BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION **COMPLAINANT**

VS. **NO. 022-1804**

ERIC CLINTON BOLTON, BROKER
DANIEL D. RAY, BROKER ASSOCIATE **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 Eric Clinton Bolton, Broker, and Daniel D. Ray, 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 Eric Clinton Bolton, sometimes hereinafter "Bolton", is an adult resident citizen of Mississippi whose last known address of record with the Commission is 1989 Oak Tree Cove, Ste. C., Hernando, MS 38632 Respondent Bolton 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. Respondent Bolton is the responsible broker for Salesperson Daniel D. Ray.

II.

Respondent Daniel D. Ray, sometimes hereinafter "Ray," is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 867 Cedar Grove Parkway, Hernando, MS 38632. Respondent Ray is the holder of a 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estateand licensing of real estate brokers under Mississippi law. Daniel Ray represented the buyer in the transaction. The sellers (Green) were represented by Lisa Davis of CPA Realty, LLC.

III.

The Commission received a complaint from the Complainants (Willis & Rita Green) who sold their home in Horn Lake, MS in March of 2018. Complainants alleged that the buyer's agent, Daniel Ray with RE/MAX Realty Group in Hernando, was negligent in handling several issues in the contract which ultimately led to the theft of some of their personal property from the home.

IV.

Complainants were informed that, under the contract, they would be given a 24-hour notice prior to the home inspection being conducted and were informed by their agent that the inspection was to be done on 1/31/18. However, on 1/29/18, the Complainant went to the house to remove personal items and, upon arrival, saw a red truck in the driveway and the front door of the home ajar. The Complainant immediately called his agent, who confirmed that the home inspector was to be there on 1/31/18. The Complainant went inside and found the home inspector, who advised that he was to do the inspection on 1/29/18. The home inspector proceeded with the inspection.

V.

Based upon the home inspection, the Complainant agreed to make certain home repairs. Respondent Daniel Ray recommended a certain contractor. Since Respondent Ray represented the buyers, the Complainant agreed to the buyers choosing the contractor since the property would become theirs at closing. The Complainant's agent prepared an addendum which Respondent Daniel Ray's clients signed, requiring that the sellers be given a 24 hours' notice before the contractor's arrival. However, the Complainant was never notified of the contractor's date of arrival. Respondent Ray text messaged the Complainant's agent on 2/9/18 and advised that repairs *had been made*. Respondent Ray stated that the contractor worked for him, and even asked if the Complainants were planning to leave their personal items that were still in the house. The Complainant's agent had already informed Respondent Ray twice that the complainant's personal items would be removed. When the Complainant went to his home on 2/17/18, he found the front gate open and discovered both back doors ajar. Upon entering the house, the Complainant noticed several personal items were missing, including boxes of old documents containing tax returns, etc., and pictures. Upon looking in the storage unit outside, the Complainant discovered that the lock had been broken and all contents, including lawn equipment, had been taken. The Complainant called the Horn Lake Police Dept. and made a house burglary report. A neighbor told the police that a truck towing a trailer had been spotted at the Complainant's house two days in a row. The contractor was contacted by phone and confirmed that he had come to the house the first day to determine what needed to be done and then returned the next day to make the repairs. He denied taking any of the missing items and said Respondent Ray had used his services several times to clean out houses and remove old property. The contractor also mentioned several things in the house that were taken. The Complainant stated the contractor could not have gained entry to the house without the lockbox code, which was known by Respondent Ray.

VI.

Respondent Ray told Lisa Davis that the home inspection was to be done on 1/31/18 but when the Greens came to the property on 1/29/18, the home inspector was there. Respondent Ray *admitted* that this was his mistake and he has taken ownership of it and apologized. The second complaint Respondent Ray addressed was that he did not give the 24-hour prior notice regarding the repair work to be done. Respondent Ray said he offered to help expedite things by offering the services of Mike Smith (KMS General Maintenance, LLC) who he often uses for general maintenance jobs. The offer was made through the Greens' agent, Lisa Davis, and relayed to the sellers, who agreed. Respondent Ray stated that he *just forgot* to give the prior notice to the sellers. Respondent Ray denies that either he or Mike Smith had anything to do with the theft of the sellers' personal property. Respondent Ray said it's true that they knew the code to gain entry, but so did the appraiser, and the carpet cleaners (Kleen Dry). Respondent Ray included a text from Lisa Davis indicating that the workers from Kleen Dry had access to the home prior to the repairs being completed by Mike Smith. Respondent Ray also included an invoice that has a carpet cleaning date of 2/19/18, which would mean the carpet cleaners were the last people in the home before closing. This contradicted what Lisa Davis said, wherein she stated that the sellers told her that they went into the house and noticed that the recently cleaned carpet was tracked. Lisa said the sellers paid for the carpet cleaning *before* the repairs were done. Mike Smith did the repairs on 2/8/18, which was eleven (11) days before the carpet cleaners were there.

VII.

The Complainant states that Respondent Daniel Ray and a fellow agent, Jackie Bailey, were the only people given the key-box code. No other buyer had seen the home prior to Respondent Ray's client, so the code had not been given to other agents. The Complainants arrived at their residence on 2/17/18 and removed the key-box themselves, due to Respondent Daniels' actions

and the theft of their property. The Complainants state that they were present when the carpet cleaners arrived on 2/19/18 and were there with them the whole time. They were paid before they left. When the police came to investigate, it was determined that there was no forced entry into the house. However, several personal items have been taken. If Respondent Ray had not failed his due diligence (which he admitted) by failing to provide proper notice of who was entering their home and when, then the theft might have been avoided.

VIII.

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)(f) and (n) and Commission Rules 3.1A,3.1B, 4.1 which provide, in relevant parts:

> **Rule 3.1A** 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 4.1 Purpose**
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> **G. "Fiduciary Responsibilities"** are those duties due the principal (client) in a real estate transaction are:
> ********
> (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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> **§73-35-21. Grounds for refusing to issue or suspending or revoking license; hearing**
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> (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. 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.

DISCIPLINARY ORDER

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

As to Eric Clinton Bolton, 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 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 Daniel D. Ray, 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 thirty (30) days of full suspension. 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 FOUND AND ORDERED this the 10th day of September, 2019.

MISSISSIPPI REAL ESTATE COMMISSION

BY: _____
ROBERT E. PRAYTOR, Administrator

AGREED: _____ DATE: 8/28/19
Eric Clinton Bolton, Broker

AGREED: _____ DATE: 8/28/19
Daniel D. Ray, Salesperson