

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 039-1807

**DOUGLAS W. MASELLE, BROKER
TAMMY JEAN NUTT, BROKER ASSOCIATE**

RESPONDENTS

COMPLAINT

Comes now the Mississippi Real Estate Commission, sometimes hereinafter "Commission," pursuant to authority of Miss. Code Ann. §§73-35-1, *et seq.*, as amended, and files this Complaint against Douglas W. Maselle, Broker, and Tammy Jean Nutt, Broker Associate, and assigns as grounds the following:

I.

Respondent Douglas W. Maselle, sometimes hereinafter "Maselle", is an adult resident citizen of Mississippi whose last known address of record with the Commission is 1418 Windrose Dr., Brandon, MS 39047. Respondent Maselle 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. Respondent Maselle is the responsible broker for Broker Associate Tammy Jean Nutt.

II.

Respondent Tammy Jean Nutt, sometimes hereinafter "Nutt," is an adult resident citizen of Mississippi, whose last known address of record with the Commission is 128 Deerwood Crossing, Canton, MS 39046. Respondent Nutt 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

III.

This complaint stated that Tammy Nutt, Broker Associate with Century 21 Maselle-Madison Branch Office, acted in bad faith, did improper dealing and failed in her fiduciary obligations to the Complainant regarding a property located 160 Wind Dance Drive in Madison, MS. Mike McNeer, Complainant, purchased the property in May of 2014. Respondent Nutt acted in the capacity of dual agent in the transaction. McNeer stated that he was told by Respondent Nutt that there was a lifetime warranty on the foundation and that this was the deciding factor in his decision to purchase the property. McNeer stated that he was told there was work done on the house, but that Respondent Nutt could not tell him what area of the house was worked on. At closing, McNeer was not given a copy of the diagram of the work done. McNeer stated he also did not receive a copy of the warranty certificate at closing. McNeer stated he did not receive either of these documents until a year and a half later when he contacted the closing attorney's office. It was also about that same time when McNeer began noticing bricks were starting to separate and crack. McNeer stated that the tile on the front porch was breaking up and the inside walls were cracking. He contacted MS Foundation Repair who came out and, according to McNeer, agreed that the foundation had moved. McNeer said he was then told that it had been recommended by this company to the previous owner to install a drainage system in the backyard

because water was getting under the house. McNeer stated that he was also told that when workers dug holes for the pylons and would leave, upon return they would find water in them.

IV.

McNeer further claimed that he was also told that when the foundations workers showed this water situation to the previous owner, she (Robin Harrell, the seller) told them she was not going to spend any more money on this house, and that the next owner could worry about it. McNeer stated he was informed that the foundation warranty was void because of the previous owner's inaction. Also, the foundation worker walked McNeer around the house pointing out patchwork that had been done to cover up the cracks in the bricks to cover up the damage to the foundation. McNeer was then asked by the foundation worker if he was any trouble with the garage flooding (which McNeer claims he does) whenever there is a hard rain because the garage needed to be jacked up. McNeer said none of this information was disclosed to him during the buy/sale transaction. After meeting with MS Foundation Repair, McNeer called Respondent Nutt, who told McNeer that he should have taken the diagram to the engineer. McNeer decided to call the engineer, Jimmy Halfacre, of Halfacre Engineering and explained the situation. Jimmy Halfacre did an inspection report, at the request of the seller, on this property on December 06, 2013. This report was emailed by the seller to Respondent Nutt on January 2, 2014. That email, written by Robin Harrell (the Seller) states that the piling work has a lifetime warranty "which is transferrable to the new owner". McNeer said Halfacre told him that Respondent Nutt should have never sold the house because of all the problems with the foundation, and that Respondent Nutt should have informed McNeer of those problems. McNeer said Respondent Nutt later told him that she thought the work was only on the master bedroom, but Halfacre said that wasn't true, as there were pylons visible all over the house, not just at the master bedroom. McNeer said Halfacre told him the house is in bad shape.

V.

When contacted by the Commission investigator, Jimmy Halfacre denied making the alleged remarks concerning the property. He further stated that when he did the first structural evaluation for the subject property, he made corrections to (2) areas which corrected the foundation problem. Halfacre stated that when he did his evaluation, there was no problem in the garage area, but he also stated that the expansive soil the house was built upon tends to shift and expand over time.

VI.

