

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

CASE # 053-1907

PHILIP LANDERS, BROKER

HARTLEY WESTER SMITH, MANAGING BROKER

DETRICE JOHNSON, SALESPERSON

ROBERT M. MANUEL II, SALESPERSON

RESPONDENTS

AGREED ORDER OF RESPONDENT HARTLEY HAVARD

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 formal Complaint against Philip Landers, Broker, Hartley Wester Smith, Managing Broker, Detrice Johnson, Salesperson, and Robert Manuel, Salesperson. Prior to the hearing before the Commission, the parties announced their respective agreement as to the allegations of the Commission Complaint and disciplinary action for Respondent Hartley Wester Smith (now Havard), all as set forth herein. The Agreed Order between the Commission and Respondents Philip Landers, Detrice Johnson and Robert Manuel is set forth and memorialized in a separate document. By entering into this Agreed Order, Respondent Hartley Wester Smith (Havard) waives her rights to an administrative hearing before the Commission with full due process and the rights to appeal any adverse decision which may have resulted from that hearing. Further, Respondent acknowledges as evidenced by her signature affixed hereto this Agreed Order must be approved by the Commission, and so Respondent expressly waives any objections she may have as to the Commission taking up this matter preliminarily for the purposes of considering approval of this Agreed Order. Respondent acknowledges and agrees that, should the Commission reject approval of this Agreed Order, Respondent will retain her right to proceed to an administrative hearing before the Commission with full due process. Having reached an agreement in this matter, the Commission issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

I.

Respondent, Hartley Wester Smith (now Havard), sometimes hereinafter "Respondent" or "Havard," is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 99 Westside Cove, Pearl, Mississippi 39208. Respondent Havard is the holder of a resident broker's 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. At all relevant times to this proceeding, Respondent Havard was a Managing Broker at Keller Williams Real Estate and over Respondents Detrice Johnson and Robert Manuel.

II.

Respondent, Philip Landers, sometimes hereinafter "Respondent" or "Landers," is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 201 E. Layfair St., Ste. 240, Flowood, Mississippi 39232. Respondent Landers is the holder of a resident broker's license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, so he 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 Landers is the Principal Broker at Hurtt and Landers LLC d/b/a Keller Williams and over the Respondents, Detrice Johnson, and Robert M. Manuel II. At all relevant times to this proceeding, Respondent Landers was the Principal Broker for Respondent Hartley Wester Smith (now Havard).

III.

Respondent, Detrice Johnson, sometimes hereinafter "Respondent" or "Johnson," is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 201 E. Layfair St., Ste. 240, Flowood, Mississippi 39232. Respondent Johnson 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 licensees under Mississippi law and the administrative rules of the Mississippi Real Estate Commission.

IV.

Respondent, Robert M. Manuel II, sometimes hereinafter “Respondent” or “Manuel,” is an adult resident citizen of Mississippi whose last known business address of record with the Commission is 201 E. Layfair St., Ste. 240, Flowood, Mississippi 39232. Respondent Manuel is the holder of a resident broker’s license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, so he is subject to the provisions, rules, regulations and statutes governing real estate licensees under Mississippi law and the administrative rules of the Mississippi Real Estate Commission. At all relevant times to this proceeding, Respondent Manuel was a licensed real estate salesperson.

V.

On or about July 26, 2019, the Commission received a sworn statement of complaint from Royzetta Hayes, sometimes hereinafter “Complainant” or “Hayes” regarding a home she purchased at 108 Beechwood Circle in Pearl, Mississippi. Hayes had engaged Respondent Johnson as a buyer’s agent in February, 2019. The listing agent for the subject property was Respondent Manuel. This was a dual agency transaction.

VI.

