

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 066-1910

**CHARLES LOUIS NICOLOSI, BROKER
ADAM NICOLOSI, 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 Charles Louis Nicolosi, Principal Broker, and Adam Nicolosi, Salesperson. The Commission was advised that there has been an agreement reached resolving the issues brought forward in this complaint. By entering into this Agreed Order, the Respondents waive their rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent Charles Louis Nicolosi, sometimes hereinafter "Charles Nicolosi" is an adult resident citizen of MS whose last known business address of record with the Commission is 130 Shelby Speights Dr., Purvis, MS 39475. Respondent Charles Nicolosi 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 Charles Louis Nicolosi is the principal broker for Lamar Property & Realty, Inc., Hattiesburg Real Estate, Inc, Hattiesburg Commercial Real Estate, Inc, and Lamar Property Management, Inc., all located in Purvis, MS. He is the responsible broker for Adam Nicolosi.

II.

Respondent Adam Nicolosi, sometimes hereinafter "Adam Nicolosi," is an adult resident citizen of Mississippi, whose last known business address of record with the Commission is 130 Shelby Speights Dr., Purvis, MS 39475. Adam Nicolosi 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

III.

On September 4, 2019, the Commission received a sworn statement of complaint from Janette Price of 136 Watkins Road in Moselle, MS 39459. She stated that on 4/5/2019 she entered into a Listing Agreement through Salesperson Adam Nicolosi of Lamar Property & Realty Inc., The Principal Broker at that time was Charles Nicolosi. Salesperson Adam Nicolosi placed a sign and a lockbox on the property that same day. The listing price was \$230,000 and the duration of the listing agreement was for six (6) months. Price complained that Salesperson Adam Nicolosi did practically nothing, except for putting her property on the local MLS, and was unavailable for any consultations during most of the month of April due to his family issues. During that time, Zillow no longer displayed the listing and Price's daughter, Aletta Price Cook, had to point that fact out to Salesperson Adam Nicolosi. There was also an issue with the interior photos taken and posted because those were taken by Salesperson Adam Nicolosi when Price was cleaning out closets and so everything was piled up and messy. Price took new photos on 5/18/2019 and sent them to Respondent Adam Nicolosi.

IV.

Salesperson Adam Nicolosi was first licensed 5/25/2018 but failed to obtain his post licensing education course within the one (1) year period required by state statute. The Mississippi Real Estate Commission was subsequently required by state law to close his licensing file on 6/1/2019. On 6/6/2019, Price called Salesperson Adam Nicolosi and expressed her concern that there had been no contact from him and no activity on the property for two (2) months. Salesperson Adam Nicolosi responded by suggesting that Price should lower the asking price. On 6/7/2019, *Adam Nicolosi sent Price a text* asking if she had thought about dropping the price. Price replied a couple of hours later, saying, "We have talked about it but not sure I want to go there yet. We will keep discussing it and give you a call". The next day, 06/08/19, Price called Salesperson Adam Nicolosi back and asked him to terminate their listing agreement because she had decided to rent the home instead. *Respondent Adam Nicolosi responded* that he would talk to his father (Charles Nicolosi, Principal broker) and get back with her, but never did.

V.

All of this June communication between the client, Price, and Respondent Adam Nicolosi was during the 7 weeks that his license file was closed. Both respondents, Adam and Charles Nicolosi, were properly informed by the Commission of Adam Nicolosi's license status change. According to Ms. Price, neither Respondent Adam Nicolosi nor Respondent Charles Nicolosi disclosed to her that Salesperson Adam Nicolosi was not licensed from the date that his file was closed until the date that he actually reapplied and passed the Salesperson exam on 7/11/2019 nor that his license was later reissued on 07/16/2019. No evidence was provided to the Commission of any other agent being assigned to Price during this time that Respondent Adam Nicolosi was not licensed.

VI.

On 6/22/2019, Price left the country for 2 months without having heard further from either Respondent, Salesperson Adam Nicolosi or the Principal Broker, Charles Nicolosi. One month later, on 7/22/2019, Price's daughter, Aletta Price Cook, called Lamar Property & Realty and spoke with Principal Broker Charles Nicolosi. She informed him of their complaints, issues, and the request for cancellation of all contractual obligations. Respondent Charles Nicolosi agreed to discuss the situation with Salesperson Adam Nicolosi. Aletta Price Cook followed that call with an e-mail to Charles Nicolosi that included the client, Janette Price, as a recipient of the e-mail. That e-mail stated that she was acting on her mother's behalf and again requested for the Listing Agreement to be terminated. *Janette Price herself followed up with an e-mail to the same group of recipients and stated the same things.*

VII.

