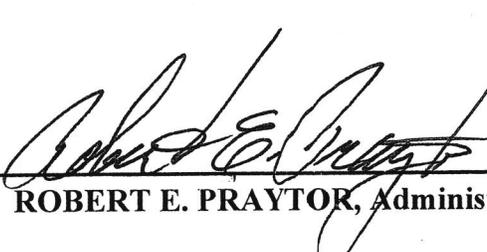
As to Gena Nolan, Broker, the Commission orders that her license incur a one (1) month suspension, held in abeyance, followed by five (5) months of probation; contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent upon her completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during that thirty (30) days held in abeyance. This order begins September 01, 2019. 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.

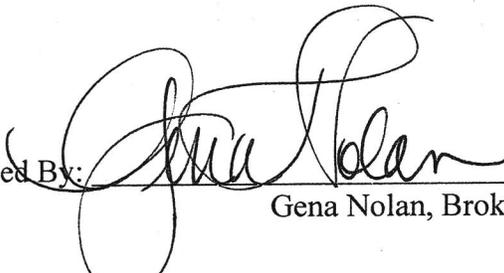
As to Lisa Bradley, Salesperson, the Commission orders that her license incur a one (1) month suspension, held in abeyance, followed by five (5) months of probation, with both contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and upon her completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during the thirty (30) days of suspension in abeyance. This order begins September 01, 2019. 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 Ordered this the 10th day of SEPTEMBER, 2019.

MISSISSIPPI REAL ESTATE COMMISSION

BY: 
ROBERT E. PRAYTOR, Administrator

Agreed By:  DATE: Aug 26, 2019
Gena Nolan, Broker

Agreed By:  DATE: Aug. 26, 2019
Lisa P. Bradley, Salesperson

