

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 77-1812

AVRA ENGERAN O'DWYER, BROKER; and
REBECCA ENGERAN O'DWYER, BROKER ASSOCIATE

RESPONDENTS

AGREED ORDER

THIS CAUSE came before the Mississippi Real Estate Commission, sometimes hereinafter "Commission," pursuant to authority of Miss. Code Ann. §§73-35-1, *et seq.*, as amended, on a formal Complaint brought against Avra Engeran O'Dwyer, Broker, and Rebecca Engeran O'Dwyer, Broker Associate. Prior to the hearing before the Commission, the parties announced their agreement as to the allegations of the Complaint and disciplinary action for Respondents, all as set forth herein. By entering into this Agreed Order, Respondents waive their rights to a hearing with full due process and the rights to appeal any adverse decision which may have resulted from that hearing. Having reached an agreement on this matter, the Commission issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

I.

Respondent Avra Engeran O'Dwyer, Broker, sometimes hereinafter "Respondent" or "Avra O'Dwyer" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 105 North Beach Blvd., Bay St. Louis, Mississippi 39520. Respondent Avra O'Dwyer 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 all of the provisions, rules, regulations and statutes governing the management, sale and transfer of real estate and licensing of real estate brokers under Mississippi law. At all relevant times, Respondent Avra O'Dwyer was the responsible and Principal Broker for O'Dwyer Realty and for Broker Associate Rebecca Engeran O'Dwyer.

II.

Respondent Rebecca Engeran O'Dwyer, Broker Associate, sometimes hereinafter "Respondent" or "Rebecca O'Dwyer," is an adult resident citizen of Mississippi whose last known address of record with the Commission is 232 East Scenic Drive, Pass Christian, Mississippi 39571. Respondent Rebecca O'Dwyer 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 all of the provisions, rules, regulations and statutes governing the management, sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

III.

On or about November 26, 2018, the Commission received a sworn statement of complaint from Peter and Lynn Ives, sometimes hereinafter "the Ives." The Ives owned a property located at 109 Basswood Drive, Pass Christian, Mississippi 39571 that had been used a rental property for several years and which rental had been managed by O'Dwyer Realty and, specifically, by Respondent Rebecca O'Dwyer as a property manager.

IV.

The Ives complained that they had executed a listing agreement on or about May 12, 2018 with Respondents to list the subject vacation property for sale. A proposed sales price was established, and the Ives were given a Property Condition Disclosure Statement (PCDS) to complete for the property. The Ives informed Respondents the completed PCDS would be left on the dining room table of the property in a folder labeled for the Respondents to retrieve. The Ives complained that weeks went by after the listing agreement was executed with no activity reported. The Ives alleged Respondents failed to communicate or properly market the property sufficiently, and to the Ives' detriment.

V.

The Ives complained that the initial online listing prepared and published by Respondents was inadequate and contained spelling errors and poor-quality photographs of the property. The Ives' son prepared and submitted to Respondents a description of the property the Ives felt better represented the listing. Respondents updated the listing with this information and sent emails to several leads that were generated by social media advertising and forwarded to Respondents by the Ives' son. Little or no activity was reported for the property for some ten weeks following the listing. Displeased with Respondents' services in marketing the property, the Ives requested they be released from the listing agreement. Respondent Avra O'Dwyer resisted or refused to cancel/release the listing but promised to provide weekly follow up reporting to the Ives regarding the listing.

VI.

Following the Ives' request to cancel the listing with Respondents, the Ives were informed by Respondents of a prospective buyer. The Ives were asked for the completed

PCDS. The Ives complained that Respondents had apparently never picked up the completed PCDS from the dining room table where the Ives claimed they left the PCDS documents weeks earlier. Thereafter, the Ives' son went to the property and retrieved the PCDS documents to return to his parents. Respondents cancelled the listing agreement for the Ives' property on or about March 26, 2019.

VII.

Following the submission of the Ives' sworn complaint, the Commission initiated an investigation of the matter. Responses and documents were obtained from Respondents during the Commission investigation. The Commission obtained a copy of the subject listing agreement which reflected an expiration date of May 12, 2019. The listing agreement was signed by both the Ives as Sellers and Respondent Avra O'Dwyer as broker, but the agreement was not dated. A required Working with Real Estate Broker form (WWREB) was dated May 8, 2018 but Respondents admitted they had no WWREB for the period beginning approximately February, 2015 when Respondents began to manage the property as a rental for the Ives.