McNeer said he later contacted the former owner, Robin Harrell, and was told by her that she had paid \$6,000 for the foundation warranty, so McNeer didn't understand why the warranty should be void. McNeer believes he was misled by the owner and Respondent Nutt regarding the severity of the damage that was repaired and that the garage should have been jacked up but wasn't. He feels the only thing Respondent Nutt was concerned with was her commission. McNeer had a home inspection done on March 21, 2014 by Tracy Echols of Echols Home Inspections, LLC (MHIB #0577). There is no mention of any structural or foundation cracks. An engineering inspection was done by James W. Miller of JWM Consulting Engineers, Inc. on March 19, 2014. This report was sent, with invoice, *to Respondent Nutt after March 05, 2014.* This report noted specifically that there were "previously patched cracks in the exterior brick.....observed at the master bedroom windows, on the rear side of the garage, above the garage doors, and at the top of the doors on the back porch." *There is no evidence that Respondent Nutt ever provided this report or its contents to her client, the Complainant.* It is also noted that there are several blanks in the Property Condition Disclosure Statement, contrary to the clear and express instructions, and foundation issues are covered by this form.

VII.

Respondent Tammy Nutt's responded that the transaction closed in May of 2014 and that McNeer was provided all documents on 3/5/14. After reviewing this information, McNeer was ready to make an offer, and did, on 3/9/14. Respondent Nutt admitted this was a dual agent transaction. On 6/10/15, Respondent Nutt received an e-mail from McNeer regarding cracking tile on the front porch and cracks in the walls. This information was passed on to the seller. Respondent Nutt received an e-mail from McNeer on 6/10/15 stating that a representative of MS Foundation had come out to view the damage that McNeer was referring to and upon viewing, agreed that the foundation had movement. According to the foundation company, the previous owner failed to follow MS Foundation's previous recommendation to have a drain installed in the back yard and this allowed water to get under the house. Respondent Nutt denied knowledge of these issues until receiving McNeer's e-mail on 6/10/15.

VIII.

Respondent Doug Maselle's response states that Respondent Nutt was provided an engineer's report from Jimmy Halfacre, with a detailed diagram and description of the repairs, stating that the recent foundation repairs were adequate, and a Lifetime Warranty Certificate from MS Foundation Repair Specialist. Respondent Maselle claimed these documents were provided to McNeer via e-mail on 3/5/14, prior to McNeer's offer on the property. At the time, Respondent Maselle claims Respondent Nutt had no knowledge of any of the claims made by McNeer and believed the documentation that she passed from the seller to McNeer was honest and accurate. Although Respondent Nutt was informed of these issues via e-mail on 6/10/15, Respondent Maselle claims Respondent Nutt still has no first-hand knowledge whether any of McNeer's recollections of what was said by MS Foundation or Jimmy Halfacre are accurate and true.

IV.

The above and foregoing described acts and omissions of the Respondents constitute 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, §73-35-21(1)(f) and (n) and Commission Rules 3.1A,3.1B, 4.1 which provide, in relevant parts:

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.

Rule 3.1B A real estate broker who operates under the supervision of a responsible broker must not at any time act independently as a broker. The responsible broker shall at all times be responsible for the action of the affiliated broker to the same extent that licensee were a salesperson and that affiliated broker shall not perform any real estate service without the full consent and knowledge of his employing or supervising broker.

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.

F. "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 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.

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.

Rule 4.3 Disclosure Requirements

C. 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 by signing the Consent To Dual Agency portion of MREC Form A.

(2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.

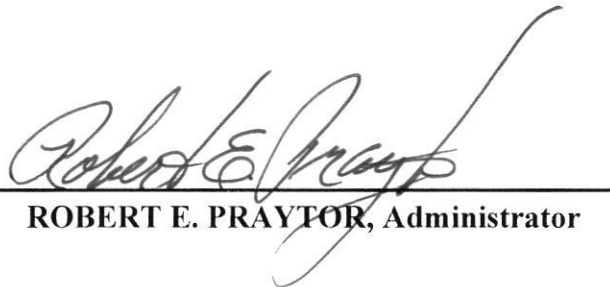
(3) *The Broker must confirm that the buyer(s) understands and consents to the consensual dual agency relationship prior to the signing of an offer to purchase.* The buyer shall give his/her consent by signing the MREC Dual Agency Confirmation Form which shall be attached to the offer to purchase. The 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.

