

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 029-1905

**ANGELA LASTER, PRINCIPAL BROKER
SHARON (SHERI) LIPSEY, SALESPERSON
JULIA FIELD, SALESPERSON
MICHAEL E. DAVIS, 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 a Complaint against Sharon Lipsey, Salesperson, and others, and the Commission was advised that there has been an agreement reached resolving the issues as to her in this complaint. By entering into this Agreed Order, this Respondent waive her right to a full hearing and her right to appeal to a circuit court. The Commission, then, does hereby FIND and ORDER the following:

I.

Respondent Angela Laster, sometimes hereinafter "Respondent Laster," is an adult resident citizen of MS, whose last known office address of record with the Commission is 6780 Hwy 45 No., Columbus, MS 39705. Respondent Laster is the principal broker with Real Living Hearts and Home Realty in Columbus, MS 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, 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. Respondent Laster was, during the events of this complaint, the responsible broker for Respondent Sharon (Sheri) Lipsey.

II.

Respondent Sharon (Sheri) Lipsey, sometimes hereinafter "Respondent Lipsey," is an adult resident citizen of MS, whose last known office address of record with the Commission is now 101 S. Lafayette St., Ste. 25, Starkville, MS 39759. Respondent Lipsey 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 so she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate salespersons under Mississippi law.

III.

Respondent Julia Field, sometimes hereinafter "Respondent Field," is an adult resident citizen of MS, whose last known office address of record with the Commission is 698 Leigh Dr., Columbus, MS 39705 (Re/Max Partners/Traditions Realty). Respondent Field 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 so she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate salespersons under Mississippi law. Respondent Field was the agent for the Buyers/Complainants.

IV.

Respondent Michael E. Davis, sometimes hereinafter "Respondent Davis," is an adult resident citizen of MS, whose last known office address of record with the Commission is 698 Leigh Dr. Columbus, MS 39705. Respondent Davis is the principal broker with Re/Max Partners/Traditions Realty in Columbus, MS 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 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. Respondent Davis was, during the events of this complaint, the responsible broker for Respondent Julia Field.

V.

The Commission received a sworn complaint from Jeremy and Andrea Heironimus alleging that Salesperson Sheri Lipsey and Broker Angela Laster committed substantial misrepresentations in the negotiations and sale of a property, located at 2156 Jess Lyons Road in Columbus, MS, and that the respondents failed to deliver proper documentation to the complainants about repairs being successfully completed timely and that misinformation caused the complainants to seek two (2) extensions of the closing and the services of legal counsel in order to finalize the transaction. The complaint further alleges that due to these misrepresentations, they incurred financial harm and assert that the Respondents acted in either bad faith, negligence or improper dealing.

VI.

The Complainants purchased a home located at 2156 Jess Lyons Road in Columbus, MS. The deal finally closed on 4/18/19. The transaction was complicated and delayed by the Listing Agent, Respondent Lipsey, then with Real Living Hearts & Home Realty, in that Respondent Lipsey assured the buyer's agent, Respondent Field, that certain repairs would be timely done. When requested for repair updates by agent Field, Respondent Lipsey did not respond, nor would she produce receipts for repairs that were to be done. The Complainants were told by their agent, Respondent Field, to overlook the fact that the sellers would not uphold their end of the contract as to the allocation of costs. They also complained that the listing agent, Respondent Lipsey, would say that basic repairs required for a VA loan were not needed, such as unprotected external electrical wires that the home inspector suggested should put in conduit. The Complainants stated that this was contrary to the addendum agreement for repairs. Due to the repair delays, the appraiser was required to re-inspect the property on 4/11/19, at an additional cost to the Complainants, and the 5-day window required by the lender for review and closing disclosure issuance forced another extension from 4/15/19 to 4/18/19 for the closing date.

The Complainants claim that because of the writing of the contract on the part of Respondent Lipsey, signed by both parties, the sellers misunderstood what costs they agreed to pay. The contract was negotiated as the "Sellers to split closing costs 50/50". A dispute arose between the agents as to what "closing costs" meant versus what "pre-paid" costs meant. Respondent Lipsey believed that "pre-paid" costs were different from "closing costs" and so her client was only responsible for paying those costs "paid out of closing". Consequently, there became an ongoing dispute over the Seller's share of responsibility for paying costs. From the resulting Commission investigation, it became readily apparent that Respondent Lipsey did not have an appropriate knowledge or understanding of what constitutes closing costs and industry terms used to describe different closing costs. Nor did the investigation reveal the Respondent Lipsey ever sought help from her then broker, Respondent Laster, for clarification but did instead seek clarification from the closing office about what constitutes closing costs. Lipsey responded to the Commission that the seller instructed her to write the counteroffer to say, "Seller to split closing costs 50/50", which was in reference to the buyer's agent, Julia Field, entry on line 13 of the sales contract, \$4,950. Line 17 of the counteroffer states, "All other terms shall remain the same as stated in offer and any prior counter offers not in conflict herewith". Line 13 of the original contract did not change, therefore, Lipsey asserted, the seller only agreed to pay \$2,475. Respondent said the seller never agreed to pay any "pre-paid" costs, which Respondent Lipsey claimed is separate from closing costs. Because the seller wanted to see the closing disclosure statement to see how much cost he was being allocated at closing, the seller advised Respondent Lipsey not to sign the extension extending the closing date from 4/15/19 to 4/17/19. However, the closing attorney, the lender, and the buyer's attorney all interpreted this contract language as being the Seller responsible for 50% of all costs to close, which included the buyer's "pre-paid" costs. Respondent Field never sought clarity or intervention on this from her broker.