Hayes entered into an exclusive buyer agency contract with Keller Williams to last from February 20, 2019 until July 20, 2019. Hayes signed an offer to purchase via dotloop with her signature on March 11, 2019 at 12:02 p.m. The offer was accepted by the sellers shortly thereafter. This was a vacant rental property of the sellers, Christopher and Jeanne Fults, who reside in California. The sellers signed all documents electronically, as did Hayes. Hayes stated, however,

that she was never provided a copy of any signed documentation, addendums, nor a home warranty like Respondent Johnson said she would receive. The only documentation Hayes had was what was saved on her phone via an e-sign document site. Hayes claimed to have not been informed of a dual agency transaction, although her electronic signature was reflected on a Disclosed Dual Agency Confirmation form. Line 177 of the Offer to Purchase disclosed that the transaction was dual agency. However, no documents were produced by these Respondents to show that this client had any document explained to her, nor any document produced that reflected Hayes was made aware documents sent to her for dotloop signature needed to be then printed or saved by her because these documents would not later be accessible. Commission Administrative Rule 3.2 clearly states that a “real estate licensee shall **immediately (at the time of signing)** deliver a true and correct copy of any instrument to any party or parties executing the same.”

VII.

A home inspection was performed on March 20, 2019 by Eli Childers of Magnolia Home Inspections LLC. An addendum was signed on April 18, 2019 wherein the parties agreed to contract with Darby Home Improvement, chosen by Respondent Johnson, for all repairs noted on the home inspection report in the amount of \$2,600.00. Among other repairs, this addendum stated that Darby Home Improvement was to replace and install a stove/oven and a master bath vanity. Once repairs were completed, Darby would be paid at closing. The addendum also provided that the seller agreed to provide a \$400.00 allowance for a new stove and a \$750.00 allowance for flooring and paint, both to be disbursed at the closing. An appraisal, performed on April 9, 2019, stated other repairs that needed to be made on a hot water heater and a burned electrical wall outlet. The appraisal also recommended termite treatment. The residence was subsequently treated for termites and a follow up inspection was performed on May 24, 2019. The appraiser stated that the power was on at the time of his follow up inspection and that the items indicated in the earlier appraisal report as needing repair had been completed. Other repairs were not completed before

closing because the utilities were turned off before a final walk through could be performed to confirm all repairs were made. Respondent Johnson stated that her buyer requested multiple time extensions to close due to the length of time it was taking to secure approval from multiple agencies for down payment assistance. However, the documents reviewed in the Commission investigation do not reflect this. Rather, the sellers supposedly became frustrated over the length of time of the process, resulting in sellers having the power turned off, even though the repairs that the sellers had agreed upon were not completed. Hayes was made aware that the power was off after Respondent Johnson visited the property to check on the status of the repairs. Upon that information, Hayes and the sellers agreed to hold funds in escrow to cover the cost of the remaining repairs to be completed post-closing. At the closing, Hayes was not given the \$750.00 allowance or her \$500.00 earnest money as agreed.

VIII.

On May 31, 2019, the day of closing, Respondent Manuel, the listing agent, submitted another repair addendum that had been signed by the sellers that morning around 8:00 a.m., and signed by Hayes at the closing table at 3:36 p.m. This addendum stated that the "seller hired a handyman according to buyer's choice to make repairs requested by home inspection, and seller made repairs requested by appraiser. All invoices are attached and made part of the PCDS." However, Hayes stated that she had last visited the property about a month prior to closing. There was no final walk through prior to the closing on May 31, 2019.

IX.

Hayes stated that, after the closing, she called her family, and they went to see her new home. Hayes claimed it was in better condition than when she first placed an offer, but it was a wreck. A refrigerator that was present during the home inspection had been removed, and almost every repair item noted on the home inspection report was either not performed at all, done inadequately or replaced with used items or items not the equivalent of what was present before

repairs. Hayes immediately called her agent, Respondent Johnson, who came to look and then said she would call the listing agent and the repairman to correct all issues. Respondent Johnson followed up with Hayes by an email on June 4, 2019 verifying a repair list. On June 8, 2019, Hayes sent Respondent Johnson an email to report issues about the bathroom vanity, the \$750.00 allowance she was to have received at closing, and the issue of the refrigerator being taken. The home inspection report stated that the refrigerator was "inoperable or not on at time of inspection." In a June 9, 2019 email response to Hayes, Respondent Johnson stated that after the March 30 home inspection report, she recalled Hayes mentioning to her that she would be purchasing a new refrigerator. Consequently, when Micah Darby (*Respondent Johnson's choice of repairman*) asked Respondent Johnson if the old one should be discarded, Respondent Johnson told him yes. The repairman bought a replacement vanity, before taking measurements on the original one, and did not get the correct size. He cut holes in it which prevented the store from taking it back. Another vanity had to be purchased, which caused the amount of money held in escrow for repairs to be insufficient. The sellers refused to provide additional funds or allowances. Apparently, no agent argued that the mistake was the fault of the repairman and the cost of a replacement vanity could have been out of his pocket, not from the escrowed funds. On June 10, 2019, Hayes began to email the managing broker, Respondent Hartley Smith, about her issues. Hayes also mentioned that she did not receive the \$750.00 allowance. Respondent Smith reviewed the documents and determined that the money held in escrow was insufficient to fund the repairs.