VIII.

Respondents admitted that the PCDS paperwork had been left for the Ives to complete following the meeting to execute the listing agreement. Respondents stated "Mrs. Ives was to call Rebecca when [the PCDS documents] were complete to come and pick up. We assumed she would mail or email back to us when complete. Rebecca did not see a file in the house when she went back." These statements are contradictory. Respondents admitted they had agreed to pick up the documents after the Ives had time to complete them. Respondent Rebecca O'Dwyer claimed to have been to the property and further

claimed she could not locate the documents while there. Rebecca O'Dwyer had apparently been to the property more than once during the relevant period to interact with vacation renters. The Commission obtained no evidence that Respondents ever contacted the Ives to inquire of the location of the PCDS documents which were ultimately retrieved from the property by the Ives' son weeks after they had been completed.

CONCLUSIONS OF LAW

IX.

The Commission and Respondents agree the above and foregoing described acts and omissions, if proved at a Commission hearing upon clear and convincing evidence, could constitute violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and Regulations of the Commission, and, more specifically, §73-35-21(1)(n) and Commission Rules 3.1 A, 3.2B, 4.2G (2) and (5), and 4.3A which provide, in relevant parts:

§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 the full power to refuse a license for cause or to revoke or suspend a license ...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...incompetency or ...improper dealing...

Rule 3.1 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.

Rule 3.2 B All exclusive listing agreements shall be in writing, properly identify the property to be sold, and contain all the terms and conditions under which the transaction is to be consummated...

Rule 4.2 G "Fiduciary Responsibilities" are those duties owed the principal (client) in a real estate transaction...:

(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.

(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 A In a single agency, a broker is required to disclose, in writing, to the party for whom the broker is an agent in a real estate transaction that the broker is an agent of the party. The written disclosure must be made before the time an agreement for representation is entered into between the broker and the party. This shall be on an MREC Agency Disclosure Form.

DISCIPLINARY ORDER

Upon agreement and consent of Respondents as to disciplinary terms and disposition of this matter in lieu of a hearing before the Commission and, having issued its Findings of Fact and Conclusions of Law, the Commission hereby issues its Disciplinary Order as follows:

As to Respondent Avra Engeran O'Dwyer:

1. The license of Respondent Avra Engeran O'Dwyer shall be suspended for a period of one (1) month (thirty days), held in abeyance. During the period of suspension in abeyance, Respondent will be permitted to continue the practice of real estate in the State of Mississippi insofar as she complies with all Mississippi Real Estate Commission statutes, rules and regulations.
2. Following the period of suspension in abeyance, the license of Respondent Avra Engeran O'Dwyer shall be on probation for a period of eleven (11) months.
3. During the period of suspension in abeyance, Respondent shall complete eight (8) hours of mandatory continuing education: four (4) hours Agency; two (2) hours Contract Law; and two (2) hours License Law. All courses shall be approved by the Commission prior to being taken. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent's license. Respondent shall furnish to the Commission written evidence of the satisfactory completion of the required courses.

As to Respondent Rebecca Engeran O'Dwyer:

1. The license of Respondent Rebecca Engeran O'Dwyer shall be suspended for a period of three (3) months (ninety days), held in abeyance. During the period of suspension in abeyance, Respondent will be permitted to continue the practice of real estate in the State of Mississippi insofar as she complies with all Mississippi Real Estate Commission statutes, rules and regulations.
2. Following the period of suspension in abeyance, the license of Respondent Rebecca Engeran O'Dwyer shall be on probation for a period of nine (9) months.

3. During the period of suspension in abeyance, Respondent shall complete eight (8) hours of mandatory continuing education: four (4) hours Agency; two (2) hours Contract Law; and two (2) hours License Law. All courses shall be approved by the Commission prior to being taken. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent's license. Respondent shall furnish to the Commission written evidence of the satisfactory completion of the required courses.

This Agreed Order shall be effective upon the date it is executed by the Commission.

This the 14th day of July, 2020.



MISSISSIPPI REAL ESTATE COMMISSION

BY: [Signature]
ROBERT E. PRAYTOR, Administrator

AGREED:

[Signature] DATE: 6/10/2020
AVRA ENGERANO'DWYER

[Signature] DATE: 6/10/2020
REBECCA ENGERAN O'DWYER