

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

vs.

NO. 005-2001

**ROSAMOND BAILEY, Salesperson
GENTRY HUNTER BRANNON, 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 Gentry Hunter Brannon, Broker, and Rosamond Bailey, Salesperson and the Commission was advised that there has been an agreement reached resolving the issues charged in this complaint. By entering into this Agreed Order, these Respondents waive their rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent, Rosamond Bailey, sometimes hereinafter called “Respondent Bailey”, is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 7165 Getwell Rd, Bldg. E, Southaven, MS 38671. (Brannon Realty in Southaven, MS) Respondent Bailey is the holder of a resident Salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, so she is subject to the provisions, rules, regulations and statutes governing real estate licensees under Mississippi law and the administrative rules of the Miss. Real Estate Commission. Respondent Bailey’s Principal Broker at the time of this complaint was Gentry Hunter Brannon.

II.

Respondent, Gentry Hunter Brannon, sometimes hereinafter called “Respondent Brannon”, is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 7165 Getwell Rd, Bldg. E, Southaven, MS 38671. Respondent Brannon holds a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and so he is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Miss. Real Estate Commission. Respondent Brannon is the Principal Broker of Brannon Realty in Southaven, MS

III.

On Dec. 02, 2019, the Commission received a sworn complaint from Janice Mace after the conclusion of a Circuit Court jury trial that found Respondent Bailey civilly liable to the Maces for her conduct regarding the July 2016 sale of a home located at 403 Windemere in Nesbit, MS.

IV.

Jamie Mace and her husband viewed this lakeside property together on July 8th, 2016. Her husband, being self-employed, could not be with Jamie later that day when she met back with Rosamond Bailey to write the contract offer. Jamie Mace told Respondent Bailey that she was nervous about doing this by herself. Respondent Bailey told her not to worry, and that she (Bailey) would assist her and walk her through it. At the time, Mace said she wanted Respondent Bailey to represent them but did not realize or understand that this created a dual agency transaction because Respondent Bailey also represented the seller, as well as her (the Maces) as buyers. Mace said that was not explained to her. Lending credence to Mace’s statement is the fact that on the agency representation form (WWREB) for the Maces, Respondent Bailey only checked dual agency and did not check that she was also representing the buyers, an omission contrary to the Commission’s administrative rules.

V.

On 7/8/16, Jamie Mace entered into a contract to purchase this property. Respondent Bailey had listed the property and represented the seller, Carol Phillips, as apparent Trustee and a Co-Conservator for title holder Charlene Swanton since 2010. This was a dual agency transaction. Although dual agencies are allowed when all principals are aware of the multiple representation, they are fraught with special problems and require a heightened standard of conduct on the part of the agents in assuring that both masters are well served and that the agents' responsibilities are fully performed as to all. Real estate agents, as professionals, assume a heighten responsibility when assuming to act on behalf of parties who may have opposing interests. The dual agent assumes separate burdens as to each principal which must be fully fulfilled, and a principal broker instructing or informing his/her agent cannot be relieved of his/her responsibilities under a contract unless the circumstances are such as to indicate that the dual agent received and handled the instruction or information as the agent for the opposing party.

VI.

Carol Phillips, along with her 4 adult siblings, was appointed in 2010 by the Chancery Court as a Co-Conservator for *her mother*, Charlene Swanton. However, the MLS sheet provided by the Respondents states that the property is in a Trust and apparently Carol Phillips was the Trustee. No document was produced by the Respondents revealing or confirming whether the property was titled in a Trust nor who the Trustee would have been. Additionally, there was no document provided by the Respondents as to whether anyone had been appointed by a Chancery Court to be a conservator of Charlene Swanton. Apparently, this issue was addressed by the closing attorney, but that does not absolve the Respondents of their obligation to have ascertained who they were dealing with during this relationship, i. e., who owned the property and who was the client.

VII.

The Mace's offer of \$164,500 was accepted on 7/09/16. Jamie's husband, Mike was not with her when she made the offer. Mike only wanted to offer \$155,000. Jamie Mace felt like her husband's offer would have been too low. Respondent Bailey agreed with her on that. Being in a dual agency, Respondent Bailey was able to know what price range the sellers would accept. During the time of writing up the contract, Respondent Bailey gave Mace a copy of the property disclosure statement which was signed but not filled out. In retrospect, Mace feels that if another agent had been representing her, this would not have been acceptable. Because the property was said to be under a conservatorship, Mace was told that the disclosure statement did not have to be filled out because Carol Phillips had never lived there. Mace said she later discovered that Carol Phillips had been the conservator for several years and, as such, had personal prior knowledge of issues with the house which she failed to disclose. In the past, Phillips had workers come to the house and do repairs and was present when the carpet was replaced in the house. This was based on Carol Phillips' sworn testimony at trial. Knowing Phillips' status and history with the house, Respondent Bailey should have told Phillips to reveal personal knowledge of the home.

