BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION **COMPLAINANT**

VS. **no. 068-1811**

DOUGLAS W. MASELLE, PRINCIPAL BROKER
DAVID W. STEVENS, PRINCIPAL BROKER
VIRGINIA SISSY WAGNER, SALESPERSON **RESPONDENTS**

AGREED ORDER

This cause came before the Mississippi Real Estate Commission (sometimes hereinafter "Commission") pursuant to authority of Miss. Code Ann. §73-35-1, et seq. on a formal complaint brought against Respondents David W. Stevens, Broker, Douglas W. Maselle, Broker, and Virginia Sissy Wagner, Salesperson. Prior to a hearing before the Commission, it was announced that an agreement was reached as to the resolution of the matters alleged and any disciplinary actions that may be imposed upon the Respondents, Douglas W. Maselle, Broker, and Virginia Sissy Wagner, Salesperson. This agreement is in lieu of further disciplinary proceedings on this Complaint. By entering into this Agreed Order, these Respondents waive their right to a hearing with full due process and the right to appeal any adverse decision resulting from that hearing. Having reached an agreement on the matter, the Commission issues this, its Findings of Fact, Conclusions, and Disciplinary Order as follows:

I.

Respondent David W. Stevens, sometimes hereinafter "Stevens", is an adult resident citizen of Mississippi whose last known address of record with the Commission is 701 Hwy 80 West, Clinton, MS. Stevens 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 David W. Stevens, of Century 21 David Stevens, was the listing agent for this transaction in issue.

II.

Respondent Douglas W. Maselle, sometimes hereinafter "Maselle", is an adult resident citizen of Mississippi whose last known address of record with the Commission is 4001 Lakeland Dr., Flowood, MS. Maselle 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. Maselle is the responsible broker for Salesperson, Virginia Sissy Wagner, both at Century 21 Maselle and Associates.

Respondent Virginia Sissy Wagner, sometimes hereinafter "Wagner," is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 4001 Lakeland Dr., Flowood, MS. Wagner is the holder of a salesperson real estate 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.

III.

On November 9, 2018 this office received a sworn statement of complaint from Linda Swilley of Madison, MS 39110. Swilley was looking to purchase acreage to place a mobile home and some cows for her father to tend. Around August 2017, she found an 18-acre parcel located on Highway 18 between Raymond and Jackson, previously listed with Respondent Stevens, that she wanted to place an offer on. Sometime in September 2017, she called the office of Respondent Stevens to inquire about the property, and the unidentified individual took her call and transferred her to speak with Wagner. Respondent Wagner had previously been with Respondent Stevens' office but had transferred her license to C-21 Maselle & Associates on May 31, 2017. Swilley had never met Salesperson Wagner prior to this phone call and was unaware at that time that her phone call had been transferred from Respondent David W. Stevens' office to a licensee working at another firm.

IV.

Wagner and Swilley met at the property around September 13, 2017, and Wagner provided Swilley with a copy of the MLS sheet that she had printed. This MLS sheet stated that the property was zoned agricultural, which was the required zoning for Swilley' s intended use. On September 18, 2017, Wagner wrote and submitted an offer to purchase using a Century 21 Lots and Land Real Estate contract. The language in the contract stated that Maselle & Associates was the agent of the buyer exclusively. Based on the information provided in the MLS, Wagner filled in the zoning as "agricultural." There was a counteroffer by the out of state seller that lead to an executed contract.

V.

On or around April 23, 2018 Swilley contacted the Hinds County permit office to request a permit to move a mobile home onto the property. A few days later she was informed that the subject property was zoned residential. Swilley contacted Respondent Stevens and informed him of the incorrect zoning information. Respondent Stevens offered to drive to the permit department with Swilley and pay any fees and facilitate any request to have the property rezoned. Swilley did not want any of that to happen. Sometime later Respondent Stevens asked how much it would take to purchase it back. Swilley gave him a price of $80,000, which was $20,000 more than Swilley' s purchase price, and Respondent Stevens refused.

VI.

On November 29, 2018, Respondent Maselle answered the complaint. Respondent Maselle acknowledged that they were clearly acting as Swilley' s agent. Respondent Maselle also stated, however, that Respondent Wagner denied ever discussing the zoning of the property with Swilley, other than confirming it was listed as agricultural in MLS, was never asked to verify the zoning and had no reason to doubt the property was not zoned as represented by the listing agent, Respondent David Stevens, and the seller. Respondent Maselle added that the contract was contingent on an appraisal and Swilley did obtain one prior to closing. Respondent Maselle stated that although his office did not receive a copy of that appraisal, it should have provided Swilley with the correct zoning classification.

VII.

Respondent Wagner responded, saying she remembered being on phone duty in May 2017 and handled a call from Swilley asking to see the property in question. Respondent Wagner said that Swilley said she spoke with someone at Respondent David Steven's office in September 2017 and confirmed that the property was zoned agricultural. Wagner stated that at the time that conversation happened, she was working at Maselle's brokerage firm. After speaking with Swilley, Wagner met her at the property. She did remember having a WWREB form signed at that meeting but did not have it anymore. Respondent Wagner denied discussing zoning and denied Swilley's claim that Wagner held herself as a "subject matter expert". Swilley was given an MLS sheet at that meeting that showed the zoning as agricultural. Wagner remembered that Swilley wanted to put cows on the property for her father to tend. Respondent Wagner stated she believed Swilley was purchasing the land for her father. Based on the information provided, Respondent Wagner filled in the zoning on the contract as being agricultural. Swilley and Wagner met on September 18th to write up the offer.

