BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION **COMPLAINANT**

VS. **NO. 011-1902**

GLENN M. GARDNER, PRINCIPAL BROKER, PATRICIA ANN BURGOYNE, BROKER, AND BRANDON RAY HODA, 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 against Glenn M. Gardner, Principal Broker, Patricia Ann Burgoyne, Broker, and Brandon Ray Hoda, Salesperson. Prior to the hearing before the Commission, the parties announced their respective agreements as to the allegations of the Complaint and any disciplinary actions. Respondents Glenn M. Gardner and Patricia Ann Burgoyne were each issued a Formal Letter of Reprimand documented separately from this Agreed Order. By entering into this Agreed Order, Respondent Brandon Ray Hoda waives his right to a hearing with full due process and the right to appeal 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 Glenn M. Gardner, sometimes hereinafter "Respondent" or "Gardner," is a Non-Resident Broker whose last known address of record with the Commission is 3332 Woodlawn Avenue, Metairie, Louisiana. 70006. Respondent Gardner 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, he 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 Gardner was the Principal Broker for Gardner Realtors, and for Salesperson, Brandon Ray Hoda.

II.

Respondent Patricia Ann Burgoyne, sometimes hereinafter "Respondent" or "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, Gulfport branch office and for Salesperson, Brandon Ray Hoda.

III.

Respondent Brandon Ray Hoda, sometimes hereinafter "Respondent" or "Hoda," is a Mississippi resident Salesperson whose last known address of record with the Commission is 2635 Pass Rd., Suite B, Biloxi, Mississippi. 39531. Respondent Hoda 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, he 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. At all times relevant to the allegations of this Complaint, Respondent Hoda was a salesperson for Gardner Realtors, Gulfport branch office.

IV.

On or about October 30, 2018, the Commission received a sworn statement of Complaint from Vera Sue Smith, sometimes hereinafter "Complainant" or "Smith." Smith had listed her property located at 17408 Carlton Cuevas Rd., Gulfport, Mississippi with Hoda. The property included approximately 1.16 acres and a mobile home.

V.

Smith complained, in essence, that Hoda had coerced her into relinquishing the net proceeds from the sale of her property wherein Hoda had also represented the buyer, Harris, in a dual agency representation. Smith's complaint primarily concerned a dispute and/or uncertainty regarding an easement necessary for ingress/egress to/from Smith's property which uncertainty caused a first scheduled closing with the buyer Harris to be cancelled and Harris' earnest money to be returned. Upon listing Smith's property, Smith and Hoda

had executed the Working With Real Estate Broker form (WWREB) wherein Hoda was designated only as "Seller's Agent" for Smith. Ultimately, a second contract was formed between Smith and Harris and the sale to Harris was consummated in a transaction wherein Smith paid to Harris at closing what would have been her net proceeds, $26,156.62, for "future easement developments."

VI.

In discussions about the uncertainty of the easement issue, Smith claimed Hoda assured her that relinquishing her net sale proceeds should keep problems about the easement "from coming back on Smith." Smith was elderly, had recently been widowed, and needed to relocate to be near her daughter in Louisiana. Smith claimed Hoda was informed she needed to net something from the proceeds of the sale as her recently deceased husband had no life insurance or burial insurance, leaving her with Social Security as her sole income. Smith claimed that Hoda had assured her at different times she would "get what was owed to her" after the sale. Smith claimed she did not understand she would get no proceeds whatsoever from the sale until being so informed by the closing attorney.

VII.

During the Commission investigation, responses and documents were received from Hoda and Gardner Realtors (through Broker David Bourdette who had replaced Respondent Burgoyne as Managing Broker). Before the initial, failed closing, Hoda received information that the driveway used to access Smith's property was located on the property of Dawn Lockhart, owner of adjacent property. Lockhart made it known that she

would not allow the prospective buyer, Harris, to use the driveway on Lockhart's property necessary to access the Smith property. Smith relayed her belief there was an existing easement for ingress/egress but did not know the exact location of the easement. In discussions with Smith, her daughter McCabe, and Lockhart, Hoda learned there were personal issues between Smith and Lockhart. Smith knew of a prior survey of the property which had been secured by her recently deceased husband but was apparently unable to locate the survey or contact the prior surveyor who had completed the survey. Discussions occurred between Smith and Hoda about having a new survey completed to determine the location of any easement.

VIII.