VIII.

Jamie Mace claims that after writing the contract offer, Respondent Bailey asked if Mace had a home inspector in mind. Mace did not, so Bailey told her that she had one in mind that she uses all the time. Mace said that apparently Respondent Bailey forgot this detail because later, during the trial, Respondent Bailey stated that she called Mace to give her the names of three inspectors. Bailey testified that Mace refused to call any of the inspectors to set up the inspection because she (Mace) was going out of town the next day and did not want to deal with it. Mace said Bailey's statement in court was untrue and that she (Mace) never left town during the entire real estate transaction which, from submitting an offer to closing, Bailey chose the inspector.

IX.

Respondent Bailey contacted home inspector, Mitchell Clinton, to come and inspect the property. Inspector Clinton confirmed that he has done several home inspections for Respondent Bailey's clients. The home inspection was on 7/18/16. Mace didn't know what to expect from the home inspection, other than it would give her some details about the property, since the disclosure statement was not completed. The home inspection was all she had to go on. During the inspection, Mitchell Clinton asked Mace and Respondent Bailey to come with him to the master bedroom and showed them a "groove", or pathway, leading from the bed to the bathroom. He asked Mace if she knew what caused this. Mace asked Respondent Bailey if the owner had used some sort of device to get around in. Bailey responded that she (Swanton) probably did.

X.

Closing took place on 7/22/16, only 14 days from when the Maces first viewed the property and 4 days after the home inspection. The Maces agreed to give the family two weeks after closing to finish removing Swanton's personal belongings. Respondent Bailey called Jamie Mace a week early and said that the house was ready and that they could take possession, which they did on 7/29/16. Jamie Mace met Respondent Bailey around 11:00 am that day and they did a walkthrough of the house. Respondent Bailey had Jamie Mace sign a document that day, telling Mace that it simply stated that she had received the keys and was taking possession of the property. Jamie Mace had her two small grandchildren with her that day and as such, had her hands full. She failed to read the document until later that day, and at that time, discovered that she had signed to accept the property "as is". Jamie Mace said the "as is" clause was never mentioned during the entire transaction. She believes Respondent Bailey knew that there were issues with the condition of the home.

XI.

After taking possession of the house, and with her husband on the road, Jamie Mace was eager to get as much done as she could. She pulled up carpet and discovered a crack in the foundation. Mace also discovered when the toilet was flushed, water, etc., went straight to the ground underneath the house, as did the water from the tub. She later learned that this was the cause of a major water leak in 2014 that the Co-Conservator knew about, had carpet replaced because of, yet failed to inform her about. When her husband got home, she showed it to him, and they immediately called Respondent Bailey to inform her of the issues. Respondent Bailey said she would contact the seller family (all Co-Conservators) to see what they had to say but did not call Jamie back. Two days later, Mace called Respondent Bailey again. Respondent Bailey said she spoke with the sellers whose reply was, "The Maces owns the property now, so the problem is theirs." Subsequently, the Maces hired an attorney to get their "problem" resolved. Jamie Mace relied on her agent, Respondent Bailey, to ensure proper representation to her as a buyer, but believes that Respondent Bailey failed in her due diligence to represent the Maces.

XII.

Jamie Mace said Carol Phillips, as a co-conservator, stated in court that she was at the house when the carpet was laid, which was about 10 months before the house was put on the market. The carpet had been "double laid" at the bottom of the wall to conceal the sinking foundation. Even the baseboards in the master bath were lowered to conceal the foundation issue. Also, Mace has copies of the water bills dating back to October — January 2014 going into 2015 indicating the water bills were \$400 - \$500. The major water leak is most likely the cause of the foundation issue. Mace said Carol Phillips had even received an insurance payout (because of the water leak) that paid for the carpet (sometime during or right after July 2015). This all came out in Carol Phillips' court testimony. This civil trial was held the first week of September 2019.

XIII.