VIII.

On December 6, 2018 another statement from Respondent Wagner was received. In it she clarified some inaccuracies made in her previous statement. Respondent Wagner earlier stated that she received the first phone call from Swilley in May of 2017 but has since remembered calling Respondent David Stevens with a question about the property lines while showing Swilley the property. Respondent Wagner stated that Respondent David Stevens refused to come out and show them the lines, and Wagner remembered thinking at the time that if she was still with Respondent David Stevens that he would have helped her. Respondent Wagner went on to say she was not certain how Swilley was put in contact with her since she no longer worked at Respondent Stevens' office. Respondent Wagner suggested that it was possible Swilley called Respondent Maselle's office by mistake and was transferred to Respondent Wagner by a receptionist or answering service.

IX.

Respondent David Stevens' response, received December 18, 2018, included copies of 2 listing agreements. One agreement ran from 7/28/2014 until 1/28/2015 and included an attached sheet showing a breakdown of 5 tax parcels, including parcel # 4852-9, and consisted of 71 acres. The other listing agreement showed that legal description as "16 acres on the north side of Hwy 18" and ran from 1/26/2015 through 7/28/2015. Respondent Stevens was asked if there was a listing agreement in effect at the time of Swilley' s conveyance and to provide MREC with a copy. He responded by providing the Commission a copy of a Central MLS Property Status Change Form which showed 2 MLS numbers and a new listing expiration date of 1/28/2018. The Commission finds that such is not sufficient documentation under Commission rules.

X.

On March 14, 2019, George Ferguson III, who performed the appraisal for Swilley on 9/29/2017, was contacted. Ferguson provided part of his appraisal showing the zoning as R-1 per information provided by the Hinds County Zoning office. Upon learning that Respondent David Stevens had listed it as agricultural, Ferguson reviewed his documents and called the Hinds County Zoning Department to verify it. Ferguson then called the MREC and stated he had spoken with the zoning officials, who reviewed the zoning map and told Ferguson that the property was in fact zoned agricultural. Ferguson stated that at the time of the appraisal, the property he appraised was 18.12 acres on the north side of Hwy 18 which was combined with a 36.56-acre tract on the south side of Hwy 18 and had one parcel number. Per Ferguson's conversation with the zoning department at the time it was appraised, this property was zoned R-1. After Swilley' s purchase, that land was split into 2 parcel numbers and Swilley' s property north of Hwy 18 was zoned agricultural and assigned parcel #4852-9 while the remaining 36.56 on the south side remained zoned R-1 and assigned a different parcel # 4852-9-1.

XI.

The above and foregoing described acts and omissions of the Respondent constitute violations of the Miss. Real Estate Brokers License Act of 1954, as amended, §§73- 35-1, *et seq.*, M. C. A., and the Rules and Regulations of the Commission, and, more specifically, §73-35-21(1)(n) and Commission Rules 3.2B and 3.3C which provide, in relevant parts:

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

(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 4.2 Definitions

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:

(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 3.2 Documents

B. All exclusive listing agreements shall be in writing, properly identify the property to be sold, and contain all of the terms and conditions under which the transaction is to be consummated; including the sales price, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of expiration. No listing agreement shall contain any provision requiring the listing party to notify the broker of their intention to cancel the listing after such definite expiration date. An "Exclusive Agency" listing or "Exclusive Right to Sell" listing shall clearly indicate in the listing agreement that it is such an agreement.

Rule 3.3 Advertising

C. No Principal Broker or licensee sponsored by said broker shall in any way advertise property or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or by any appointed person or entity who also has full authority to convey the property.

DISCIPLINARY ORDER

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

As to Douglas W. Maselle, Broker, the Commission orders that his license incur a one (1) month suspension period, held in abeyance, and be immediately followed by five (5) months of probation; contingent upon both his future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent 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 time from September 15th to October 15th, 2019. Said education is to be completed in a classroom environment, rather than through on-line education. Further, these classes will be courses approved by this Commission, be in addition to any regular hours of continuing education that may be required of him for license renewal and will not be the same classes from the same provider as those used by this Respondent in her last renewal period. Evidence of completion of these classes is to be provided to this Commission. Respondent Maselle's suspension, in abeyance, and five (5) month license probation period will start October 01, 2019.

As to Virginia Sissy Wagner, Salesperson, the Commission orders that her license incur a one (1) month suspension period, held in abeyance, and be immediately followed by five (5) months of probation; contingent upon both her 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 time from September 15th to October 15th, 2019. Said education is to be completed in a classroom environment, rather than through on-line education. Further, these classes will be courses approved by this Commission, be in addition to any regular hours of continuing education that may be required of her for license renewal and will not be the same classes from the same provider as those used by this Respondent in her last renewal period. Evidence of completion of these classes is to be provided to this Commission. Respondent Wagner's suspension, in abeyance, and five (5) month license probation period will start October 01, 2019.

So Ordered this the 10th day of September, 2019.

MISSISSIPPI REAL ESTATE COMMISSION

By: _____
Robert E. Praytor, Administrator

Agreed: _____ DATE: 9-10-19
Douglas W. Maselle, Broker

Agreed: Virginia Sissy Wagner DATE: 9-10-19
Virginia Sissy Wagner, Salesperson