

**BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION**

**MISSISSIPPI REAL ESTATE COMMISSION**

**COMPLAINANT**

**VS.**

**NO. 023-1905**

**PATRICIA ANN BURGOYNE, BROKER**

**RESPONDENT**

**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.*, as amended, on a formal Complaint against Patricia Ann Burgoyne, Broker (sometimes hereinafter "Burgoyne" or "Respondent." Prior to hearing before the Commission, the parties announced their agreement as to the allegations of the Commission Complaint and disciplinary action for Respondent, all as set forth herein. By entering into this Agreed Order, Respondent waives her rights to a hearing with full due process and for an appeal of any adverse decision which may have resulted from that hearing. Having reached an agreement on this matter, the Commission issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

**FINDINGS OF FACT**

I.

Respondent Patricia Ann Burgoyne is a Non-Resident Broker/Associate whose last known address of record with the Commission is 1021 Hwy. 90, Bay St. Louis, Mississippi 39520. Respondent Burgoyne 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 sale and transfer of real estate and

licensing of real estate brokers under Mississippi law. At all times relevant to the allegations of this Complaint, Respondent Burgoyne was the Managing Broker for Gardner Realtors, Bay St. Louis branch office and for then active Salesperson, Terri L. Townsend.

## II.

The Commission received a sworn complaint from Todd and Debbie Coffin, sometimes collectively hereinafter "Coffin." Todd Coffin complained that he had purchased some riverfront property in Pass Christian, Mississippi for the purpose of placing a camper thereon. Coffin purchased approximately 1/3 acre of property from a larger tract of improved property that was listed for sale by Salesperson Terri Townsend (currently inactive). Coffin was represented by Joseph Piernas of Exit Prestige Luxury Realty.

## III.

Coffin complained that he provided clear instructions to his agent that he desired a property upon which he could place a camper. At one point during the negotiations for the property Coffin purchased, Coffin asked his agent Piernas if he was sure Coffin would be able to place his camper on the property. Piernas responded that, according to the Seller's agent (Townsend), "yes," he would be able to place his camper on the property. The transaction closed on or about November 21, 2018. Subsequent to the closing, Townsend left Gardner Realtors and transferred her license to Exit Prestige Realty.

## IV.

Coffin complained to the Commission that, following the closing, he made inquiries to obtain electric and water services and for installation of a septic tank. Coffin then learned that there was a minimum lot requirement of one acre for the installation of a septic tank and the permits necessary for electric and water service. Coffin complained he would never have purchased the property if he had known he would not be able to install his camper with attendant utility services.

Coffin complained that he had been repeatedly assured he would be able to keep the camper on the property.

V.

Upon receipt of Coffin's complaint, the Commission initiated an investigation of the transaction. Responses to Coffin's allegations were requested from Respondent Burgoyne and Salesperson Terri Townsend. Townsend provided a response including limited documentation available to her since she was no longer an agent with Gardner Realtors where she had been licensed during the relevant period. A response and documentation, including a copy of the transaction file, was ultimately obtained from Respondent Burgoyne and Gardner Realtors.

VI.

Documents and responses from buyer's agent Piernas and Piernas' broker were obtained and reviewed by the Commission as part of a separate investigation (Commission administrative docket #22-1905). Upon thorough review of the entirety of documents and statements received by the Commission in this matter and the related investigation, the Commission investigative staff found insufficient evidence to corroborate Coffin's central allegation that he had clearly instructed or informed the agents in the transaction that he intended to *permanently* install his camper on the property, with utility services, as opposed to utilizing the property for intermittent periods for camping, as was recounted by his buyer's agent, a surveyor, and Respondents Burgoyne and Townsend herein.

VII.

Following the closing and upon learning he had not purchased enough land to permanently install his camper with utility services, Coffin made inquiries and began an effort to obtain additional land from the seller in order to complete the necessary one-acre parcel sufficient for utility services. Eventually, Coffin began communicating directly with Seller's agent, Respondent

Patricia Burgoyne with Gardner Realtors in attempts to negotiate for the additional acreage he needed. By this time, Respondent Terri Townsend (currently inactive) was no longer with Gardner Realtors.

#### VIII.

Coffin complained to the Commission that he had discussions/communications with Burgoyne in attempt to purchase the additional land. Coffin stated Burgoyne requested he provide terms for an offer for the additional land and that he did so. Coffin complained that he tried to follow up with Burgoyne several times about the status of the offer. Coffin complained that Burgoyne eventually quit responding to his inquiries.

#### IX.

Burgoyne admitted to the Commission that she had offered to write up an offer for Coffin. Copies of text messages were obtained during the Commission investigation that reflect Coffin's communications with Burgoyne about submitting the offer. The communications included Burgoyne's invitation for Coffin to submit an offer through Burgoyne, Coffin's response with his terms for the offer and a subsequent question from Burgoyne inquiring of Coffin whether he would want to seek owner financing from the seller.

#### X.

Ultimately, Coffin requested a status update from Burgoyne about his offer. Burgoyne had not submitted an offer for Coffin and only then informed him she had released the listing but had excluded Coffin from the released listing. Respondent Burgoyne has admitted the required Working with a Real Estate Broker Form reflecting the agency relationship established with Coffin in his effort to utilize Burgoyne to negotiate with the seller was never presented or executed. Failure to document and explain the agency relationship, if any, added unnecessary confusion to

the situation attendant the transaction and the relationship between Coffin and Respondent Burgoyne.