WHEREFORE, considering the aforesaid allegations, the Respondents should be cited and properly noticed to appear before the Commission, for the Commission to hear and receive evidence of these allegations, any response that the Respondents desire to present, amend the pleadings to conform to the evidence and adjudicate this matter within the Commission's authority and sound discretion.

So stated this the 08th day of October, 2019.

MISSISSIPPI REAL ESTATE COMMISSION

BY: _____


ROBERT E. PRAYTOR, Administrator

TO THE RESPONDENTS:

Statutory Hearing Authority/Hearing Proceedings.

You are directed to appear before the Mississippi Real Estate Commission on a date and time set by the Commission by notice of hearing for a hearing to be held pursuant to §73-35-21, *Miss. Code Ann.* (1972) as amended, to show cause, if any you can, that the Commission should not suspend or revoke your license(s) to practice real estate and/or pursue further action against you as may be appropriate in the premises. You may be represented by a lawyer at the hearing, and you or your lawyer may inspect the pertinent evidentiary material contained in the investigative file at the Commission offices. The hearing will be conducted in a trial format; thus, evidence which supports the Complaint will be presented first and you may present any rebuttal witnesses or evidence or make any pertinent statements of your position. Cross examination of witnesses will also be permitted. The formal rules of evidence will be relaxed. Necessary witnesses may be subpoenaed by the Commission upon request; appearance and mileage fees for subpoenaed witnesses shall be taxed as part of costs of the proceedings, as applicable. Upon conclusion of the hearing, the Commission shall render its decision and shall notify the parties, in writing, of its decision.

Hearings and Appeals-Statutory Fees and Costs Taxed.

Authorities: *Miss. Code Ann.* §§73-35-23, 73-35-25 (1972) as amended; *Uniform Circuit and County Court Rules* 5.04, 5.05. Adverse decisions of the Commission may be appealed to the Circuit Court of the licensee's county of residence or to the Circuit Court of the First Judicial District of Hinds County, within thirty (30) days of the service of the written decision of the Commission.

Supersedeas.

Uniform Circuit and County Court Rule 5.08 provides, “[N]o supersedeas will be granted on appeal from a denial, revocation or suspension of a license to practice a profession or a trade.”

The Commission will oppose all motions for supersedeas.

Required Bond.

A copy of a Notice of Appeal from a Commission decision must be provided to the Commission simultaneously upon filing of the appeal with the Court. Appeals require the posting of a satisfactory bond in the amount of Five Hundred Dollars (\$500.00) for the payment of any costs which may be adjusted by the Court upon conclusion of the appeal. It is the policy of the Commission to seek from the reviewing Court the taxation of all costs and fees as may be available by law as part of any final disposition of an appeal taken from a Commission decision.

Required Hearing Record.

Appeals of Commission decisions require the submission of a written record of the Commission proceedings for review by the Circuit Court on appeal. The record includes exhibits introduced at the hearing and a written transcript/stenographic notes of the Commission proceeding. The Commission’s actual costs incurred in the preparation of the Commission hearing record will be billed to the licensee or person taking appeal upon notice to the Commission of the filing of the appeal. Upon payment to the Commission for same, a complete copy of the record shall be furnished to the licensee simultaneously with submission of the record to the Court for review on appeal. If no appeal is taken from a Commission decision, any party to the proceeding may request a copy of the written transcript of the proceedings which shall be furnished upon payment of the Commission’s actual costs in preparation of same.

This the ^{8th}~~14th~~ day of October, 2019.

MISSISSIPPI REAL ESTATE COMMISSION



BY: _____

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

SERVED BY: _____

DATE: 10/8/2019

RECEIVED BY: _____

DATE: 11-22-19

Douglas W. Maselle
Douglas W. Maselle, Broker

RECEIVED BY: _____

DATE: 11/2/19

Tammy Jean Nutt
Tammy Jean Nutt, Broker Assoc.

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TAMMY JEAN NUTT, BROKER ASSOCIATE**

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 Douglas W. Maselle, Broker and Tammy Jean Nutt, Broker Associate and the Commission was advised that there has been an agreement reached among the parties resolving the 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 Douglas W. Maselle, sometimes hereinafter "Respondent Maselle", is an adult resident citizen of Mississippi whose last known address of record with the Commission is 1418 Windrose Dr., Brandon, MS 39047. Respondent Maselle 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. Respondent Maselle is the responsible broker for Broker Associate Tammy Jean Nutt.

