

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

vs.

NO. 064-1909

ANN PREWITT, Principal Broker

BRITTANY DAY WOODBURN, Salesperson

D. D. FOSTER, Salesperson

SHANNON DYE, 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 Ann Prewitt, Principal Broker, Salespersons D. D. Foster and Brittany Day Woodburn, and Broker Shannon Dye, and the Commission was advised that there has been an agreement reached with Ann Prewitt resolving the issues brought against her in this complaint. By entering into this Agreed Order, this Respondent waive her rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent, Ann Prewitt (sometimes hereinafter called "Respondent Prewitt"), is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 735 Avignon Park, Ste. 3 Ridgeland, MS 39157. Respondent Broker Prewitt is the holder of a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.* so she is subject to the provisions, rules, regulations and statutes governing real estate brokers under Miss. law and the administrative rules of the Mississippi Real Estate Commission. Respondent Prewitt is the principal broker for Respondents Brittany Woodburn and D. D. Foster.

II.

Respondent, Brittany Day Woodburn (sometimes hereinafter called "Respondent Woodburn"), is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 735 Avignon Park, Ste. 3 Ridgeland, MS 39157. Respondent Woodburn is the holder of a resident salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., so 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.

III.

Respondent, D. D. Foster (sometimes hereinafter called "Respondent Foster"), is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 735 Avignon Park, Ste. 3 Ridgeland, MS 39157. Respondent Woodburn is the holder of a resident salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., so he is subject to the provisions, rules, regulations and statutes governing real estate brokers under Miss. law and the administrative rules of the Mississippi Real Estate Commission.

IV.

Respondent, Shannon Dye (sometimes hereinafter called "Respondent Dye"), is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 164 Bienville Dr., Madison, MS 39110. Respondent Dye is the holder of a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., so 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.

V.

Leslie Johnson's sworn complaint is regarding a property he purchased located at 710 Dunleith Lane in Ridgeland, MS. Johnson was represented by Broker Shannon Dye. Johnson's complaint alleged that licensees Brittany Woodburn and D.D. Forster of Berkshire Hathaway, Ann Prewitt Realty provided a property condition disclosure statement (PCDS) which was not completed by the sellers (Larry and Kashonda Day) who left numerous blanks. Additionally, Johnson's complaint lists faulty plumbing, broken pipes, and HVAC issues that he said were not disclosed on the PCDS.

VI.

The day after Johnson moved in, he discovered leaking pipes at the water shut-off valve, low water pressure in the sinks, and calcium buildup on the fixtures. He later discovered a leaking HVAC system that was leaking from the attic through the 2nd floor bedroom and bathrooms and through the walls down to the kitchen and garage. The drip pan was not installed until after the damage had occurred. The area surrounding the HVAC system has mold or mildew present and also in the closet of the master bedroom as well as the sheet rock on the ceiling. The sellers said there were water issues when they moved into the house and that they would fix the problems that caused these issues, which they subsequently did.

VII.

ServePro came out and checked the areas that were heavily saturated and suggested that they be demolished. Blake Blackwell, of ServePro, suggested that the attic ventilation issue should be resolved and that mold in the attic insulation should be vacuumed out, sanded, and encapsulate the studs. On 8/22/19, ServePro performed a water restoration at 710 Dunleith Lane with a total cost of \$2,159. 97.

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In his response, Respondent D.D. Foster said the seller accepted the offer to purchase from the buyer on 7/2/19. Closing was set for 8/30/2019. Prior to the offer being made or accepted, a copy of the PCDS was given to the buyer and his agent, Shannon Dye, to review.

IX.

After accepting the contract, the buyer had a home inspection done. The buyer's agent, Respondent Dye, sent a copy of the inspection summary report denoting the repairs that the buyer requested to be done. Respondent Foster said the request was unclear because the repairs were not listed on the contingency removal form and there were never any water leaks noted or mentioned in the home inspection report. However, it was denoted on the summary report what repair areas were being requested of the sellers.

X.

Upon receiving the repair request, Respondents Foster and Woodburn met with the sellers and discussed the requested repairs. The sellers accepted the repair list with the understanding that the home inspector would come back and do a reinspection of the repairs once they were completed, to see if there was anything overlooked.

XI.

