

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

vs.

NO. 02-1905

JAMES J. RANKIN, HOME INSPECTOR

RESPONDENT

AGREED ORDER

This cause came before the Mississippi Real Estate Commission, hereinafter referred to as "Commission," pursuant to authority of M. C. A. §§73-60-1, et seq., on a formal Complaint brought against James J. Rankin, Home Inspector, sometimes hereinafter "Respondent" or "Rankin." Prior to this matter being set for hearing before the Commission, the parties announced instead their agreement as to the disciplinary action. By entering this Agreed Order, Respondent Rankin waives his right to a hearing with full due process and the right to appeal any adverse decision resulting from that hearing. Having reached an agreement on this matter, the Commission issues its Findings of Fact and Disciplinary Order as follows:

Finding of Facts

I.

Respondent, James J. Rankin (sometimes hereinafter called "Rankin" or "Respondent"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 191 3rd Street Flora, MS 39071. Respondent Rankin is the holder of a home inspector license, No. 0576, issued by the Commission pursuant to Miss. Code Ann. §§73-60-1, et seq., and, as such, he is subject to the provisions, rules, regulations and statutes governing the practice of home inspections under Mississippi law.

II.

A formal, written statement of complaint from William and Susan Fulton alleges that Respondent Rankin, in his capacity as a licensed MS Home Inspector, failed to report numerous visually observable adverse conditions in his home inspection report performed on a residential property that the Fulton's purchased at 1907 Meadowbrook Road in Jackson, MS. The complaint further alleges that Rankin's negligence during the inspection of the property has caused them considerable financial harm and loss of money and that Home Inspector Rankin's misrepresentations demonstrates incompetency and/or bad faith.

III.

In December 2015, the Fulton's contracted to purchase a home located at 1907 Meadowbrook Road in Jackson. Susan Fulton (an active real estate licensee at that time) represented the buyers. A home inspection was allowed by the Contract of Sale and Susan Fulton contacted Respondent James (Jeff) Rankin, a licensed Home Inspector with All American Inspections, to perform the inspection. Rankin agreed to do the inspection for free. The inspection was done on 12/4/15 and the inspection report was provided to the Fulton's.

The report was used by the Fultons, at least in part, to base their decision on buying the home, along with any work required of the previous owners prior to the Fulton's purchase. The Fulton's reviewed the inspection report and negotiated with the seller to correct certain items indicated on Rankin's report. On 1/11/16, the Fulton's closed on the purchase of the home.

IV.

In October 2018, the Fulton's discovered some significant problems which they allege were related to Rankin's lack of doing a complete and professional inspection report to indicate all the problems with the home. The Fultons had clogged sewer lines on several occasions since moving into the house. On those occasions, they have had to engage a plumber to "snake" the main cleanout to unclog the line. In October of 2018, the plumber was able to identify the approximate area of a busted sewer line by snaking the cleanout where a break in the sewer line appeared to be. The plumber determined that the line break was under an elevated wood deck and below an existing patio slab located adjacent to the house's main foundation wall at the rear of the house. The Fultons began demolition of part of the wood deck and concrete to get down to the broken sewer line. After repairing the sewer line, the Fultons began to re-install the wood deck that had been removed. At this time, it was noticed that the existing rim joist for the wood deck attached to the house was not attached at all and most of the rim joist could be pulled off the exterior wall by hand. The Fultons then realized that the home appeared to have a severe case of rotten wood at the rim joists that went completely through to the crawl space along the rear wall of the deck.

V.

In November 2018, Respondent Rankin was notified. Rankin came out and examined the rotted rim joist and attributed the damage to nothing more than termites. The Fultons then contacted Joel Byrd, who handles termite issues, to come look at the problem. Upon inspection

of the rotted rim joist, Joel Byrd advised that this was just water rot and not associated with termite damage. He further stated that it was his opinion that the damage was very old.

VI.