X.

During the Commission investigation, Respondents claimed "[i]t appears that the closing attorney did not consider the addendum referencing the \$750.00 allowance." In a subsequent email to the Commission Investigator, Respondent Hartley Smith stated that the "overage went to Keller Williams because the closing attorney did not reflect the reduction in commission on the CD. Tensions were high, and the seller was unwilling to pay the additional \$750 which was agreed

upon already, therefore putting him in a "breech" situation and potential lawsuit." On June 25, 2019, Hayes went to the Keller Williams office where she signed a statement on an "addendum" form which was also signed by Respondent Smith, but not by the sellers. This addendum stated that "at the time of closing, an amount of \$750.00 was to have been held in escrow for Ms. Hayes and that this money was not held due to failure of the funds being reflected in the settlement statement. This was an oversight on the part of the agents involved and they elected to make up the oversight by each contributing \$375 to Ms. Hayes. This was paid by check and a cash payment." This constituted paying a rebate to an unlicensed person, contrary to state law.

XI.

The referenced "Addendum" included additional language that stated that Ms. Hayes "now accepts the property and warrants that all repairs have been completed that were agreed to in the contract with the exception of the garage door which will be repaired June 28th." This addendum was not dated. There was no written document produced that reflected the agents' reduction of sales commission to make up this mistake at the closing. In a March, 2020 email from Respondent Johnson to the Commission, Johnson stated that complete repairs took approximately 5 weeks after closing, due in part to the property not having power and Hayes did not have money for the utility deposits. Proper disbursement of her funds could have prevented this. This prolonged the repair process after closing. Once power was restored, Hayes elected to discontinue the services of the handyman that Respondent Johnson had chosen because she was not satisfied with his work. Hayes had other contractors review the remaining work and give quotes, which took another week.

XII.

The referenced "Addendum" pursuant to which the post-closing \$750.00 payment from the agents to Royzetta Hayes was memorialized, was included with and held out by Respondents to be part of the official record of the subject real estate transaction in the files maintained by Respondents, and otherwise represented to the Commission during its

investigation as the true record of the subject real estate transaction. In fact, the referenced "Addendum" was not an addendum to the real estate contract between the buyer and seller parties to the transaction, despite being held out and represented as such by Respondents. The "Addendum" was not signed by the seller Fults. Rather, the document was executed by the buyer Hayes and Respondent Hartley Wester Smith (Havard). The document reflected the \$750.00 was paid to the buyer, directly from the agents (Respondents Johnson and Manuel) due to "over sight(sic) by the agents involved" and was "not held due to the failure of the funds reflecting on the settlement statement." It may be true that the funds were intended to be withheld from sellers' proceeds at closing pursuant to the contract between the buyer and sellers and that the agents (acting in capacity of dual agency) should have caught the error prior to closing. However, there was no evidence obtained during the Commission investigation to establish that the real estate agent commissions were to be reduced in order to provide these funds to the buyer Hayes, only that the sellers refused to pay the \$750.00 called for in the contract. The real estate commissions paid to the agents were in the exact amount due at closing pursuant to the listing agreement executed by the sellers and the subject real estate contract. The evidence obtained by the Commission established that one or more of the Respondents, or all of them, knew that the \$750.00 payment made directly to the buyer Hayes from the agents' commissions, post-closing, was both improper and contrary to the terms of the contract. Respondents, and each of them, were complicit in this substantial and clear misrepresentation of the facts and circumstances attendant the \$750.00 post-closing payment. These Respondents' misrepresentations were included with and held out to be part of the official record of the subject real estate transaction, and the misrepresentations were continued, willful and repeated by Respondents in their responses made to the Commission during its official investigation of the matter.

XIII.