The closing was scheduled for 8/30/19. However, on 8/2/19, Respondent Foster received word from the buyer's agent, Respondent Dye, that the buyer had been cleared to close by the lender and the closing could be moved up to 8/5/19. The seller had been getting repairs done, knowing 8/30/19 as the closing date. The seller put a rush on repairs to accommodate an early closing for the buyer. Both parties agreed that if anything was missed, it was due to accommodating an early closing for the buyer, which ultimately took place on 8/9/19.

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Upon reinspection by the home inspector, the only repair noted to the sellers from the inspection report was a loose toilet in the half bath downstairs. The toilet was repaired by being securely bolting down prior to closing. On the day before closing, the buyer's agent, Respondent Dye, said the repaired toilets were loose. This was not noted on the home inspection report. Even so, the sellers had this item fixed.

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After the closing, and after the buyer had moved into the house, Respondent Dye contacted Respondent Woodburn about a water leak. The sellers were notified and had someone repair the leak, for which the sellers paid at a cost of \$484. The sellers also had ServePro do a water restoration on the home at his cost of \$2,159.97. Respondent Foster said he thought these two repairs should have been covered by the buyer's home insurance.

XIV.

Respondent Dye said that on 8/18/19, she contacted Respondents Woodburn and Foster and advised that the buyer sent her photos showing that the plumbing was leaking. Respondent Dye said the ceiling and carpet were wet and water was running down the outside brick. The buyer contacted the sellers directly and the sellers responded to the issue, despite the fact that the follow up inspection report did not reveal any outstanding repairs other than bolting down a toilet in the half bath downstairs, which was done prior to closing. It was acknowledged that the sellers paid ServePro \$2,159.97 out of pocket to address the damages.

XV.

Respondent Woodburn said that there was never any mention of a leak to her or Respondent Foster during the entire transaction. The sellers said that they never experienced any mold issues while living in the home, and the home inspection report does not note any mold present. The sellers also did not mention any problems with the plumbing or leaking pipes, nor was any of this mentioned or noted on the home inspector's report. The sellers said that they never had any issues with leaks during the ten years that they lived in the home.

XVI.

This home was titled in just the name of Kashonda Day. However, she was married to Larry Day at the time of her purchase. Only Kashonda Day signed the PCDS, the listing agreement, and the working with a broker form (WWREB). Her spouse signed documents at the closing, however, including the deed. Co-owner Larry Day unquestionably had knowledge of the home condition at the time the PCDS was completed, yet no evidence reveals he helped in initially completing the PCDS. Although Kashonda Day indicated on the PCDS that there was no water or moisture damage in the home, when ServPro addressed the post-closing water damaged, it was revealed that mold was present in the attic. Review of the transaction documents revealed that the PCDS has numerous blanks that should have been addressed by all of the Respondents. Importantly, the PCDS was blank as to how the square footage of the house was determined. This was especially significant in this transaction since a term of the contract addendum specified that the home had to be at least 1900 square feet. An appraisal done for this transaction revealed the home to be measured as under 1900 square feet. None of the Respondents appear to have noticed or addressed this transactional flaw.

XVII.

Additionally, Kashonda Day checked as “unknown” whether homestead exemption applied. Such an issue must be addressed by the Respondents before closing, lest the buyer discover no homestead exemption the first year of ownership. On the listing agreement, however, Kashonda Day checked that there *was* homestead exemption in effect. Both documents were completed by her on the same day. This important financial issue went unaddressed by the Respondents. The question of the presence of any hazardous conditions, substances, or materials on the property was left blank. The question of internet service being available was left blank; rather significant during these times of Covid requirements. The question of whether any item being left in the home had a separate mortgage was left blank. Lastly, no updated PCDS was provided to the Commission by any Respondent, although there were repairs made to the home.

XVIII.

Respondent Prewitt responded that she has what she considers a significant compliance and training process; “The Policy of Berkshire Hathaway Home Services Ann Prewitt Realty is to review ALL documents of a transaction in a timely matter for supervisory purposes. (See attached policy and procedures manual page 3-10) Our policy and procedures manuals are updated on an as needed basis AND it is required that agents come to a meeting where the update is explained. On June 10, 2019, Brittany listed the property at 710 Dunelith Lane.” Respondent Prewitt continued, stating, “The next day, our entire sales meeting was training regarding documentation including Listing Files. June 11, 2019 a policy manual update was added regarding document submissions. I held 2 meeting that day (11 am, & 6 pm) to ensure all agents could schedule a time to be in attendance so that I could fully explain the documents that were required by MREC to be in their file which did include: WWREB, PCDS, PCDS Exclusion, Informational statement of PCDS. Further, it was explained the sellers MUST fill in

