

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 063-1810

TASHIA D. MCGINN, PRINCIPAL BROKER and
CHARLOTTE DISTEFANO, 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.*, as amended, on a formal Complaint brought against Tashia D. McGinn, Principal Broker, and Charlotte Distefano, Salesperson. Prior to hearing before the Commission, the parties announced their respective agreements as to the allegations of the Commission Complaint and disciplinary actions for Respondents, all as set forth herein. By entering into this Agreed Order, Respondents waive their rights to a hearing with full due process and the rights to appeal any adverse decisions which may have resulted from that hearing. Having reached individual agreements on this matter, the Commission issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

I.

Respondent Tashia D. McGinn, Broker, sometimes hereinafter "Respondent" or "McGinn" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2598 Pass Rd., Suite B, Biloxi, Mississippi 39531. Respondent McGinn 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 relevant times to this Complaint, Respondent McGinn was the Principal Broker for Salesperson Charlotte Distefano.

II.

Respondent Charlotte Distefano, Salesperson, sometimes hereinafter "Respondent" or "Distefano," is an adult resident citizen of Mississippi whose last known address of record with the Commission is 2598 Pass Rd., Suite B, Biloxi, Mississippi 39531. Respondent Distefano is the holder of a real estate salesperson'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 salespersons under Mississippi law.

III.

On or about October 6, 2018, the Commission received a sworn statement of complaint from Brent & Kim Robin, sometimes hereinafter "Complainant" or "the Robins." The Robins complained that Distefano represented them during the purchase of their home located at 14603 Old Mossy Trail in Gulfport, Mississippi. The Robins closed on their home in August, 2017 and complained they had provided a list of repairs/items to be completed to their agent Distefano. The list was to be forwarded to the builder of the home for completion. The Robins complained that Distefano had informed them they had one year to have items repaired/completed.

IV.

The Robins claimed that certain of the items were not completed by the time of closing. Thereafter, the Robins learned that the list of items they provided to Distefano apparently did not correspond to the list of items submitted to the builder. The Robins claimed that the builder refused certain repairs and denied being informed of others.

V.

Of additional concern to the Robins, the contract for the purchase of the property included a "special provision" reflecting "Home Warranty Included" and the Robins claim that home warranty was explained by Distefano as an item the seller was including for the Robins as an item of negotiation in the sales transaction. Documents obtained during the Commission show that a home warranty was indeed included as a provision of the contract, and discussed between agents during the transaction, but same was not in fact provided. The closing documents reflect no such home warranty was purchased for the Robins. The Robins relied on their agent Distefano to assure that the home warranty be provided as per the contract.

VI.

The Robins claim that their efforts to communicate their concerns to Distefano after closing were difficult. During at least one conversation with Distefano, the Robins claim that Distefano stated or implied the Robins should have used the home inspector she would have selected and to whom she referred as "her guy." In response to the Robins' concerns relayed to Distefano after closing, the Robins claim Distefano was quick to point out they had not used her preferred home inspector and the matter was out of her hands. In one communication from Distefano obtained during the Commission investigation, the Robins were informed by Distefano that they should correspond directly with the builder going forward since the transaction had been "processed and closed." Distefano informed the Robins the matter was then "outside [her] scope of involvement."

VII.

The Commission and Respondents agree the above and foregoing described acts and omissions of Respondents 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 3.1A and 4.2G (1), (2) and (5), 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:

(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... or improper dealing...

Rule 3.1 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 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.
- (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.

- (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.

DISCIPLINARY ORDER

Upon agreement and consent of Respondents 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:

AS TO TASHIA D. MCGINN, PRINCIPAL BROKER:

1. The license of Respondent Tashia D. McGinn shall be suspended for one (1) month, held in abeyance. During the period of suspension in abeyance, Respondent McGinn 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.
2. Following the period of suspension in abeyance, the license of Respondent McGinn shall be on probation for a period of five (5) months.
3. During the period of suspension in abeyance, Respondent McGinn 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 in a classroom setting. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent McGinn'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.
4. This Agreed Order shall be effective as to Respondent McGinn upon execution by the Commission.

AS TO CHARLOTTE DISTEFANO, SALESPERSON:

1. The license of Respondent Charlotte Distefano shall be suspended for three (3) months, held in abeyance.
2. Following the period of suspension in abeyance, the license of Respondent Distefano shall be on probation for a period of three (3) months.
3. During the period of suspension, Respondent Distefano 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 in a classroom setting. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent Distefano'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.
4. This Agreed Order shall be effective as to Respondent Distefano upon execution by the Commission.

THIS the 11th day of FEBRUARY 2020.

MISSISSIPPI REAL ESTATE COMMISSION

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

AGREED:

Tashia D. McGinn
TASHIA D. MCGINN

DATE 2/6/20

Charlotte Distefano
CHARLOTTE DISTEFANO

DATE 2/6/2020

