

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 06-1902

BEN WARREN AUSTIN, BROKER

and

DENISE TIMBES, PRINCIPAL 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 Denise Timbes, Broker, and Ben Warren Austin, non-resident Broker, and the Commission was advised that there has been an agreement reached with Respondent Denise Timbes resolving the issues brought forward in this complaint. By entering into this Agreed Order, this Respondent waive her right to a full hearing and her right to appeal to a circuit court. The Commission, then, does hereby find and order the following:

I.

Denise Timbes, sometimes hereinafter called "Respondent Timbes," is an adult resident citizen of MS, whose last known address of record with the Commission is 302 Hwy 72 Burnsville, MS 38833. Respondent Timbes is the principal broker of Home Link Realty Group, LLC and 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, she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate salespersons under Mississippi law.

II.

The MREC received a formal complainant against Respondent Denise Timbes regarding the sale/purchase of a property located 14 County Road 303 in Corinth, MS. In the statement, the Complainants, Rogerick Judd and Jamie Talley, alleged that their agent, Denise Timbes, committed numerous misrepresentations, including failing to deliver all the proper documentation to them as required by MREC guidelines and that Timbes' actions demonstrated bad faith, dishonesty and improper dealing.

III.

The Complainants, through their agent, Respondent Denise Timbes, made an offer to purchase the aforesaid house in Corinth, MS. The seller, Swan Properties, LLC, acted through the seller's agent, Christine Hurst, of List4Less Realty, Inc. of Savannah, TN. There were contract negotiations that were communicated *through these respective agents*, a property condition disclosure statement completed by the seller *and communicated through the selling agent* (Hurst), a subsequent home inspection, and a closing that occurred in Mississippi.

IV.

After moving into the house, complainant Jamie Talley called Respondent Timbes to inform her that the heating unit was not working properly; that it wouldn't get warm enough. Talley said Respondent Timbes didn't seem as if she was interested in assisting them. Additionally, after numerous requests, Talley claimed to not have received a copy of the purchase contract. According to the repair addendum on the property disclosure statement, the seller was to fix everything listed but did not, so the complainants had to pay for several repairs. The home inspector had found standing water under the house and a moisture barrier had to be put down under the house due to a leak. Also, the complainants hired a plumber to fix several more leaks.

The Complainants spoke with Respondent Timbes about what they were having to pay for and complained of no satisfaction with Respondent Timbes. The Complainants further stated that the seller sent a text to Respondent Timbes saying he was not going to honor the document that he had signed saying that he would do certain repairs. The complainants paid \$665.00 to get the heating and air unit fixed. The Complainants said that when they first notified the seller, he recommended someone he uses, but that repairman quoted \$900.00 to do the repairs, which was more than the complainants subsequently paid. This repairman had originally installed the heating unit, apparently without the heat strip pack.

V.

Broker Denise Timbes responded, stating that complainant Jamie Talley contacted her regarding a property located at CR 303 in Corinth, MS that was listed by List 4 Less Realty, Inc., under Non-Resident Broker Ben Austin. Respondent Timbes showed the property to the complainants and noted that the rider board on the realty sign had Christine Hurst as the agent. Respondent Timbes said this was the only house the buyers were interested in and they ultimately purchased the house.

VI.

There were numerous communications between Respondent Timbes and TN agent Hurst about this transaction. At no time was this transaction handed off to a MS licensed agent with the selling agency, List4less. Two days after moving in, Talley contacted Respondent Timbes that the heating unit was not working properly. Respondent Timbes stated that she contacted the seller's agent, Christie Hurst, who in turn contacted the seller. Hurst called Respondent Timbes back and said that the seller's response was that the heating unit was new. This information was relayed to

Ms. Talley. Respondent Timbes received another call from Talley on 11/17/18 stating that the buyers were also having problems with the commode. In response to the allegation that the complainants had not received a copy of the contract, Respondent Timbes said that she had emailed them a second copy of the contract on 1/18/19. Respondent Timbes said that during the transaction, she met with Ms. Talley numerous times and had emailed documents and information to Talley as well. *There were also several emails between Respondent Timbes and the seller's agent, Christie Hurst, regarding the transaction.* Respondent Timbes said the Complainants' focus at that time was getting into the house as quickly as possible.

VII.

After receiving the response from Respondent Timbes, there was an attempt to contact the seller's agent, Christie Hurst, to seek a response regarding her knowledge of facts, as representative of the seller. Upon researching MREC records, it was discovered that *Christie Hurst is not licensed for real estate in MS.* Ms. Hurst is a licensed real estate agent under Respondent Non-Resident Broker Ben Austin, but only in TN. Respondent Austin is the Principal Broker of List 4 Less Realty, Inc., as a licensed company in TN, but *List4Less Realty, Inc. was not licensed to do business in Mississippi.* During the investigation it was determined that:

1. List 4 Less Realty, Inc. was not licensed to conduct real estate business in the State of Mississippi. Respondent Denise Timbes stated that the realty yard sign (List 4 Less) at 14 County Road 303 in Corinth, MS included a sign rider with Christie Hurst's name on it.
2. MS Broker Denise Timbes conducted a buy/sale transaction with this unlicensed agent. Respondent Timbes failed to verify that either Christie Hurst or List4Less Realty, Inc. were licensed to conduct real estate activity in Mississippi.

The above and foregoing described acts and omissions of this Respondent constitutes 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, M.C.A. §§ 73-35-1, 73-35-21(1)(n), and Mississippi Real Estate Commission Rule 4.2 G(5), which provide, in relevant parts:

§73-35-1. Citation of chapter; license requirement This chapter shall be known, and may be cited, as "the Real Estate Brokers License Law of 1954"; and from and after May 6, 1954, it shall be unlawful for any person, partnership, association or corporation to engage in or carry on, directly or indirectly, or to advertise or to hold himself, itself or themselves out as engaging in or carrying on the business, or act in the capacity of, a real estate broker, or a real estate salesperson, within this state, without first obtaining a license as a real estate broker or real estate salesperson as provided for in this chapter.

§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 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.

DISCIPLINARY ORDER

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

As to Denise Timbes, Broker, the Commission orders that her license incur a one (1) month suspension, held in abeyance, and 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 the month of September, 2019. Said education cannot be completed online and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Further, these classes will be courses approved by this Commission and be in addition to the regular hours of continuing education already required of licensees for license renewal. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the 15th day of October, 2019.

MISSISSIPPI REAL ESTATE COMMISSION



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

AGREED: Denise Timbes
Denise Timbes, Broker

DATE: 9-6-19