every blank of the PCDS or have N/A or unknown. No questions were to be left unanswered." (emphasis added) The timeline compiled from documents provided revealed that Respondent Woodburn uploaded the PCDS to the MLS within a couple of days of the listing agreement being signed on June 10th. Respondent Woodburn did not provide ANY documents for review to Respondent Prewitt until one MONTH after they were completed, and this was one WEEK after an offer contract *was signed*. This was admitted by Respondent Prewitt in her response, saying, "Compliance did not receive any documents from Brittany or DD until July 9, 2019 at 4pm. The receipt at that time included the WWREB, Exclusive Right to Sell Agreement, and Seller and Buyer signed PCDS disclosure. *Compliance never had nor has the PCDS with only the sellers signature.*" (emphasis added) "I reviewed the file on JULY 10th and tabbed the issues that were non-Compliant. I had my assistant to send an email to Brittany stating multiple corrections that were to be made." Agents having the ability and access to upload documents prior to review clearly defeats any purported supervisory review process. This PCDS upload was one month *before* any documents were submitted for compliance review and one month before the training session that stressed the completeness of the PCDS. The failure of the training and supervisory process is clearly evident. Additionally, the closing date was advanced by 3 weeks and Respondent Prewitt admitted in her response that she was unaware of this.

XIX.

The above and foregoing described acts of these Respondents, Ann Prewitt and Brittany Day Woodburn 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:

(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.

Part 1601 Chapter 4: Agency Relationship Disclosure

Rule 4.1 Purpose

Consumers shall be fully informed of the agency relationships in real estate transactions identified in Section 73-35-3. This rule places specific requirements on Brokers to disclose their agency relationship. This does not abrogate the laws of agency as recognized under common law and compliance with the prescribed disclosures will not always guarantee that a Broker has fulfilled all of his responsibilities under the common law of agency. Compliance will be necessary in order to protect licensees from impositions of sanctions against their license by the Mississippi Real Estate Commission. Special situations, where unusual facts exist or where one or more parties involved are especially vulnerable, could require additional disclosures not contemplated by this rule.

Rule 4.2 Definitions

A. "Agency" shall mean the relationship created when one person, the Principal (client), delegates to another, the agent, the right to act on his behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the principal accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations, and high standards of good faith and loyalty.

C. "Client" shall mean the person to whom the agent owes a fiduciary duty. It can be a seller, buyer, landlord, tenant or both.

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.*

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

F. Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written communication or who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

M.C.A. §89-1-501. Applicability of real estate transfer disclosure requirement provisions
(1) The provisions of Sections 89-1-501 through 89-1-523 apply only with respect to transfers by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, of real property on which a dwelling unit is located, or residential stock cooperative improved with or consisting of not less than one (1) nor more than four (4) dwelling units, *when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson.*

M.C.A. §89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery

The transferor of any real property subject to Sections 89-1-501 through 89-1-523 shall deliver to the prospective transferee the written property condition disclosure statement required by Sections 89-1-501 through 89-1-523, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

(b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this paragraph, execution means the making or acceptance of an offer. With respect to any transfer subject to paragraph (a) or (b), the transferor shall indicate compliance with Sections 89-1-501 through 89-1-523 either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document. If any disclosure, or any material amendment of any disclosure, required to be made by Section 89-1-501 through 89-1-523, is delivered after the execution of an offer to purchase, the transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

M. C. A. §89-1-525. Enforcement by Mississippi Real Estate Commission

The Mississippi Real Estate Commission is authorized to enforce the provisions of Sections 89-1-501 through 89-1-523. Any violation of the provisions of Sections 89-1-501 through 89-1-523 shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, Section 73-35-1 et seq., and shall be subject to same penalties as provided in that chapter.

DISCIPLINARY ORDER

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

As to Ann Prewitt, the Commission orders that her license incur a one month suspension, 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 one (1) month of full license suspension. This order begins December 15, 2020. Said education may be completed through Distance Education, in light of Co-Vid 19 restrictions. 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 8th day of DECEMBER, 2020.

MISSISSIPPI REAL ESTATE COMMISSION



BY: _____

ROBERT E. PRAYTOR, Administrator

Agreed: _____

Ann Prewitt, Broker

Date: 11-23-2020

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every blank of the PCDS or have N/A or unknown. No questions were to be left unanswered."

