# BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

**MISSISSIPPI REAL ESTATE COMMISSION** **COMPLAINANT**

**VS.** **NO. 054-1809**

**BILLY MCKEE, JR., BROKER**
**RYAN A. PORTER, SALESPERSON**
**JOHN BLAKE CRESS, BROKER**
**CHRSTOPHER TODD EVERETT, 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 a complaint against Billy McKee, Jr., Broker, Ryan Porter, Salesperson, John Blake Cress, Broker and Christopher Todd Everett, Salesperson. 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 Billy McKee, Jr., sometimes hereinafter "Respondent McKee" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2600 Valley Campbell Rd, Terry, MS 39170. Respondent McKee 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 McKee is the responsible broker for Respondent Ryan A. Porter.

## II.

Respondent John Blake Cress., sometimes hereinafter "Respondent Cress" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 502 Heatherstone Ct, Ridgeland, MS 39157. Respondent Cress 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 Cress is the responsible broker for Respondent Christopher Todd Everett.

## III.

Respondent Ryan A. Porter, sometimes hereinafter "Respondent Porter," is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 545 Turtle Lane, Brandon, MS 39047. Respondent Porter 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 estateand licensing of real estate brokers under Mississippi law.

## IV.

Respondent Christopher Todd Everett, sometimes hereinafter "Respondent Everett," is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 538 Heatherstone Ct, Ridgeland, MS 39157. Respondent Everett 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 estateand licensing of real estate brokers under Mississippi law.

## V.

A formal written complaint was submitted by Gary and Sonya Amis alleging that Ryan Porter, Salesperson with McKee Realty, Inc., made several substantial misrepresentations in conjunction with a real estate transaction on a property located at 411 Port Arbor St. in Brandon. Thereafter, the Commission opened its investigation of the matter. The complaint further alleges that Respondent Porter failed to inform the sellers, or their real estate agent, that the transaction was not going to be finalized, failed to tender an earnest money deposit in a timely fashion, as required by state law, and demonstrated bad faith, untrustworthiness, dishonesty, or improper dealing during the course of this transaction. Complainant Amis was the seller in this transaction and Josh Ashley, represented by Respondent Ryan Porter, was the buyer.

## VI.

Per the contract, the property was set to close on 7/18/18, but did not. Amis stated that, according to his agent, Respondent Everett, the buyer's broker, Respondent Billy McKee, was to send Respondent Everett the earnest money deposit check. On 8/9/18, Amis said that his agent, Respondent Everett, was told by the buyer's agent, Respondent Ryan Porter, that the earnest money deposit check had been mailed. On 8/15/18, Respondent Everett asked his client, Amis, if he had received the earnest money check. Amis replied that he had not. On 8/23/18, after having not receiving the earnest money check, Amis contacted his agent, Respondent Everett, who informed Complainant Amis that Respondent Porter said he had put the release form on Respondent Broker Billy McKee's desk two weeks prior, to be signed and sent to Amis. *Respondent Everett was on inactive status from 6/12/18 - 10/4/18, and including during this transaction,* due to no proof of Errors & Omission insurance coverage being provided to the Commission. Respondent Cress has a duty to the Commission, as principal broker, to monitor and be aware of such matters.

## VII.

The contract on the lots in Arbor Landing were executed on Tuesday, 6/26/18. Respondent McKee stated that the earnest money was delivered to his office the next day by Respondent Porter. Respondent McKee said *he did not deposit the earnest money into his escrow account until the following Tuesday* (contrary to Rule 3.4) and it was held in escrow until the money was released *back to the buyer* on 8/10/18. During the time of the transaction, there was confusion over whether the correct set of covenants had been given to the buyer and buyer's architect. Further, there was a conflict in the covenants as to whether the buyer could build the home/homes that he was intending to build at the time the offer was made. It took some time to get the final ok from the HOA as to what could be done, so the closing date could not be met. Ultimately, there was not enough time for the buyer to obtain financing.

