

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

vs.

NO. 78-1911

TEENA TERRY-WILSON, Salesperson

MARIE EVANS, Principal Broker

and

MARY KATHERINE (KATIE) WARREN, Salesperson

STUART WARREN, Principal 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 the complaint against Stuart Warren, Broker, and Mary Katherine Warren, Salesperson and others. The Commission was advised that there has been an agreement reached with Stuart Warren, Broker, and Mary Katherine Warren, Salesperson resolving their issues brought forward 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, Teena Terry-Wilson, sometimes hereinafter called "Respondent Terry-Wilson", is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 3900 Lakewood Dr., Ste 101, Flowood, MS 39232 (Dorsey-Evans Realty). Respondent Terry-Wilson 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 brokers under Mississippi law and the

administrative rules of the Mississippi Real Estate Commission. Respondent Terry-Wilson's Principal Broker at the time of this complaint was Respondent Marie Evans.

Respondent, Marie Evans, sometimes hereinafter called "Respondent Evans", is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 3900 Lakewood Dr., Ste. 101, Flowood, MS 39232. Respondent Evans holds a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and is the Principal Broker for Dorsey-Evans Realty. She is subject to the provisions, rules, regulations and statutes governing real estate brokers under Miss. law and the MS Real Estate Commission.

II.

Respondent, Mary Katherine Warren, sometimes hereinafter called "Respondent Katie", is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 113 Executive Dr., Ste. C, Madison, MS 39110 (Turn Key Properties). Respondent Katie 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 brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission. Respondent Katie's Principal Broker at the time of this complaint was Respondent Stuart Warren.

Respondent, Stuart Warren, sometimes hereinafter called "Respondent Warren", is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 113 Executive Dr., Ste. C, Madison, MS 39110. Respondent Warren holds a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and is the Principal Broker for Turn Key Properties. He is subject to the provisions, rules, regulations and statutes governing real estate brokers under Miss. law and the MS Real Estate Commission.

III.

On 10/25/2019, the Commission received a sworn statement of complaint from Willie Freeman regarding his purchase of a home on Harvey Circle in Canton, MS. His agent for this transaction was Respondent Teena Terry-Wilson of Dorsey-Evans Realty. Representing the Seller was Respondent Mary Katherine (Katie) Warren of Turn Key Properties.

IV.

Freeman's complaint states that on 9/2/19 he entered into an agreement to purchase a property located at 147 Harvey Circle in Canton, MS. Freeman's basic complaint is that his agent, Respondent Terry-Wilson, was not looking out for his best interest and that she failed in her fiduciary obligations to him as her client. According to Freeman's complaint, the asking price for this home was \$199,000 but the price was negotiated to \$200,000 to allow for the seller to pay \$2500 for some agreed-upon repairs and that was the only reason he agreed to purchase this property. Freeman stated that some repair costs were to be paid after closing from funds that were to be available to him after closing, as a contractual allowance by the Seller.

V.

At closing, Freeman reviewed the closing documents and noticed that there were changes made to the contract that he wasn't aware of and didn't agree with, and he initially refused to sign. Freeman said the changes were apparently made by the seller's agent, Respondent Katie, and that this information was not made known to him by his agent, Respondent Terry-Wilson. Freeman further said that all he wanted was for the seller to compensate the contractor for repairs that both he and the seller had originally agreed to in the sales contract. Mr. Freeman eventually did close on this property, reluctantly.

VI.

Respondent Terry-Wilson's response to the Commission stated that Willie Freeman's offer was negotiated to include repair costs for flooring, paint and tile repairs. On 10/10/19, Respondent Terry-Wilson said she received a phone call from Monica Michael at the mortgage company and was advised that the underwriting office had requested that the contract wording regarding a wall mounted TV reflect that the TV remained at the property and that it had "no value". Monica Michael texted Respondent Terry-Wilson about that wording change being added by an addendum and Respondent Terry-Wilson responded "yes".

VII.

Respondent Terry-Wilson said that a short time later that same day, she received another text message from Monica Michael stating that underwriting wanted to have the closing extension date added and "allowance removed". Ms. Michael asked Respondent Terry-Wilson if she wanted to draft the addendum or would she rather have Respondent Katie write it. Respondent Terry-Wilson replied that she was okay to have the seller's agent, Respondent Katie, write the addendum. Respondent Terry-Wilson added that Monica only explained that the contract needed to indicate that the seller is leaving the TV and that it has "no value". Respondent Terry-Wilson said it was never discussed with her or her client/buyer that the \$2,500 repair cost allowance was being removed from the deal. However, the text message from the lender employee clearly states, "remove allowance" and this same text message thread was sent on to Respondent Katie. At the closing on October 15, 2019, Respondent Terry-Wilson said she found out that the seller had closed earlier on 10/12/19. Respondent Terry-Wilson asked the closing attorney, Bobby Coleman, about the check for repairs. Attorney Coleman said he knew nothing about a check for repairs. However, Respondent Terry-Wilson said that Monica Michael said she had sent it over with the original contract. The closing attorney said to just send him a

copy of the addendum and he would take care of it. The next day, however, he emailed Respondent Terry-Wilson, stating that Respondent Katie had advised him that the \$2,500 was no longer in the contract, after Respondent Katie had communicated with Monica Michael. Respondent Terry-Wilson said Respondent Katie never told her that the \$2,500 allowance had been removed and did not send her the revised addendum for her client to sign.