### CONCLUSIONS OF LAW

#### XI.

The Commission and Respondent agree above and foregoing described acts and omissions of Respondent Patricia Burgoyne, if proved at a Commission hearing upon clear and convincing evidence, could 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, §73-35-21(1)(n), and Commission Rules 3.1, 4.1, 4.2, and 4.3 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 full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

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(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**

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- F. Any licensee who ...fails or neglects to abide by Mississippi Real Estate Commission's Rules or Regulations shall be deemed, *prima facie*, to be guilty of improper dealing.

#### **Rule 4.1**

Consumers shall be fully informed of the agency relationships in real estate transactions identified in Section 73-35-3. This rule places specific requirements on Brokers to disclose their agency relationship. This does not abrogate the laws of agency as recognized under common law and compliance with the prescribed

disclosures will not always guarantee that a Broker has fulfilled all of his responsibilities under the common law of agency. Compliance will be necessary in order to protect licensees from impositions of sanctions against their license by the Mississippi Real Estate Commission. Special situations, where unusual facts exist or where one or more parties are especially vulnerable, could require additional disclosures not contemplated by this rule...

**Rule 4.2**

- A. "Agency" shall mean the relationship created when one person, the Principal (client), delegates to another, the agent, the right to act on his behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the principal accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations, and high standards of good faith and loyalty.
- B. "Agent" shall mean one who is authorized to act on behalf of and represent Another. A real estate broker is the agent of the principal (client) to whom a fiduciary obligation is owed...
- C. "Client" shall mean the person to whom the agent owes a fiduciary duty. It can be a seller, buyer... or both.

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- E. "Customer" shall mean that person not represented in a real estate Transaction. It may be the buyer [or] seller...
- F. "Disclosed Dual Agent" shall mean that agent representing both parties to a real estate transaction with the informed consent of both parties, with written understanding of specific duties and representation to be afforded each party. There may be situations where disclosed dual agency presents conflicts of interest that cannot be resolved without breach of duty to one party or another. Brokers who practice dual agency should do so with the utmost caution to protect consumers and themselves from inadvertent violation of demanding common law standards of disclosed dual agency.
- 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.
  - (2) 'Obedience' -the agent agrees to obey any lawful instruction from the principal in the execution of the transaction that is the subject of the agency.
  - (3) 'Disclosure' -the agent must disclose to the principal any

information the agent becomes aware of in connection with the agency.

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- (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.

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H. "First Substantive Meeting" shall be:

- (1) In a real estate transaction in which the Broker is the agent for the seller, first substantive meeting shall be before or just immediately prior to the first of any of the following:

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- (b) Eliciting confidential information from a buyer concerning the buyers' real estate needs, motivation, or financial qualifications.

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I. "Single Agency" shall mean a broker who has chosen to represent only one party to a real estate transaction. It may be either the buyer [or] seller...

**Rule 4.3**

- A. In a single agency, a broker is required to disclose, in writing, to the party for whom the broker is an agent in a real estate transaction that the broker is the agent of the party. The written disclosure must be made before the time an agreement for representation is entered into between the broker and the party. This shall be on an MREC Agency Disclosure Form.
- B. In a single agency, a real estate broker is required to disclose, in writing, to the party for whom the broker is not an agent, that the broker is an agent of another party in the transaction. The written disclosure shall be made at the time of the first substantive meeting with the party for whom the broker is not an agent. This shall be on an MREC Agency Disclosure Form.
- C. Brokers operating in the capacity of disclosed dual agent must obtain the 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...
- (2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual

agency...

- (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 Broker must confirm that the seller(s) also understands and consents to the consensual dual agency relationship prior to presenting thee offer to purchase...
- D. In the event the agency relationship changes between the parties to a real estate transaction, new disclosure forms will be acknowledged by all parties involved.

### DISCIPLINARY ORDER

Upon agreement and consent of Respondent as to disciplinary terms and disposition of this matter in lieu of a hearing before the Commission and, having issued its Findings of Fact and Conclusions of Law, the Commission hereby issues its Disciplinary Order as follows:

1. The license of Respondent Patricia Ann Burgoyne shall be suspended for a period of forty-five (45) days.
2. Following the period of suspension, the license of Respondent Burgoyne shall be suspended for a period of forty-five (45) days, held in abeyance. During the period of suspension in abeyance, Respondent Burgoyne will be permitted to practice real estate in the State of Mississippi insofar as she complies with all statutes, rules and regulations governing the practice of real estate in Mississippi and with all other terms of this Agreed Order.
3. Following the period of suspension in abeyance, the license of Respondent Burgoyne shall be on probation for a period of nine (9) months.
4. Within ninety (90) days following the effective date of this Agreed Order, Respondent Burgoyne shall complete eight (8) hours of mandatory continuing education: four (4) hours Agency; two (2) hours Contract Law; and two (2) hours License Law. All courses shall be approved by the Commission prior to being taken and must be administered by a Commission approved continuing education provider. The mandatory continuing education hours shall be in



addition to any hours required for renewal of Respondent Burgoyne's license and shall not be the same continuing education course from the same course provider previously completed for renewal of Respondent's license during the last renewal period. Respondent shall furnish to the Commission written evidence of the satisfactory completion of the required courses.

5. This Agreed Order shall be effective upon execution by the Commission.

THIS, the 8<sup>th</sup> day of SEPTEMBER, 2020.



MISSISSIPPI REAL ESTATE COMMISSION

BY:

Robert E. Praytor  
ROBERT E. PRAYTOR, Administrator

AGREED:

Patricia Ann Burgoyne DATE: Sept. 03/2020  
PATRICIA ANN BURGOYNE