The Fultons then contacted Michael Bankston, with MS Foundation Repair, since it appeared that some of the rotted material was no longer resting on the conventional foundation masonry wall, to get his opinion on how to address the issue. Mr. Bankston met with the Fultons on 12/13/18 and examined the damages. Bankston expressed that what he saw (with half the deck being removed) appeared to be significant rot. He recommended that the other part of the deck be removed to see what the full extent of the damage was. After completely removing the wood deck and rotted rim joist, they cut out a section extending for two (2) feet up the wall of the sheathing to ensure that the rot didn't extend into the actual wall framing. The Fultons could see through to the crawl space and discovered other areas of concern. They specifically saw where the bathroom floor had been shored up by concrete blocks and wood blocking, brick along the foundation wall had been removed for access to do prior repairs of some sort, and construction materials that had been used for previous repairs had been left beneath the house. Additionally, the Fultons saw that a pipe coming from a vent at the front of the house and into the crawl space carried water into the crawl space and should have been one of the first things an inspector saw upon entering the crawl space. After physically going into the crawl space, the Fultons determined that these findings should have been evident to Rankin if he had properly done a home inspection, yet these things were not mentioned in his report. The Fultons stated that it became evident that numerous significant things were not pointed out in the home inspection report. However, the report clearly indicates that a crawl space inspection was done, as evidenced by Respondent Rankin pointing out that an underneath A/C duct was crushed.

VII.

On 2/22/19, the Fultons emailed Rankin regarding their concerns and met with him. Rankin basically blamed it on termite damage and didn't take responsibility for not pointing out things such as: concrete blocks, wood materials and brick that had been knocked out of a foundation wall; termite shield laying on the ground; cast iron pipe remnants; and an actual wood block shoring of the floor system under the hall bathroom. The Fultons claim that any competent home inspector should have pointed out these issues of concern and significance in the inspection report. Had these issues been pointed out in Rankin's report, the Fultons could have negotiated with the seller to have the issues corrected, or otherwise could have withdrawn from the transaction. Rankin told Ms. Fulton he did this inspection for free, because of their professional relationship, and that he would refund their money ... but he did it for free! Regardless, Rankin provided an inadequate home inspection report that was used in the Fulton's decision-making to buy the home and/or negotiate any repair work with the seller based on the inspection report.

VIII.

Rankin's response to the Commission states that he was contacted in November of 2015 by Susan Fulton, a real estate licensee with Front Gate Realty, to inspect a home located at 1907 Meadowbrook Road. The home inspection was performed on 12/4/15. At the time of the inspection, Rankin claims he did not know it was for Ms. Fulton but was initially told it was for her client. Rankin said the inspection was done as a normal inspection using his normal checklist. Rankin stated that the only rotten wood he saw was on the outside of the home in various places, with one of those places being the outside back door that opened onto the rear deck. Rankin admitted that part of his inspection included the crawl space, where he found crushed duct work, but stated he saw no rotten wood. As for materials left under the house,

Rankin said that he doesn't point out things that are not affecting the house. Rankin said that every crawl space that he has been in has material left in them. Rankin said that as they walked around the house, he pointed out to Ms. Fulton that parts of the floor were not level and claimed that she responded that she, too, could feel that the house was not level. Rankin said that once he finished, Ms. Fulton told him that the inspection was for her and her kids. He said he did the inspection for free because he felt she could not afford it. In November 2018, Rankin confirmed that Ms. Fulton called him and said they had found rotten wood, so he went to see if he could be of assistance. The Fulton's had removed the deck and some of the siding and said they were having foundation work done to level the conventional foundation. Mr. Fulton showed Rankin the old rim joist they had pulled out, which was thought to be termite damage and Mr. Fulton said he was going to contact a termite inspector. In February 2019, Mr. Fulton emailed Rankin regarding the home inspection. Mr. Fulton told Rankin that after contacting a termite inspector it was determined that the rotten wood was not because of termites. Fulton told Rankin that he didn't understand how the below listed issues were missed, such as: rotted floor joists; rotted rim joists; extensive damaged brick/foundation walls; extensive amount of leftover debris/materials under the house where prior repairs were made. Rankin emailed back stating that, looking at the outside wood, he thought it might have been termite damage and that he doesn't point out junk in a crawl space. Rankin said he noted the crushed duct work, but with the old deck it was impossible to see the outside joist and, further, that he doesn't remove siding. However, the inside didn't appear to him to be in that bad of shape.

IX.

