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BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 94-2105

WALTER KELLEY, Jr., PRINCIPAL BROKER

RESPONDENT

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 Walter Kelley, Jr., non-resident Broker, and the Commission was advised that there has been an agreement reached with this Respondent resolving the issues brought forward in this complaint. By entering into this Agreed Order, this Respondent waive his right to a full hearing and his right to appeal to a circuit court. The Commission, then, does hereby find and order the following:

I.

Respondent Walter Kelley, Jr., sometimes hereinafter called "Respondent Kelley," is an adult resident citizen of Alabama, whose last known company address of record with the Commission is 4274 Cahaba Heights Ct., Suite 200, Birmingham, AL 35243. Respondent Kelley is the principal broker of ARC Realty, LLC in Mississippi, and 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. As such, he is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. At the time of the incidents described herein, he is the only Mississippi licensed agent working in this brokerage.

II.

On July 2, 2019, Respondent Kelley submitted an application for a company license for ARC Realty, LLC, representing himself to be either an officer, owner, co-owner, partner, or member when, in fact, Respondent Kelley was neither. The sole member and only person listed with the MS Secretary of State's office was a person named Beth Lamey, with an address in Gulfport, MS. The company address was listed on the real estate application by Respondent Kelley as being in Birmingham, AL. The next year, ARC Realty's certificate of registration was revoked by the Mississippi Secretary of State. Notwithstanding such, and contrary to Mississippi law, Respondent Kelley continued to operate ARC Realty, LLC in Mississippi.

III.

On or about May 05, 2021, it was reported to the Commission that Respondent Kelley had been advertising, through Loopnet, a commercial building located at 813 W. Park Avenue in Greenwood, MS without displaying the company office number in the advertisement. Subsequent inquiry confirmed this issue and, upon talking with the Respondent, he acknowledged such.

IV.

Subsequent emails to Respondent Kelley contained queries about this matter that went unanswered. Instead, Respondent Kelley brought up other related matters. As a result of the inquiry, two proposed informal resolutions were issued with directions for Respondent Kelley to respond. Respondent Kelley did not respond to either resolution offer. In addition to the requirement of Commission Rule 3.1F., on March 6th, 2019, Respondent Kelley executed an affidavit supplemental to his license application in which he 3) "also agree(d) to cooperate with any investigation by the Commission of my real estate activities involving possible violations of the Mississippi license law."

V.

The above and foregoing described acts and omissions of this Respondent constitutes violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, §§73-35-1, *et seq.*, Miss. Code Ann., and the Rules and Regulations of the Commission, and, more specifically, §73-35-1, §73-35-15, §73-35-21(1)(n) and Commission Rules 3.1 and 3.3 which provide, in parts:

§73-35-1. Citation of chapter; license requirement This chapter shall be known, and may be cited, as "the Real Estate Brokers License Law of 1954"; and from and after May 6, 1954, it shall be unlawful for any person, partnership, association or corporation to engage in or carry on, directly or indirectly, or to advertise or to hold himself, itself or themselves out as engaging in or carrying on the business, or act in the capacity of, a real estate broker, or a real estate salesperson, within this state, without first obtaining a license as a real estate broker or real estate salesperson as provided for in this chapter.

§73-35-6. Licenses for business entities

A corporation, partnership, company or association shall be granted a license when individual broker's licenses have been issued to every member, owner, partner or officer of such partnership, company, association or corporation who actively participates in its brokerage business and when any required fee is paid.

§73-35-15. Location of business and responsible broker to be designated

(1) Every person, partnership, association or corporation licensed as a real estate broker shall be required to *have and maintain a definite place of business*, which shall be a room either in his home or an office elsewhere, to be used for the transaction of real estate business, or such business and any allied business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker shall be prominently displayed in said office. The said

place of business shall be designated in the license. In case of removal from the designated address, the licensee shall make application to the commission before removal, or within ten (10) days after removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period.

§73-35-21(1)(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 General Rules

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 3.3 Advertising

A. "Advertising" means the use of any oral, written, visual, printed or electronically generated advertisement by a real estate licensee or other person on behalf of a real estate licensee. "Advertisement" means any oral, written, visual, printed or electronic media advertisement and encompasses any correspondence, mailing, newsletter, brochure, business card, for sale or for lease signage or sign rider, promotional items, automobile signage, telephone directory listing, radio and television broadcasts, telephone solicitation and electronic media to include e-mails, text messaging, public blogs, social media networking websites, and/or *internet displays*.

B. A broker shall advertise in the name in which the license is issued. A broker may use a descriptive term after the broker's name to indicate the occupation in which engaged, for example, "realty", "real estate" or "property management". If advertising in any other form, a partnership, trade name, association, company or corporation license must be obtained prior to advertising in that manner. All advertising must be under the direct supervision and in the name of the Principal Broker or in the name of the real estate Brokerage Firm and must prominently display the name of the Principal Broker or the name of the Brokerage Firm in such a manner that it is conspicuous, discernible and easily identifiable by a member of the public. Principal Brokers are required to verify and determine that their name or the name of the Brokerage Firm is prominently displayed on all advertising and that the name of any real estate licensee or any approved real estate Team or Group is situated near the name of the Brokerage Firm. The Broker or the Brokerage Firm must be

identified by using the same size or larger print as that of a Licensee or a Team in all advertising. All advertising must include the telephone number of the Principal Broker or the Brokerage Firm.

DISCIPLINARY ORDER

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

As to Walter Kelley, Jr., Broker, the Commission orders that his license incur a two (2) month suspension, held in abeyance, and followed by ten (10) 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 the month of September, 2021. Said education may be completed online, because of Covid restrictions, but will not be the same classes from the same provider as those used by this Respondent in his last renewal period. Further, these classes will be courses already approved by this Commission and be in addition to the regular hours of continuing education already required of licensees for license renewal. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the 12th day of October, 2021.

MISSISSIPPI REAL ESTATE COMMISSION



BY:

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

AGREED:

Walter Kelley, Jr.
Walter Kelley, Jr., Broker

DATE:

8-11-21