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recommended by this company to the previous owner to install a drainage system in the backyard because water was getting under the house. McNeer stated that he was also told that when workers dug holes for the pylons and would leave, upon return they would find water in them.

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IV.

The above and foregoing described acts and omissions of the Respondents constitute 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, §73-35-21(1)(f) and (n) and Commission Rules 3.1 A, 3.1 B, 4.1 which provide, in relevant parts:

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.

Rule 3.1B A real estate broker who operates under the supervision of a responsible broker must not at any time act independently as a broker. The responsible broker shall at all times be responsible for the action of the affiliated broker to the same extent that licensee were a salesperson and that affiliated broker shall not perform any real estate service without the full consent and knowledge of his employing or supervising broker.

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.

F. "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 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.

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.

Rule 4.3 Disclosure Requirements

C. 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 by signing the Consent To Dual Agency portion of MREC Form A.

(2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.

(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.

DISCIPLINARY ORDER

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

As to Tammy Jean Nutt, Salesperson, she is to be issued a Letter of Reprimand.

As to Douglas W. Maselle, Broker, he is to be issued a Letter of Reprimand.

SO ORDERED this the 8th day of DECEMBER, 2020.



MISSISSIPPI REAL ESTATE COMMISSION

BY: _____

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

Agreed: _____

Tammy Jean Nutt
Tammy Jean Nutt/Salesperson

Date: _____

11/17/20

Agreed: _____

Douglas W. Maselle
Douglas W. Maselle, Broker

Date: _____

11-17-20



Mississippi Real Estate Commission

ADMINISTRATOR
ROBERT E. PRAYTOR

LEFLEUR'S BLUFF TOWER, SUITE 300
4780 I-55 NORTH, JACKSON, MS 39211

P.O. BOX 12685 (601) 321-6970 – Office
JACKSON, MS 39236 (601) 321-6955 - Fax

OFFICIAL LETTER OF REPRIMAND

December 15, 2020

Douglas Maselle, Broker
4001 Lakeland Dr.
Jackson, MS 39232

RE: MREC v. Douglass Maselle & Tammy Jean Nutt; case # **039-1807**

Greetings:

The Miss. Real Estate Commission has concluded its matter of the above referenced case. The Legal Counsel and the Investigative Staff of the Real Estate Commission determined, and the Commission subsequently decided, that the information obtained during the investigation of this complaint was sufficient to show that your actions in this matter were contrary to the Administrative Rules and/or Miss. statutes as are outlined in the Agreed Order filed in the case referenced above. As a Principal Broker, you had an obligation under Rule 3.1 to educate and supervise the activities of the involved salesperson, Tammy Jean Nutt.

This Official Letter of Reprimand will be placed in your file to become a part of your permanent record. You should take every precaution to familiarize yourself with the Real Estate Brokers License Act of 1954, as Amended, and the Administrative Rules and Regulations of the Real Estate Commission in order to avoid a serious violation which might affect the status of your license.

If you have any questions pertaining to this matter, please contact the Commission.



Robert E. Praytor
Administrator
Mississippi Real Estate Commission



Mississippi Real Estate Commission

ADMINISTRATOR
ROBERT E. PRAYTOR

LEFLEUR'S BLUFF TOWER, SUITE 300
4780 I-55 NORTH, JACKSON, MS 39211

P.O. BOX 12685 (601) 321-6970 – Office
JACKSON, MS 39236 (601) 321-6955 - Fax

OFFICIAL LETTER OF REPRIMAND

December 15, 2020

Tammy Jean Nutt
P. O. Box 2488
Madison, MS 39130

RE: MREC v. Douglass Maselle & Tammy Jean Nutt; case # **039-1807**

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The Miss. Real Estate Commission has concluded its matter of the above referenced case.

The Legal Counsel and the Investigative Staff of the Real Estate Commission determined, and the Commission subsequently decided, that the information obtained during the investigation of this complaint was sufficient to show that your actions in this matter were contrary to the Administrative Rules and/or Miss. statutes as are outlined in the Agreed Order filed in the case referenced above.

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If you have any questions pertaining to this matter, please contact the Commission.



Robert E. Praytor
Administrator
Mississippi Real Estate Commission