Respondent Rosamond Bailey was found liable by a jury in court for violations of her duties as a real estate agent. Respondent Bailey has never submitted a copy of the court's adverse decision to the MREC nor even reported it to the Commission as required by administrative rule. Additionally, Respondent Bailey renewed her license in November of 2019, signing the renewal form on the back, acknowledging her requirement to report any adverse decisions in which she was a defendant. Nor did Respondent Gentry Hunter Brannon report this adverse decision. Damages were set at \$30,000, with the jury determining that Carol Phillips was 20% at fault, Respondent Rosamond Bailey 60% at fault, and the Maces 20% at fault.

XIV.

The above and foregoing described acts of the Respondents, Rosamond Bailey and Gentry Hunter Brannon demonstrate and constitute violations of M.C.A. §73-35-1, et seq. and §89-1-501 et seq. and particularly §73-35-21, and §§89-1-505, 511 and MREC Administrative Rules, 3.1 and 4.2, 4.3, 5. 1.B and 5. 2. C, and, in particular:

As to Respondent Rosamond Bailey:

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

- (1) (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.

§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.

§89-1-505. Limit on duties and liabilities with respect to information required or delivered

(1) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy or omission of any information delivered pursuant to Sections 89-1-501 through 89-1-523 *if the error, inaccuracy or omission was not within the personal knowledge of the transferor or that listing or selling agent*, was based on information timely provided by public agencies or by other persons providing information as specified in subsection (2) that is required to be disclosed pursuant to Sections 89-1-501 through 89-1-523, and ordinary care was exercised in obtaining and transmitting it.

§89-1-511. Disclosures to be made in good faith

Each disclosure required by Sections 89-1-501 through 89-1-523 and each act which may be performed in making the disclosure, shall be made in good faith. For purposes of Sections 89-1-501 through 89-1-523, "good faith" means honesty in fact in the conduct of the transaction.

§89-1-525. Enforcement by Mississippi Real Estate Commission

The Mississippi Real Estate Commission is authorized to enforce the provisions of Sections 89-1-501 through 89-1-523. Any violation of the provisions of Sections 89-1-501 through 89-1-523 shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, Section 73-35-1 et seq., and shall be subject to same penalties as provided in that chapter.

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 4.2 Definitions

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 4.3 Disclosure Requirements

C. Brokers operating in the capacity of disclosed dual agents must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:

(1) The seller, at the time an agreement for representation is entered into between the broker and seller, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.

(2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.

(3) The Broker must confirm that the buyer(s) understands and consents to the consensual dual agency relationship prior to the signing of an offer to purchase. The buyer shall give his/her consent by signing the MREC Dual Agency Confirmation Form which shall be attached to the offer to purchase. The Broker must confirm that the seller(s) also understands and consents to the consensual dual agency relationship prior to presenting the offer to purchase. The seller shall give his/her consent by signing the MREC Dual Agency Confirmation Form attached to the buyer's offer. The form shall remain attached to the offer to purchase regardless of the outcome of the offer to purchase.

Rule 5.1 Notifications of Complaints to the Commission

B. Every licensee shall, within ten days, notify the Real Estate Commission of any adverse court decisions in which the licensee appeared as a defendant.

As to Respondent Gentry Hunter Brannon:

Rule 3.1 General Rules

A. 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.

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 5.1 Notifications of Complaints to the Commission

C. It shall be mandatory for a responsible broker to notify the Commission if the responsible broker has reason to believe that a licensee for whom the broker is responsible has violated the Real Estate License Law or Rules and Regulations of the Commission.

DISCIPLINARY ORDER

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

As to Gentry Hunter Brannon, Broker, the Commission orders that his license incur a three (3) month suspension, held in abeyance, followed by nine (9) months of probation; contingent upon both 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 that three months of license suspension in abeyance. This order begins the day of Commission approval. Said education may be completed through Distance Education, due to Co-vid 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.

As to Rosamond Bailey, Salesperson, the Commission orders that her license incur a four (4) month full suspension, followed by eight (8) 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 that four months of license suspension. This order begins the day of Commission approval. Said education may 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 8th day of DECEMBER, 2020.

MISSISSIPPI REAL ESTATE COMMISSION



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

Agreed: *Gentry Hunter Brannon* Date: 11/25/20
Gentry Hunter Brannon, Broker

Agreed: *Rosamond Bailey* Date: 11-25-2020
Rosamond Bailey, Salesperson