(emphasis added) The timeline compiled from documents provided revealed that Respondent Woodburn uploaded the PCDS to the MLS within a couple of days of the listing agreement being signed on June 10th. Respondent Woodburn did not provide ANY documents for review to Respondent Prewitt until one MONTH after they were completed, and this was one WEEK after an offer contract was signed. This was admitted by Respondent Prewitt in her response,

saying, "Compliance did not receive any documents from Brittany or DD until July 9, 2019 at 4pm. The receipt at that time included the WREB, Exclusive Right to Sell Agreement, and Seller and Buyer signed PCDS disclosure. *Compliance never had nor has the PCDS with only the seller's signature.*" (emphasis added) "I reviewed the file on JULY 10th and tabbed the issues that were non-Compliant. I had my assistant to send an email to Brittany stating multiple corrections that were to be made." Agents having the ability and access to upload documents prior to review clearly defeats any purported supervisory review process. This PCDS upload was one month *before* any documents were submitted for compliance review and one month before the training session that stressed the completeness of the PCDS. The failure of the training and supervisory process is clearly evident. Additionally, the closing date was advanced by 3 weeks and Respondent Prewitt admitted in her response that she was unaware of this.

XIX.

The above and foregoing described acts of these Respondents, Ann Prewitt and Brittany Day Woodburn constitute violations of M.C.A. § 73-35-1, et seq. and MRECE Administrative Rules, in particular:

§ 73-35-21. Grounds for refusing to issue or suspending or revoking license; hearing

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(i) 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.

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Consumers shall be fully informed of the agency relationships in real estate transactions identified in Section 73-35-3. This rule places specific requirements on Brokers to disclose their agency relationship. This does not abrogate the laws of agency as recognized under common law and compliance with the prescribed disclosures will not always guarantee that a Broker has fulfilled all of his responsibilities under the common law of agency. Compliance will be necessary in order to protect licensees from impositions of sanctions against their license by the Mississippi Real Estate Commission. Special situations, where unusual facts exist or where one or more parties involved are especially vulnerable, could require additional disclosures not contemplated by this rule.

Rule 4.2 Definitions

A. "Agency" shall mean the relationship created when one person, the Principal (client), delegates to another, the agent, the right to act on his behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the principal accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations, and high standards of good faith and loyalty.

C. "Client" shall mean the person to whom the agent owes a fiduciary duty. It can be a seller, buyer, landlord, tenant or both.

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.*

M. C. A. §89-1-501. Applicability of real estate transfer disclosure requirement provisions

(1) The provisions of Sections 89-1-501 through 89-1-523 apply only with respect to transfers by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, of real property on which a dwelling unit is located, or residential stock cooperative improved with or consisting of not less than one (1) nor more than four (4) dwelling units, *when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson.*

M. C. A. §89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery

The transferor of any real property subject to Sections 89-1-501 through 89- 1-523 shall deliver to the prospective transferee the written property condition disclosure statement required by Sections 89-1-501 through 89-1- 523, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

(b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this paragraph, execution means the making or acceptance of an offer. With respect to any transfer subject to paragraph (a) or (b), the transferor shall indicate compliance with Sections 89-1-501 through 89-1-523 either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document. If any disclosure, or any material amendment of any disclosure, required to be made by Section 89-1-501 through 89-1-523, is delivered after the execution of an offer to purchase, the transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

M. C. A. §89-1-525. Enforcement by Mississippi Real Estate Commission

The Mississippi Real Estate Commission is authorized to enforce the provisions of Sections 89-1-501 through 89-1-523. Any violation of the provisions of Sections 89-1-501 through 89-1-523 shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, Section 73-35-1 et seq., and shall be subject to same penalties as provided in that chapter.

Rule 3.1 General Rules

F. Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written communication or who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

DISCIPLINARY ORDER

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

Day
As to Brittany Ann Woodburn, the Commission orders that her license incur a one (1) month suspension, 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 of full license suspension. This order begins December 15, 2020. Said education may be completed through Distance Education, in light of Co-Vid 19 restrictions. 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 8th day of DECEMBER, 2020.



MISSISSIPPI REAL ESTATE COMMISSION

BY: _____

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

Agreed: _____

Brittany Day Woodburn, Salesperson

Date: _____

11/10/2020