In documents provided to the Commission, Price included copies of group text messages between her and Aletta Price and Respondent Charles Nicolosi. In those texts, on 7/24/2019, Janette Price asked Charles Nicolosi if he had been receiving their e-mails, as neither she nor her daughter has received any responses. Charles Nicolosi replied, but he thought he was speaking to Aletta Cook and said that he "would look at this asap and get back with your mother". Broker Nicolosi added that he appreciated Aletta Cook "running interference" for her but that her mother entered into an agreement with his company and it is his job to see that the company fulfill its obligation. Respondent Charles Nicolosi stated that the next and only conversation he would have would be with the person who hired the company, entered into the contract, and signed the contract. Aletta Price cook responded to that text by saying that it was her mother that sent the message today and that he WAS communicating with his client on this thread. Respondent Charles Nicolosi than apologized to her and repeated he would "take a look asap". Aletta Cook

then replied that they looked forward to hearing from him. One minute later, Janette Price texted Charles Nicolosi and said thanks for the acknowledgement, and she appreciated his need to communicate directly with her but to "cc" Aletta Cook so that Cook could respond if the client, Janette Price, was not available.

VIII.

On 8/5/2019 and 8/8/2019, Janette Price texted and emailed Charles Nicolosi because he had not replied to her. On 8/12/2020, Aletta Cook called Charles Nicolosi on behalf of Janette Price, who was still out of the country. Charles Nicolosi told Aletta Cook that he needed to speak with Janette Price. Aletta Cook asked Charles Nicolosi to download the phone app, WhatsApp, so he and Janette Price could speak, but Charles Nicolosi refused. That same day, Janette Price texted/emailed Charles Nicolosi expressing her displeasure and disappointment in how he treated her daughter and again asked that he terminate their listing agreement. As of the date of Price making the complaint with the Commission, there had been no response from Respondents Charles or Adam Nicolosi to them. Janette Price continued with e-mails and texts in this group thread until 8/15/2019, still with no response from the broker, Respondent Charles Nicolosi. Price included copies of these texts and emails with her complaint to the Commission.

IX.

On 10/31/2019, the broker's response was received by the Commission. Respondent Charles Nicolosi stated that the Contractual Agreement that he provided in his response is signed and dated by only Janette Price. He pointed out that her daughter, Aletta Price Cook, is not on the document and so his company had no obligation to respond to her without an official Power of Attorney or a notarized document or, at the least, a call from their client, Janette Price. Charles Nicolosi stated that he requested this authorization several times and that it is well documented in their email messages. Charles Nicolosi stated that there was never a signed document of any kind presented to

him that allowed him to speak of Janette Price's personal business to anyone. He stated that the names appearing on a telephone and Gmail account could be created by anyone and is simply not enough for his company to do anything legal, such as canceling a contractual agreement. Respondent Charles Nicolosi claimed that the calls he received from Aletta Price Cook have been the only verbal contact he has had on the matter from about 7/22/2019 until the time of his response to the complaint. Charles Nicolosi added that in all phone calls with Aletta Cook, she made disrespectful allegations towards Respondent Adam Nicolosi and asked why the Listing Agreement had not been terminated. In the last call, Aletta Cook began by threatening to file a complaint with his governing body. Respondent Charles Nicolosi said he told her to do whatever she wanted to do but unless the call was from his client, Janette Price, to please not call.

X.

Charles Nicolosi added that in a call to Adam Nicolosi, much earlier than Charles' conversation with Aletta, Janette Price told Adam Nicolosi that the reason for removing the listing from social media was to rent the house, since there had not been any actual showings. Charles Nicolosi said that the cancellation was not necessary for that purpose. He felt that the forceful demand made from Aletta on the first communication with him was an attempt to circumvent their Company's listing agreement. Also, the fact that Cook stated several times that her husband was a Realtor in Georgia and knew real estate law gave Respondent Charles Nicolosi concern that, if such were true, then he would have pointed out to her the importance for the listing broker to speak to the client. Charles Nicolosi explained that the initial photos used for marketing were photos from when Adam Nicolosi first obtained the listing. Charles Nicolosi stated that he had permission to use these until Janette Price cleaned the house up and provided more photos, which she later did.

XI.