VIII.

After interviews with these Respondents and review of emails and text messages sent in by those agents, the investigation determined that poor communication between the agents and the lending office employee led to a condition of the contract, that the seller would pay up to \$2500 in repairs, being deleted from the contract. It appears it was just a wording problem, as the use of the word "allowance" was deemed by the lender to be a selling concession, which lending guidelines would not allow. Respondent Terry-Wilson, working full-time outside of real estate, acquiesced to Respondent Katie writing the final addendum, leaving Respondent Katie to decipher the terse and vague text messages from the mortgage lender employee about the allowance provision. Fatal to this process, however, was that Respondent Katie did not send the final addendum to Respondent Terry-Wilson for review and signature by the buyer, Freeman. Instead, Respondent Katie let the mortgage employee direct her to email the addendum to the lender, relying on the lender to inform Freeman, the buyer. Respondent Katie did not include Respondent Terry-Wilson on this email transmission of the addendum. The lender employee admittedly never conveyed it to the buyer or his agent, Respondent Terry-Wilson. Consequently, the final addendum was not seen by the buyer until closing. However, Respondent Terry-Wilson knew that there was an addendum to review before closing but never followed up with anyone to see it before closing. Respondent Terry-Wilson did receive the CD before the closing and should have noticed that there was no \$2500 itemization for her client.

IX.

Both Respondent brokers were directed, by Commission letter of Nov. 03, 2019, to provide”a signed notarized affidavit indicating that, to the best of their knowledge, they were submitting copies of any/all documentation associated with the real estate activities outlined above and enumerated in the complaint...”. Respondents Terry-Wilson and Evans did not provide a property condition statement (PCDS) or a broker agency (WWREB) form. Additionally, Respondent Evans answered to the Commission that she was out of the country when this event transpired, apparently asserting that she therefore bears no accountability for supervision in this matter. However, her documents reveal that she was receiving text messages and phone calls while overseas. On the PCDS that Respondent Katie provided, there were a few blanks as to items of material significance and there is no evidence of Respondent Terry-Wilson protecting her client by getting that missing information. Licensees owe a duty to their clients to review such documents for completeness. Obtaining the most relevant and truthful information as possible in deciding to buy a home is a paramount concern of the client, and so a major duty of every salesperson and broker. 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. Further, it is the duty of the responsible broker to exercise supervision of the real estate activities for every salesperson operating his/her broker license.

IX.

The above and foregoing described acts of the Respondents, Teena Terry-Wilson and Marie Evans as well as Respondents Mary Katherine (Katie) Warren and Stuart Warren demonstrate and constitute violations of M.C.A. § 73-35-1, et seq. and § 73-35-21, §§ 89-1-501 through 89-1-523 and MREC Administrative Rules 3.1, 4.1, 4.2, and 4.3, and in particular:

As to Respondents Teena Terry-Wilson and Mary Katherine (Katie) Warren:

§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.

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 4.1 Purpose

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 involved are especially vulnerable, could require additional disclosures not contemplated by this rule. In such cases, Brokers should seek legal advice prior to entering into an agency relationship.

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.

H. "First Substantive Meeting" shall be:

- (3) In a real estate transaction in which the Broker is the agent for the buyer, first substantive meeting shall be at the initial contact with a seller or a seller's agent or before or just immediately prior to the first of any of the following:

- (a) Showing the property of a seller to a represented buyer.
- (b) Eliciting confidential information from a buyer concerning the buyers' real estate needs, motivation, or financial qualifications.
- (c) The execution of any agreements governed by Section 73-35-3 of the Miss. Code of 1972 Annotated.

Rule 4.3 Disclosure Requirements

- 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. (WWREB)

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

- (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.

§89-1-525. 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.

As to Respondents Marie Evans and Stuart Warren:

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.
- 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.

DISCIPLINARY ORDER

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

As to Stuart Warren, Broker, the Commission orders that his license incur a one (1) month suspension, held in abeyance, followed by five (5) 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 thirty (30) days held in abeyance. This order begins the day of Commission approval. Said education may be completed through Distance Education, in light of COVID restrictions. Further, these classes must 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 his last renewal period. Evidence of completion of these classes is to be provided to this Commission.

As to Mary Katherine Warren, Salesperson, the Commission orders that her license incur a one (1) month full suspension, followed by five (5) months of probation, 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 thirty (30) days of full suspension. This order begins upon Commission approval. Said education may be completed in through Distance Education, in light of COVID 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 her last renewal period. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the 8TH day of DECEMBER, 2020.

MISSISSIPPI REAL ESTATE COMMISSION



BY:

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

Agreed: Stuart Warren

Stuart Warren, Broker

DATE: 12-2-20

Agreed: Mary Katherine Warren

Mary Katherine Warren, Salesperson

DATE: 12-2-20