The above and foregoing described acts of the Respondent James J. Rankin constitute violations of Miss. Code Ann. §73-60-01 et seq., a chapter which states, in relevant parts:

§ 73-60-3. Administration and enforcement of chapter by Mississippi Real Estate Commission; powers and duties of commission

This chapter shall be administered and enforced by the Mississippi Real Estate Commission, which shall have the duties and powers to:

(e) Take appropriate action upon a decision and the related findings of fact made by the commission, or a hearing officer employed by the commission, if, after an administrative hearing, the commission or hearing officer (i) determines that a licensed home inspector under this chapter has violated the code of ethics and standards established under this section, and (ii) recommends that the license of the home inspector be suspended or revoked, that renewal be denied, or that some other disciplinary action be taken;

§ 73-60-7. Powers and duties of Mississippi Real Estate Commission; civil and criminal immunity

(1) The Mississippi Real Estate Commission shall have the duties and powers to:

(a) Be responsible for matters relating to home inspectors' code of ethics and standards, home inspector qualifications, testing standards and disciplinary functions.

(c) Conduct investigations, subpoena individuals and records, administer oaths, take testimony and receive evidence and to do all other things necessary and proper to discipline a person licensed under this chapter and to enforce this chapter. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon application by the commission, may issue to this person an order requiring him to appear before the commission, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

(e) Suspend or revoke licenses pursuant to the disciplinary proceedings provided for in this chapter.

§ 73-60-17. Standards of practice and code of ethics

- (1) A licensed home inspector is required to follow the Standards of Practice and Code of Ethics as adopted and published by the commission.
- (2) A home inspection report must be issued by a home inspector to a client as specified in the Standards of Practice.

§ 73-60-31. Disciplinary actions; causes

The commission may refuse to issue or to renew or may revoke or suspend a license or may place on probation, censure, reprimand, or take other disciplinary action with regard to any license issued under this chapter, including the issuance of fines for each violation, for any one (1) or combination of the following causes:

- (a) Violations of this chapter or the commission's rules promulgated pursuant hereto;
- (b) Violation of terms of license probation;
- (c) Conviction of a felony or making a plea of guilty or nolo contendere within five (5) years prior to the date of application;
- (d) Operating without adequate insurance coverage required for licensees; and
- (e) Fraud in the procurement or performance of a contract to conduct a home inspection.

Mississippi Real Estate Commission/Home Inspector Division Standards of Practice and Code of Ethics

PURPOSE AND SCOPE 2.1 The purpose of the Standards of Practice is to establish a minimum standard (Standard) for home inspections performed by home inspectors who subscribe to this Standard. Home inspections performed using this Standard are intended to provide the client with information about the condition of inspected systems and components at the time of the home inspection.

3. STRUCTURAL COMPONENTS

3.1 The inspector shall:

- A. inspect structural components including the foundation and framing.

B. describe:

1. the methods used to inspect under-floor crawlspaces and attics.
2. the foundation.
3. the floor structure.
4. the wall structure.
5. the ceiling structure.
6. the roof structure.

Definitions

Home Inspection. The process by which an inspector visually examines the readily accessible systems and components of a home *and describes those systems and components using this Standard.*

Under-floor Crawl Space. The area within the confines of the foundation and between the ground and the underside of the floor.

ASHI® CODE OF ETHICS for the Home Inspection Profession

2. Inspectors shall act in good faith toward each client and other interested parties.
 - A. Inspectors shall perform services and express opinions based on genuine conviction and only within their areas of education, training, or experience.
 - B. Inspectors shall be objective in their reporting and not knowingly understate or overstate the significance of reported conditions.
 - C. Inspectors shall not disclose inspection results or client information without client approval. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards, when feasible.

DISCIPLINARY ORDER

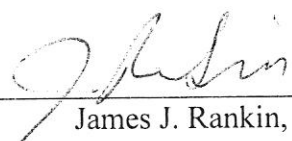
THEREFORE, by agreement and consent, the Commission **ORDERS** discipline as follows:

1. The license of Respondent, James J. Rankin, shall be suspended for ninety (90) days, with 60 of those suspension days held in abeyance for good behavior, beginning December 15, 2019. The Respondent is further ordered to pay a fine to MREC of \$ 500.00 by December 31, 2019.
2. Following the 30-day period of license suspension, the license of Respondent Rankin shall be placed on probation for a period of eleven (11) months.
3. Prior to the expiration of the 30-day period of suspension, Respondent Rankin shall complete an ethics course for home inspectors. The course shall be approved by the Commission and this mandatory ethics course shall be completed in addition to those continuing education hours required for renewal of Respondent Rankin's home inspector license.

SO ORDERED, THIS THE 14TH DAY OF JAN., 2020.

MISSISSIPPI REAL ESTATE COMMISSION

By:  date: 01/14/2020
Robert E. Praytor, Administrator

Agreed:  date: 12/10/19
James J. Rankin, Respondent