In Respondent Adam Nicolosi's response, he stated that he thought he was clear with the client as to what all was involved in listing the home; the processes, the documents, the marketing and the other things involved. Adam said the client, Price, knew he was taking pictures for marketing and he understood that, after the home was cleaned, he would come back for more pictures. Weeks later, he said, the client sent him new pictures. Adam said did not go back to take those pictures himself. Adam Nicolosi admitted there had not been any showings of this house, but claimed that there had been numerous telephone inquiries, despite this home being located in a mostly rural area of Jones County (Moselle, MS). *Respondent Adam Nicolosi added that when the client called in June to state that she had decided to rent the house instead, he stated that he would discontinue the marketing, but that the listing agreement would remain, in case a buyer did come forward before the listing agreement expired in October.* Respondent Adam Nicolosi claimed that he informed his broker of this call and had no more contact with the client, Price. This confirmed his activity during the time his file was closed. Although Respondent Adam Nicolosi had become a father at this time, there is no proof provided to the Commission of any coordination at this realty office where any other agent "covered" for Adam Nicolosi's immediate responsibilities and duties to this client during the time his license file was closed, a burden that rested squarely on the shoulders of his responsible broker, Respondent Charles Nicolosi, under MREC Rule 3.1.

XII.

The WWREB form and Listing Agreement were signed and dated 4/3/2019, not 4/5/2019 as was previously stated by both parties. There was no Informational Statement provided. The PCDS was signed by Janette Price but did not contain a date. The PCDS also contained a question which was left unanswered, that being Section I, line 4 that addressed how the square footage of the home was determined.

XIII.

Review of the completed investigation revealed that Respondent Charles Nicolosi applied for a company license for Hattiesburg Commercial Real Estate, Inc. and stated on the application that the company would be in Purvis, MS. In fact, the office is located on S. 40th Ave. in Hattiesburg, MS. Also at that location is an unlicensed branch office of another real estate company of Respondent Charles Nicolosi, that being Lamar Property and Realty, Inc.

XIV.

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, §73-35-3, §73-35-21(1)(n), §89-1-501, §89-1-509 and Commission Rules 3.1 A and 4.2 which provide, in relevant parts:

As to Salesperson Adam Nicolosi:

§73-35-3. Definitions; applicability of chapter

(1) The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, list, sell, purchase, exchange, rent, lease, manage or auction any real estate, or the improvements thereon, including options; or who negotiate or attempt to negotiate any such activity; or who advertise or hold themselves out as engaged in such activities; or who direct or assist in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary or upon fee, commission or otherwise, to sell such real estate, or parts thereof, in lots or other parcels, including timesharing and condominiums, and who shall sell, exchange or

lease, or offer or attempt or agree to negotiate the sale, exchange or lease of, any such lot or parcel of real estate.

§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.

§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.

§89-1-509. Form of seller's disclosure statement

The disclosures required by Sections 89-1-501 through 89-1-523 pertaining to the property proposed to be transferred shall be set forth in and shall be made on a copy of a disclosure form, the structure and composition of which shall be determined by the Mississippi Real Estate Commission.

As to Broker Charles Nicolosi:

§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.

§73-35-21. 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.

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

(2) 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.

§89-1-509. Form of seller's disclosure statement

The disclosures required by Sections 89-1-501 through 89-1-523 pertaining to the property proposed to be transferred shall be set forth in and shall be made on a copy of a disclosure form, the structure and composition of which shall be determined by the Mississippi Real Estate Commission.

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 Miss. Real Estate License Law and to exercise supervision of their real estate activities for which a license is required.

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:

- (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 each Respondent individually, the Commission orders that his license incur a one-month full suspension period, followed by five (5) months of probation. Respondent Adam Nicolosi's suspension will start Sept. 01, 2020 and will be immediately followed by the five (5) month probation period. Respondent Charles Nicolosi's full license suspension period will immediately follow, beginning October 01, 2020, to be followed by his five (5) month probation period. Each Respondent is to complete eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during his respective 1 month of full license suspension. Said education is to be completed in a classroom environment, rather than through on-line education. Further, these classes will be courses already approved by this Commission, be in addition to any regular hours of continuing education that may be required of him for license renewal and will not be the same classes from the same provider as those used by either Respondent in his individual last renewal period. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the 8th day of SEPTEMBER 2020.

MISSISSIPPI REAL ESTATE COMMISSION



By: *Robert E. Praytor*
ROBERT E. PRAYTOR, Administrator

Agreed: *Adam Nicolosi*
Adam Nicolosi, Respondent

Date: 8/27/2020

Agreed: *Charles Nicolosi*
Charles Nicolosi, Respondent

Date: 8-27-2020