## VIII.

There was a delay in the dirt sample test due to a death in the family of the contractor taking the sample. Because of this and the delayed response from the HOA, the buyer was not able to get financing approved in time. Respondent McKee believed the earnest money was due back to the buyer, who was trying to deal with the bank's requirements concerning the two separate sets of covenants, and the square footage discrepancy called for in the covenants. By the time this was resolved, there were still several unanswered questions from the lender, and so not enough time to close the loan. Because these events transpired in the transaction, Respondent McKee felt that the buyer was entitled to the earnest money refund. Respondent McKee did not explain how any of this was the fault of the seller. Respondent McKee denied telling the seller's agent, Respondent Everett, that McKee would send the earnest money to the seller. Respondent McKee was told that Respondent Porter thought the seller should be awarded the earnest money, but that Respondent

Porter should have conferred with him before making a statement like that to Respondent Everett, since it was not Porter's call. McKee said if he thought the seller was entitled to the earnest money, he would have sent it to Respondent Everett. Copies of the earnest money check from the buyer, along with the deposit slip, as well as a copy of the check refunding the earnest money *back to the buyer* was included in McKee's response.

**IX.**

The buyer contracted to purchase two lots in Arbor Landing with the intention to build two (2) 2000 square foot houses. After going under contract, the buyer sought to build one spec house to sell, and one house to live in. After looking at the copy of the covenants that Respondent Everett had provided (the 3rd edition), Respondent Porter had questions on how the lots are classified. Respondent Porter then called the management company (Orkin) regarding his concerns. It was revealed that the covenants he was provided were outdated. Respondent Porter was sent the updated covenants, being the 5th edition. Those updated covenants clearly state that only a 2700 square foot house could be built.

**X.**

Respondent Porter proceeded to order a soil sample test that took longer than expected. After losing a week and a half of time, the buyer and Respondent Porter went to an architect with the new 5th edition covenants to pick home plans due to the setback. After a quote from a builder, they decided that two 2700 square foot houses were not feasible. The buyer's DTI could not carry a loan needed for two 2700 square foot houses but could, if the homes were at 2000 square feet. Respondent Porter stated that after a closer look, the lot cost (at $160,000) would make the house need to be at least 3400 square feet in size in order to meet the appraisal value. After explaining this to the listing agent, Todd Everett argued that they could indeed build two 2000 square foot

houses. Respondent Porter and the buyer met with Linda Spann to go over exactly what they could and couldn't do. After several calls to various HOA board members and architects, it was determined that Ms. Spann was wrong in her interpretation of the covenants and that the lots did indeed fall into the jurisdiction of the 3rd edition covenants. With these delays and setbacks, the buyer was at the deadline for closing and asked for more time to re-evaluate the findings with the architect, builder, and lender. The seller declined to extend the contract deadline.

**XI.**

Salesperson Todd Everett's response was that his client/seller entered into a contract with the buyer on 6/24/18. After a few counter-offers, a contract was executed on 6/26/18. On 7/2/18, the buyer and seller agreed on a closing date of 7/18/18. On 7/6/18, a letter of commitment was requested from the buyer's lender. On 7/16/18, Respondent Everett received a text message from Respondent Porter stating that the buyer was not going to be able to build in this subdivision. Respondent Everett stated that the property consisted of two lots combined, and that the buyer could build 2 separate houses or build a house on each lot. Respondent Everett stated that the covenant information was confirmed by the HOA and the Property Manager. Respondent Everett further stated that Respondent Porter agreed with him that the seller was due the earnest money and that Respondent Porter even asked what address the seller wanted the check mailed to. On 8/17/18, after still not having received the earnest money, Respondent Everett texted Respondent Porter that the seller had not received the earnest money check. Respondent Everett stated that the last time he heard from Respondent Porter was by text, stating that he (Respondent Porter) had laid the release of earnest money form on Respondent McKee's desk to be signed.

## XII.

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.*
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> **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.
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> **Rule 3.4 Earnest Money**
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> 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.

## DISCIPLINARY ORDER

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

*As to Billy McKee, Jr., 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 his future compliance with MS Real Estate Statutes and Commission Rules and upon him completing Mandatory Continuing Education of 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, and not 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 Ryan Porter, Salesperson,* the Commission orders that his license incur a one (1) month suspension, held in abeyance, followed by five (5) months of probation, contingent upon his future compliance with all MS Real Estate Statutes and Commission Rules and upon him completing Mandatory Continuing Education of 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, and not 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: _____ DATE: 8/26/19
Billy McKee, Jr., Broker

Agreed: _____ DATE: 8/26/19
Ryan Porter, Salesperson