The Buyer Agency Contract between Hayes and Keller Williams did not reflect any percentage or flat rate amount of commission to be paid by the buyer. The PCDS form is incomplete, as questions A2, B5, B8, F3, F5, and I18 were left blank. Seller Chris Fults did not sign the PCDS informational statement until March 11, 2019, one day *after* the buyer signed it. Additionally, no agent noticed that the sellers marked that they did *not* have deeded title to this property (A1). Hayes earnest money was not remitted to her until June 20th, 3 weeks after the closing, and not delivered to her until June 24, contrary to Rule 3.4.

CONCLUSIONS OF LAW

XIV.

The Commission and Respondent Hartley Wester Smith (Havard) agree the above and foregoing described acts and omissions of Respondent, if proved at an administrative hearing upon clear and convincing evidence, could constitute violations of Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and Regulations of the Commission and, more specifically §73-35-21(1), Miss. Code Ann. §§89-1-501, *et seq.* and Commission Rules 3.1, 3.2, 3.4 and 4.2 which provide, in relevant parts:

§73-35-21. Grounds for refusing to issue or suspending or revoking a 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:

(a) Making any substantial misrepresentation in connection with a real estate transaction;

(j) Paying any rebate, profit or commission to any person other than a real estate broker or salesperson licensed under the provisions of this chapter;

(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.

§89-1-525. Enforcement by Mississippi Real Estate Commission

The Mississippi Real Estate Commission is authorized to enforce the provisions of Sections 89-1-501 through 89-1-523. Any violation of the provisions of Sections 89-1-501 through 89-1-523 shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, Section 73-35-1 et seq., and shall be subject to same penalties as provided in that chapter.

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 3.1E:

No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license.

Rule 3.1F:

Any licensee ...who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

Rule 3.2A:

A real estate licensee shall **immediately (at the time of signing)** deliver a true and correct copy of any instrument to any party or parties executing the same.

Rule 3.4A:

The responsible broker is responsible at all times for earnest money deposits. Earnest money accepted by the broker or any licensee for which the broker is responsible and upon acceptance of a mutually agreeable contract is required to deposit the money into a trust account prior to the close of business of the next banking day. The responsible broker is required to promptly account for and remit the full amount of the deposit or earnest money at the consummation or termination of transaction. A licensee is required to pay over to the responsible broker all deposits and earnest money immediately upon receipt thereof. Earnest money must be returned promptly when the

purchaser is rightfully entitled to same allowing reasonable time for clearance of the earnest money check. In the event of uncertainty as to the proper disposition of earnest money, the broker may turn earnest money over to a court of law for disposition. Failure to comply with this regulation shall constitute grounds for revocation or suspension of license.

Rule 4.2G:

"Fiduciary Responsibilities" are those duties due the principal (client) in a real estate transaction are:

- (1) 'Loyalty' –the agent must put the interests of the principal above the interests of the agent or any third party.

- (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

Upon agreement and consent of Respondent 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:

1. The license of Respondent Hartley Wester Smith (Havard) shall be suspended for one month (thirty days), effective August 15, 2021 through September 13, 2021.

2. Following the period of suspension, the license of Respondent Havard shall be on probation for a period of eleven (11) months.

3. During the period of suspension, Respondent Havard 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 and must be administered by a Commission approved continuing education provider, and in a classroom setting if available. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent Havard's license and shall not be the same continuing education course from the same course provider previously completed for renewal of

Respondent's license during the last renewal period. Respondent shall furnish to the Commission written evidence of the satisfactory completion of the required courses.

4. Respondent Havard expressly waives any objections she may have as to the full Commission taking up this matter preliminarily for the purposes of consideration of approval of this Agreed Order. Respondent acknowledges and agrees that should the Commission reject approval of this Agreed Order, Respondent will retain her right to proceed to an administrative hearing before the Commission with full due process.

5. This Agreed Order shall be effective as to Respondent Havard upon approval of the Commission as evidenced by execution by the Commission Administrator.

THIS, the 10th day of August, 2021.



MISSISSIPPI REAL ESTATE COMMISSION

BY:

Robert E. Praytor
ROBERT E. PRAYTOR, Administrator

AGREED:

Hartley Havard DATE 7/12/21
HARTLEY HAVARD