

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

vs.

NO. 07-2002

FABIAN ADONIS NELSON, Broker

DEBORAH BLAND, Salesperson

TENA J. MYERS, Broker

JESSICA STETSON, Broker/Salesperson

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 Tena J. Myers, Broker, and Jessica Stetson, Broker/Salesperson and others, and the Commission was advised that there has been an agreement reached among these parties, Tena Myers and Jessica Stetson, resolving the issues brought against them 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, Fabian Adonis Nelson, sometimes hereinafter called "Respondent Nelson", is an adult resident citizen of Miss. whose last known business address of record with the Commission is 5435 Executive Place Jackson, MS 39206. Respondent Nelson holds a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, and so he is subject to the provisions, rules, regulations and statutes governing real estate brokers under Mississippi law and the administrative rules of the Miss. Real Estate Commission. Respondent Nelson was the principal broker for Respondent Deborah Bland during these events described.

II.

Respondent, Deborah Bland, sometimes hereinafter called “Respondent Bland”, is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 5435 Executive Place Jackson, MS 39206. Respondent Bland 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.

III.

Respondent, Tena J. Myers, sometimes hereinafter called “Respondent Myers”, is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 115 Laurel Park Cove, Ste. 204, Flowood, MS 39232. Respondent Myers holds a resident broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and 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 Myers was the principal broker over Respondent Jessica Stetson during the events described below.

IV.

Respondent, Jessica Stetson, sometimes hereinafter called “Respondent Stetson”, is an adult resident citizen of MS whose last known business address of record with the Commission is 115 Laurel Park Cove, Ste. 204, Flowood, MS 39232. Respondent Stetson holds a resident Broker/Salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and so she is subject to the provisions, rules, regulations and statutes governing real estate brokers under Miss. law and the administrative rules of the Miss. Real Estate Commission.

V.

Donald and Barbara Bridges purchased a property located in Ridgeland, MS. Their agent was Respondent Bland. The Sellers were Heath and Shelia Cooley. Their agent was Respondent Stetson. The closing date was 11/29/19. A few days after moving in, Ms. Bridges was washing clothes and the water pipe came out of the drainage hole behind the washer. Bridges called Home Warranty of America, and a plumber was sent by the warranty company. The plumber said to pour Liquid Plumber into the sink, which she did, but water backed up into the kitchen sink and dishwasher. The plumber was called back out on 12/19/19 and a report was written up and submitted to the insurance company for approval. On 1/3/20 the insurance company denied the claim, stating this was a pre-existing condition and so not covered. The Bridges said the sellers failed to disclose the plumbing issues when submitting the PCDS. The Sellers stated there were never any plumbing issues when they occupied the home. The Commission received a signed formal complaint from the Bridges on 01/03/20.

VI.

On 2/20/20, the Home Inspector, Joshua Smith, was interviewed by telephone. Smith completed the home inspection on 10/22/19 and stated that during the inspection, all sink faucets, toilets, showers, and tub faucets were tested. Smith related that testing of sink faucets consisted of running all water sources in the bathroom at the same time and flushing the toilet to ensure functional flow and drainage of water was present. This was done in both bathrooms and no concerns were noted by him. The sink in the kitchen drained appropriately. In addition, a full cleaning cycle of the dishwasher was run with no concerns noted. Smith said routine home inspections do not include validation of plumbing by use of a plumbing camera. In his professional opinion, Smith said the sellers should have experienced some of the problems the buyers were complaining about, regarding plumbing and back-up problems. Smith did not have prior knowledge of issues, and that the property had been vacant for about six months prior to the home inspection.

VII.

The appraiser, Danny Sturgis was interviewed on 3/31/20 regarding his recollection of the subject property and subsequent appraisal. Sturgis recalled performing the appraisal at 316 Longmeadow Court, and that the house had not been updated. He recalled some minor cracks in the floor tile, but nothing major. Sturgis said it is not uncommon for him to call the listing agent and ask if there are additional items or conditions that he may not be aware of. Upon speaking with Respondent Stetson, she advised him that the buyer was having, or going to have, a home inspection. Sturgis said the property met VA minimum property standards at the time of the appraisal. A copy of the appraisal was tendered with Sturgis' statement.

VIII.

