

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

CASE NO. 2022000090

ELIZABETH D. JOHNSON, BROKER

RESPONDENT

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.*, as amended. The Commission conducted a hearing on the Commission's formal Complaint brought against Elizabeth D. Johnson, Broker (sometimes hereinafter "Respondent" or "Johnson"). The hearing was held at the Commission offices in Jackson, Mississippi on January 10, 2023, beginning at approximately 10:00 a.m. The Respondent, Elizabeth Johnson, was present without counsel. The Commission recognized its quorum and opened the hearing. The hearing was conducted with witnesses being sworn, documentary evidence being admitted as exhibits, the right to cross examination of witnesses and the verbatim transcript of the hearing being taken by an official court reporter. The Commission makes its Findings of Fact, Conclusions of Law and issues its Disciplinary Order as set forth hereinafter based upon evidence that was clear and convincing.

FINDINGS OF FACT

I.

Respondent Elizabeth D. Johnson, Broker, is an adult resident citizen of Mississippi whose last known address of record with the Commission is 119 Oak Street, Brookhaven, Mississippi 39601. Respondent Johnson 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, she is subject to all of the provisions, rules, regulations, and statutes governing the management, sale and transfer of real estate and licensing of real estate brokers under Mississippi law. At all times relevant to this Complaint, Respondent Elizabeth D. Johnson was the principal and responsible broker for A Southern Heritage Realty, Inc.

II.

On or about November 23, 2022, the Commission received a sworn complaint from M. Howard, a former agent in Respondent Johnson's brokerage, who submitted documentation to the Commission along with a sworn statement alleging Johnson had improperly commingled funds on deposit in her brokerage escrow account with her brokerage operational account and had converted a substantial sum of escrow funds for her personal use, including for her gambling activities. The Commission thereafter initiated an investigation of the matters alleged.

III.

John Phillips (sometimes hereinafter "Phillips"), Contract Investigator for the Commission, testified at the hearing. Phillips testified he traveled to Johnson's office in

Brookhaven and met with Johnson on two occasions pursuant to the Commission investigation. Phillips first met with Johnson at her office on December 5, 2022, to deliver a Notice of Investigation and to serve a Subpoena for records to Johnson for the Commission to obtain records of Johnson's brokerage escrow and operating accounts. Phillips testified that Johnson admitted to him that she was "guilty" of the allegations the Commission was investigating.

IV.

Commission Investigator Rick Stubblefield (sometimes hereinafter "Stubblefield") testified at the hearing. Stubblefield testified he reviewed the escrow and operating account statements obtained from Johnson pursuant to the Commission subpoena, along with other documents obtained from Johnson during the Commission investigation. Stubblefield testified the Commission obtained during its investigation a "tenant deposit" ledger prepared by Johnson that reflected approximately \$64,997.00 in current tenant deposits that should have been maintained in the escrow account according to Johnson's own estimation. The brokerage escrow account statement for the period ending October 31, 2022 was introduced into evidence at the hearing which statement reflected the escrow account was overdrawn in the amount of -\$547.19.

V.

Investigator Stubblefield testified that the escrow and operating accounts reviewed by the Commission and introduced into evidence at the hearing indicated numerous instances where large sums of money were transferred from the escrow account to the

operating account only to be immediately withdrawn by debit card or ATM withdrawal at various casinos on the very same day.

VI.

Elizabeth Johnson testified under oath at the hearing. Johnson admitted she had converted funds held in trust in her brokerage escrow account for her own use, including for her gambling activities. Johnson admitted she would transfer funds from the escrow account into her brokerage operating account and would subsequently withdraw funds by debit card or ATM withdrawal at various casinos. Johnson testified she had been withdrawing the funds for her gambling for a significant period of time. Johnson admitted a pattern of behavior wherein she periodically replaced funds missing from the escrow account only to repeat her actions to improperly convert the escrowed funds for her personal use.

CONCLUSIONS OF LAW

VII.

Miss. Code Ann. §73-35-23(3) charges the Commission to examine all factors during hearings based upon a preponderance of evidence standard of proof. Exceeding this minimum standard of proof, the Commission finds based upon clear and convincing evidence introduced at the hearing that the above and foregoing acts and omissions of Respondent Elizabeth Johnson constitute violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and

Regulations of the Commission and, more specifically, Miss. Code Ann. §73-35-21(1)(a), (c), (f), and (n), and Rules 3.1, 3.4 and 4.2 which provide, in relevant parts:

§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 the full power to refuse a license for cause or to revoke or suspend a license ...where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

(a) Making any substantial misrepresentation in connection with a real estate transaction;

(c) Pursuing a continued and flagrant course of misrepresentation...;

(f) Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others or commingling of monies belonging to others with his own funds...;

(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...

Rule 3.1F Any licensee 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.

Rule 3.4C Accurate records shall be kept on escrow accounts of all monies received, disbursed, or on hand. All monies shall be individually identified as to a particular transaction. Escrow records shall be kept in accordance with standard accounting practices and shall be subject to inspection at all times by the Commission.

Monies received in a trust account on behalf of clients or customers are not assets of the broker;...

Rule 4.2 G "Fiduciary Responsibilities" are those duties due the principal (client) in a real estate transaction....:

(1) 'Loyalty' –the agent must put the interests of the principal above the interests of the agent or any third party.

(3) 'Disclosure' –the agent must disclose to the principal any information the agent becomes aware of in connection with the agency.

(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.

(6) 'Full accounting' –the agent must provide a full accounting of any money or goods coming into the agent's possession which belong to the principal or other parties.

DISCIPLINARY ORDER

The real estate broker's license of Elizabeth D. Johnson is hereby REVOKED.

This Order shall be effective thirty (30) days from the date of the Order.

This the 23rd day of JANUARY, 2023.

MISSISSIPPI REAL ESTATE COMMISSION

BY: 
JOE STEDMAN, Chairman