

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 050-1907

**ALYCE (BETSY) ALEXANDER, BROKER
EUGENIA CROWLEY, 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 Alyce Alexander, Broker, and Eugenia Crowley, Broker, and the Commission was advised that there has been an agreement reached with Respondent Alexander resolving the issues brought forward in this complaint. Respondent Alexander acknowledges that the allegations set forth in the above referenced pending complaint, if proven at an administrative hearing upon clear and convincing evidence, could constitute violations of the Mississippi Real Estate Broker's License Law of 1954, Miss. Code Ann. §73-35-1, *et seq.*, as amended, and/or the rules and regulations of the Commission promulgated thereto, for which she could be subjected to discipline by the Commission, up to and including revocation of her license to practice real estate in Mississippi.

By entering into this Agreed Order, Respondent Alexander waives her rights to a full hearing and to any appeal. The Commission, then, does hereby Find and Order as follows:

I.

Respondent Alyce (Betsy) Alexander, sometimes hereinafter "Respondent Alexander", is an adult resident citizen of MS whose last known business address of record with the Commission is 157 W. Reed Rd., Greenville, MS 38701. Respondent Alexander 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Miss. law.

II.

Respondent Eugenia Crowley, sometimes hereinafter "Respondent Crowley," is an adult resident citizen of MS, whose last known business address of record with the Commission is 1019 Fairview Ave., Greenville, MS 38701. Respondent Crowley 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Miss. law.

III.

The Commission received a written complaint from Theresa and Kenneth Joseph following their offer for the purchase of a home located at 1977 Susan Drive in Greenville, MS. Respondent Crowley was the buyers' agent. Respondent Alexander represented the sellers. The buyers later withdrew from the contract for good and valid reasons but instructed Respondent Crowley to deliver the \$1,000.00 earnest money to the sellers anyway. Investigation revealed that the earnest money transferred by Respondent Crowley to Respondent Alexander was then held by Respondent Alexander without being either deposited, returned to the buyers or interplead with a court, as required by M.C.A. §73-35-21(1)(f) and Commission Rule 3.4 (the earnest money rule).

IV.

On or about October 10, 2018, an offer was made by the complainants through Respondent Crowley to purchase the home. It was accepted by Respondent Alexander's clients on October 19, 2018. Among other terms, the contract specifically provided for earnest money amount of \$1,000, which was held by Respondent Crowley. There was a home inspection done. A VA loan appraisal was ordered in early November of 2018, but not delivered until December 12th, five days before closing. Closing for the property was set for December 17, 2018. The list price was \$365,000; the accepted offer was for \$320,000; the appraisal value, however, was only \$285,000.

V.

Records obtained during the Commission investigation reflect that Respondent Alexander informed Respondent Crowley that the sellers were not accepting the earnest money but were going to sue the buyers and that Respondent Alexander was holding the check. Respondent Crowley then inquired of Respondent Alexander some days later to "...please mail me the earnest monies." Records submitted by Respondent Crowley reflect that she had informed the seller's agent, Respondent Alexander, that the earnest money specified in the contract had not been timely returned to the buyers. Respondent Crowley subsequently had the held earnest money check "cancelled" by the bank and she returned the earnest money to her clients.

VI.

Ultimately, it was also learned that Respondent Alexander failed to note or cause her seller clients to properly complete the statutorily required property condition disclosure statement (PCDS). Additionally, Respondent Crowley failed to note or take affirmative action regarding the incompleteness of the PCDS, to the detriment of her buyer clients. Both agents thereby failed in a fiduciary duty to their respective clients.

VII.

The PCDS has blanks in Section F. Land and Site Data both at question No. 1 regarding a survey or plat being available and the follow up question. Also, question 11 on page 5 is blank as to whether there is a sewage pump installed. Under the Miscellaneous section on page 5, there are blanks for question no. 1, question no. 4, the follow up question for no. 5, question no. 9, question no. 10, question no. 12, question no. 13, question no. 17, and question no. 18. The quality of the information in the PCDS cannot be understated. It is a basis, if not *the* basis, for a buyer to decide on getting a home inspection report and subsequently deciding on buying the home.

VIII.

The above and foregoing described acts and omissions of the Respondents, if proven at an administrative hearing upon clear and convincing evidence, would 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 3.1F. and 3.4, which provide, in relevant parts:

§73-35-21(1)(f) Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others... Every responsible broker... shall deposit, within a reasonable period of time, the sum or sums so received in a trust or escrow account in a bank or trust company pending the consummation or termination of the transaction. "Reasonable time" in this context means by the close of business of the next banking day;

§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 F. Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written communication or 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 3.4 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 the 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.

Part 1601 Chapter 4: Agency Relationship Disclosure

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.

§89-1-501. Applicability of real estate transfer disclosure requirement provisions

(1) The provisions of Sections 89-1-501 through 89-1-523 apply only with respect to transfers by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, of real property on which a dwelling unit is located, or residential stock cooperative improved with or consisting of not less than one (1) nor more than four (4) dwelling units, when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson.

DISCIPLINARY ORDER

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

As to Alyce Alexander, Broker, the Commission orders that her license incur a two (2) month suspension, held in abeyance, followed by four (4) months of probation, with both contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and 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 two months (2) of suspension in abeyance which begins December 15, 2020. Said education can be completed through Distance Education, in light of Co-Vid 19 restrictions. 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 13th day of JANUARY, 2021, 2020.

MISSISSIPPI REAL ESTATE COMMISSION



BY: _____

ROBERT E. PRAYTOR, Administrator

Agreed: _____

Alyce (Betsy) Alexander, Broker

DATE: 12/15/2020