During the investigation, it was learned that the listing brokerage, being Respondent Tena Myers, allowed their agents to post "completed" PCDS forms on the MLS at the time the listings were posted. This allowed for no prior review of the PCDS for completeness by the principal broker. So, in this case, the PCDS was completed by the sellers, posted but not reviewed for completeness, and obtained by the buyers prior to their offer. Noted during the investigation was that the initial PCDS had blanks for how the square footage of the home was determined and for the yearly tax bill. Subsequent copies provided by the agents as part of this investigation revealed that these blanks were later filled in by someone other than the sellers. All of the Respondents were interviewed, and each denied knowing who filled in the missing information about the taxes and square footage. Agents have a duty to their clients to assist them in complying with state statutes in real estate transactions. Principal Brokers have a continuing duty to supervise the activities of their agents to insure fulfillment of those duties. When this transaction closed at Abstract & Closing Services, the PCDS, with the addendum to the PCDS showing repairs made, was signed by the sellers.

IX.

Throughout the time of this transaction, there were several communication exchanges between Respondents Stetson and Bland about transaction documents. Noted in these exchanges were a handful of times where Respondent Bland sought copies of documents from Respondent Stetson which Bland admittedly had but could not later locate. On 12/23/19, Respondent Bland texted Respondent Stetson asking for a copy of the home warranty because she could not find her copy. Respondent Stetson emailed it to Respondent Bland (again). On 1/3/20, Respondent Bland called Respondent Stetson, asking for a copy of the signed disclosure from closing because she was unable to locate her copy. It was at this time that Respondent Bland admitted to Respondent Stetson that Bland "didn't seem to be able to keep up with her paperwork". The investigation noted that during the early days of this transaction, the buyer's wife was added as a party to this transaction and that Respondent Bland sent the transaction documents as an email attachment to the lender to reflect that addition, meaning that Respondent Bland had some of these documents already in her immediate possession through her email account. On 10/30/19, Respondent Bland sent Respondent Stetson copies of the revised documents due to Barbara Bridges' name added to the loan. These later requests of Respondent Bland to Respondent Stetson for documents were after the closing, so these documents should also have been available to Bland in Respondent Nelson's brokerage file. Additionally, Respondent Bland was requested to provide text messages to the Commission as part of her response. Respondent Bland replied that she does not know how to retrieve text messages from her phone and none of these communications were in the transactional file. Agents have a fiduciary duty to the clients of competency.

X.

On 11/16/19, Respondent Bland called Respondent Stetson asking if Stetson had changed the price of the property. Bland said her client/buyers were unhappy because they did not get the best price on the property since it was now showing a lower price online. Respondent Stetson viewed her online listing and sent a screen shot to Respondent Bland showing the property listed at the original price. Bland told Stetson that the buyers commented that they were not afraid to sue someone if they felt they were being misled into believing the house was worth what they were paid for it. Respondent Stetson sent Respondent Bland the screenshot from Home Snap and from Realtor.com, showing the property was priced the same. Bland replied that when she talked with "Desiree" from Realtor.com, the information was from public records, and that Bland was going to let her broker, Respondent Nelson, handle it. Respondent Stetson took that comment to mean that Respondent Bland was having problems with her client/buyers satisfying them with the price they had agreed upon. Respondent Stetson said she then contacted her broker, Respondent Myers, that the buyers were showing signs of buyer's remorse with their agent. Despite interviews with Respondents Bland and Nelson, there is no evidence that this was discussed between them or that Respondent Nelson ever took any supervisory role in this matter.

XI.

The above and foregoing described acts of the Respondents, Fabian Adonis Nelson, Deborah Bland, Tena J. Myers, and Jessica Stetson demonstrate and constitute violations of M.C. A. § 73-35-21, § 89-1-501, et seq., and MREC Administrative Rules 3.1 and 4.2, and in particular:

§ 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 full power to refuse a license for cause or to revoke or suspend a license

where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

(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. However, simple contact and/or communication with any mortgage broker or lender by a real estate licensee about any professional, including, but not limited to, an appraiser, home inspector, contractor, and/or attorney regarding a listing and/or a prospective or pending contract for the lease, sale and/or purchase of real estate shall not constitute conduct in violation of this section.

Part 1601 Chapter 3: Administration/Conducting Business

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 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.

G. A real estate broker must keep on file for three years following its consummation, complete records relating to any real estate transaction. This includes, *but is not limited to*: listings, options, leases, offers to purchase, contracts of sale, escrow records, agency agreements and copies of all closing statements.

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.

DISCIPLINARY ORDER

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

As to Tena J. Myers, Broker, she is to be issued a Letter of Reprimand.

As to Jessica Stetson, Salesperson, she 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, Administrator

Agreed: _____

Tena J. Myers, Broker

Date: _____

11/30/2020

Agreed: _____

Jessica Stetson, Salesperson

Date: _____

11/30/2020