VIII.

Following the closing not occurring on the second agreed date of April 15th, Respondent Lipsey put the house back on the market, which was discovered by the Complainants via a notification from Zillow. While consulting with their agent, Respondent Field, to sign closing documents, it was discovered that the extension document for April 15th was not signed by the Sellers. The Complainants were informed by Respondents Lipsey and Laster that they no longer had a contract. The lender had completed everything but the wire transfer for closing, which the lender could not do because the sellers did not return the deed and the Power of Attorney documents to the closing attorney. The Complainants said that Respondent Lipsey had these 2 documents in her possession but refused to submit them to the closing attorney, causing delay. Respondent Lipsey admitted to such, saying that it was her client's instructions not to deliver the documents to the closing attorney until her clients received the closing disclosure. Complainants were forced to seek legal advice from an attorney, selecting to have him write a letter to the sellers rather than just walk away from the transaction. It was only at this point that Respondent Davis became involved in saving this transaction. It was conveyed in the addendum presented on the actual closing date that the sellers would only agree to the sale if their portion of costs was not over \$2,475.00. The seller's actual costs amount was to be \$3,988.00, based on the closing attorney and the lender's interpretation of Respondent Lipsey's contract verbiage. The Complainants were forced to accept these terms and absorb the additional "unequal" costs in order to complete the purchase.

IX.

There were several of these costs incurred before the closing, a roof inspection, engineer inspection, termite inspection, home inspection and septic inspection. As to the home inspection, it was recommended that some outside wires be put in conduit. Respondent Lipsey finally caused this work to be done, but had the invoice made out to her name, had the invoice mailed to her home

address, and admitted having paid the bill from her own personal funds. Agents are not to become personally financially invested for certain items in a real estate transaction, particularly those of closing costs, as such may also be a RESPA violation. Such financial investment could also cause an agent to become more concerned about closing a sale, to the detriment of the client, just to insure the agent's "recovery" of "pre-paid expenses". Such appears to have happened here.

X.

Upon interview with Respondent Laster, it was determined that there was a brokerage form regarding the breakdown of costs that was supposed to be used in every transaction, including this one, but that Respondent Lipsey had not complied with that office direction. In addition to this breach of duty by Respondent Lipsey, causing the resulting angst, this also evidences a failure of supervision by Respondent Lipsey's then principal broker, Respondent Laster.

XI.

Investigation also revealed that there was an apartment on the property that had been used as an in-law residence and also rented to others. No property condition disclosure form was done for this separate residence by the seller. Respondents Lipsey and Laster failed to have their seller/client prepare that statutorily required document. Noted also is that the buyer's agent, Respondent Field, did not require it for her clients, and this was overlooked by her broker, Respondent Davis.

XII.

The sellers, living in Texas, chose not to attend the closing and so executed a Power of Attorney vesting signatory authority in Respondent Lipsey. An agent taking on such a role has a duty to the client to perform such activity correctly, so as not to jeopardize the client's legal position in the transaction or any resultant outcome. Respondent Lipsey did execute Addendum # 5 of the sales contract, but simply signed "per agent", as opposed to "per the POA" (indicating by what authority she signed for her clients), and then failed to date the signings.

XIII.

The above and foregoing described acts and omissions of the Respondents constitute violations of the Miss. 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, §§73-35-21(1)((n), §§ 89-1-501 *et seq.*, and Comm. Rules 3.1A and F., which provide, in relevant parts:

§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...

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

(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.

§89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery

The transferor of any real property subject to Sections 89-1-501 through 89-1-523 shall deliver to the prospective transferee the written property condition disclosure statement required by Sections 89-1-501 through 89-1-523, as follows:

- (a) In the case of a sale, as soon as practicable before transfer of title.
- (b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this paragraph, execution means the making or acceptance of an offer.

With respect to any transfer subject to paragraph (a) or (b), the transferor shall indicate compliance with Sections 89-1-501 through 89-1-523 either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document.

If any disclosure, or any material amendment of any disclosure, required to be made by Section 89-1-501 through 89-1-523, is delivered after the execution of an offer to purchase, the transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

§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.

Rule 3.1A 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.

3.1 F. Any licensee who fails in a timely manner to respond to official Miss. Real Estate Commission written communication or who fails or neglects to abide by Miss. Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

Part 1601 Chapter 4: Agency Relationship Disclosure

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

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. Salespersons licensed under the broker are subagents of the Broker, regardless of the location of the office in which the salesperson works.

C. "Client" shall mean the person to whom the agent owes a fiduciary duty. It can be a seller, buyer, landlord, tenant or both.

G. "Fiduciary Responsibilities" are those duties due the principal (client) in a real estate transaction are:

(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.

(4) 'Confidentiality' - the agent must keep private information provided by the principal and information which would give a customer an advantage over the principal strictly confidential, unless the agent has the principal's permission to disclose the information. This duty lives on after the agency relationship is terminated.

(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

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

As to Sharon Lipsey, Salesperson, the Commission orders that her license incur a three (3) month full suspension, beginning January 01, 2021, followed by nine (9) months of probation; contingent upon both her future compliance with all Mississippi Real Estate Statutes and Commission Rules and also 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 month January, 2021. Said education may be completed online, because of Co-Vid restrictions, but will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Further, these classes will be courses 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 8th day of DECEMBER 2020.

MISSISSIPPI REAL ESTATE COMMISSION



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

AGREED: Sharon Lipsey DATE: 11/25/2020
Sharon Lipsey, Salesperson