Several days after the first closing was cancelled and the transaction was effectively dead, Hoda contacted Smith and informed her the prospective buyer Harris wanted to make another offer. Smith learned that Hoda had been in contact with the neighbor, Lockhart, regarding the issue of the location of the easement and negotiations for Harris to purchase some additional land from Lockhart adjacent to Smith's property. A new survey had not been completed but Hoda represented that Harris wanted to move forward anyway.

IX.

Evidence obtained during the Commission investigation reflect that Hoda negotiated with Lockhart on behalf of the buyer Harris prior to bringing a second offer to seller Smith that would include Smith relinquishing her $26,156.62 net proceeds of the sale in order to provide Harris funds for "future easement developments." Hoda had secured an agreement with Lockhart whereby Lockhart would allow the buyer Harris access to the

existing driveway to Smith's property if she was able to sell her own adjacent property for $25,000.00. On June 3, 2018, Lockhart executed a listing agreement for her property adjacent to Smith's property with a listing price of $25,000.00. Simultaneously, Lockhart and Hoda executed the required Working With Real Estate Broker form (WWREB) wherein Hoda was designated only as "Seller's Agent" for Lockhart.

X.

In responses and documentation submitted by Respondent Hoda during the Commission investigation, it was established that Hoda had been instructed by the buyer Harris, after the first transaction with Smith had failed, that Harris wanted to make offers for both Smith's and Lockhart's properties. The same day that Hoda obtained the listing for Lockhart's property, June 3, 2018, Hoda brought an offer for Harris to purchase Lockhart's property for $25,000.00 and the second offer to Smith for purchase of Smith's property wherein Smith would be required to relinquish her net proceeds from the sale for "future easement developments." Both Smith and Lockhart accepted the respective offers from Harris the same day, June 3. Closings on the Smith and Lockhart transactions occurred back-to-back on June 13, 2018.

XI.

While both Smith and Lockhart signed Dual Agency Confirmation forms on the June 3, 2018 date that their respective contracts were executed, the respective WWREB forms were marked as designating Hoda as Seller's Agent for each while the WWREB form for buyer Harris, also dated June 3, reflected Hoda as Buyer's Agent and Disclosed Dual Agent. Hoda never prepared a new WWREB form for his representation of Smith

although he had been working on behalf of Harris to negotiate toward the sales of the Smith and Lockhart properties separately. The WWREB form for Lockhart designating Hoda as Seller's Agent was also executed on June 3, as were the Lockhart listing agreement and contract for purchase by Harris, despite Hoda having negotiated with Lockhart, on behalf of Harris, extensively prior to that date. Respondent Brandon Hoda could not properly represent two different and adversarial sellers in dual agency representation, with a single buyer, for adjacent properties with a common/intertwined easement issue.

CONCLUSIONS OF LAW

XII.

The Commission and Respondent Brandon Ray Hoda agree the above and foregoing acts and omissions of Respondent Hoda 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, Miss. Code Ann. §73-35-11, §73-35-21(1)(a), (b), (c), and (n), and 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 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:

(a) Making any substantial misrepresentation in connection with a real estate transaction;

(b) Making any false promises of a character likely to influence, persuade or induce;

(c) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons…;

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(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 3.1F Any licensee …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 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 imposition 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 4.2A "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.

Rule 4.2F "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 the 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 disclosed 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.

Rule 4.2G "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.

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(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.

Rule 4.3C 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…

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(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 4.3D 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 Brandon Ray Hoda 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 Brandon Ray Hoda shall be suspended for three (3) months (ninety days).
2. Following the period of suspension, the license of Respondent shall be suspended for three (3) months (ninety days), held in abeyance. During the period of suspension in abeyance, Respondent Hoda will be permitted to practice real estate in the State of Mississippi insofar as he 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 Hoda shall be on probation for a period of six (6) months (one hundred eighty days).
4. During the period of suspension, Respondent Hoda 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 must be

approved by the Commission prior to being taken. The mandatory continuing education hours must be taken in a traditional classroom, or virtual classroom setting, and may not be the same course from the same provider previously completed for renewal of Respondent's license during the last two (2) renewal periods. These mandatory continuing education hours are in addition to any hours necessary for renewal of Respondent's license. 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 13th day of OCTOBER, 2020.

MISSISSIPPI REAL ESTATE COMMISSION

BY: _____
ROBERT E. PRAYTOR, Administrator

AGREED:

Brandon Ray Hoda DATE: 9-28-2020
BRANDON RAY HODA