

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 69-1811

J.E. SMITH, PRINCIPAL BROKER;

RESPONDENT

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 J.E. Smith, Principal Broker. Prior to hearing before the Commission, the parties announced their agreement as to the allegations of the Complaint and disciplinary action for Respondent, all as set forth herein. By entering into this Agreed Order, Respondent 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, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

I.

Respondent J.E. Smith, Principal Broker, sometimes hereinafter "Respondent" or "Smith" is an adult resident citizen of Mississippi whose last known address of record with the Commission is 646 Hwy. 18 E., Bay Springs, Mississippi 39422. Respondent Smith

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 all of the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

II.

On or about November 7, 2018, the Commission received a sworn complaint from Neil Sulek, sometimes hereinafter "Complainant" or "Sulek." Sulek complained he had purchased a home located at 19 Bayless Drive, Bay Springs, Mississippi 39422 from Seller McArthur. The transaction closed on or about July 12, 2013. The contract for sale of the subject property was prepared by Respondent J.E. Smith who was paid a six percent (6%) commission of \$4800.00 at closing for the \$80,000 sales price for the purchase of the property by Sulek.

III.

Among other complaints, Sulek complained that he had never received information from Respondent Smith prior to or before closing as to the agency relationship with Smith, if any. Sulek complained that Respondent Smith had prior and actual knowledge of negative conditions regarding the subject property that were not disclosed or not properly disclosed by the Seller McArthur. Sulek complained that he was not made aware of issues regarding the septic system and known foundation issues with the subject property. Additionally, Sulek complained that he was not provided with engineer/foundation reports concerning the property until he requested documents from Respondent Smith in 2018, all of which were available to Respondent Smith prior to closing in 2013. Sulek complained

that Smith had known of certain issues regarding the location and component properties of the septic system for the property which were not disclosed to Sulek, and to his detriment.

IV.

Sulek complained specifically that he learned, prior to filing his complaint with the Commission, that real estate licensees were required to disclose their agency relationship(s) to the parties to a real estate transaction through delivery and execution of the Commission's required Working With a Real Estate Broker Form (WWREB). Sulek complained that he had never received or executed such form when working with Respondent Smith during the transaction, nor did Respondent Smith ever explain the agency relationship(s) attendant the transaction. When Sulek inquired directly of Smith regarding the WWREB form, Smith responded in writing that he "didn't use that form then."

V.

Upon receipt of Sulek's sworn complaint, the Commission initiated its investigation of the matters alleged. In Commission correspondence dated November 13, 2018, Respondent Smith was directed to "respond to the allegations in the formal written complaint within the next ten (10) days by supplying a written statement specifically addressing the allegations in the complaint ...and include a signed, notarized affidavit indicating that you are submitting any/all documentation, including but not limited to, **the entire transaction file and supporting correspondence** associated with your activities involving the real estate transaction located at 19 Bayless Drive in Bay Springs, Mississippi." Smith requested and was provided additional time to submit the required

documentation and response. In Smith's response received by the Commission on November 30, 2018, Smith failed to provide any written response to the allegations of Sulek's sworn complaint. Smith was notified by the Commission Investigator of his failure to respond to the allegations as instructed. Ultimately, the Commission received additional responses from Smith on or about March 6, 2019.

VI.

Respondent Smith claimed in a response to the Commission that he had made an "error" when he stated to Sulek (in writing) that he "did not use [the required WWREB] form" during the time period including the subject 2013 transaction. Smith stated to the Commission that he "must have overlooked" the requirement for the WWREB but admitted same had not been provided to Sulek. Additionally, the Commission obtained no evidence that the Seller, McArthur, was ever presented the required WWREB form. In response to the Commission, Respondent Smith stated that he was agent for the Seller, McArthur, and that Sulek had been a customer, and thus not represented in the transaction. Respondent Smith failed to explain the agency relationship to the parties in the transaction, as evidenced by his admitted failure to present and execute the required WWREB forms to any of the parties. Licensees are required to explain their agency relationship(s), if any, to parties to a real estate transaction and the execution of the WWREB form had been an existing Commission requirement for at least fifteen (15) years prior to the subject 2013 transaction.

VII.

During the Commission investigation, documents were received from both Complainant Sulek and Respondent Smith. Upon review of the documents, it was discovered that the required Property Condition Disclosure Statement (PCDS) had not been signed by the Seller at the closing on or about July 12, 2013. With regard to the question whether Seller was “aware of any problems or conditions that affect the desirability or functionality of the ...Plumbing ...Systems,” Seller had checked “No.” Sulek complained that Smith knew about negative issues regarding the septic system which were not disclosed. With regard to the question whether any foundation repairs were “currently needed,” the Seller had checked “No.”

VIII.

Sulek alleged that Smith had personal knowledge of at least one foundation inspection report dated on or about June 3, 2013 that indicated a negative issue and recommended repair which report was prepared and received by Smith after Sulek had entered into the April 17, 2013 contract for purchase and prior to the closing. Respondent Smith failed to disclose this information and report until Sulek requested documentation of the transaction in 2018. The Commission obtained evidence of an additional report regarding the property foundation, prepared directly for Respondent Smith on or about June 11, 2013, that acknowledged an area of concern regarding the transaction but only recommended cosmetic repairs. This report was prepared for and received by Respondent Smith after Sulek had entered into the contract for purchase and prior to closing, but was not disclosed by Seller McArthur or Respondent Smith.

IX.

During the Commission investigation, the Commission received documentation and admission of Respondent Smith that he had appraised the subject property for the Seller McArthur, on or about April 10, 2013 for a fee of \$400.00. On the same date that the sales contract was executed by Sulek and the Seller McArthur, April 17, 2013, a "Commission Agreement" was signed by the Seller agreeing to pay Respondent Smith a 6% commission on the \$80,000 sales price for the contract. This "Commission Agreement" reflected that Respondent Smith's \$400.00 appraisal fee charged to McArthur would be refunded or given back to the Seller after closing. The April 17, 2013 sales contract did not disclose the agency relationship between Respondent Smith and any party to the contract.

CONCLUSIONS OF LAW

X.

The Commission and Respondent agree the above and foregoing described acts and omissions of Respondent 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, §73-35-21(1)(a), (j) and (n), §89-1-505, §89-1-511, §89-1-513 and Commission Rules 3.1E, 3.1F, 3.2E, 4.1, 4.3A and 4.3B, which provide in relevant parts:

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

- (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 ...or improper dealing...

§89-1-505(1) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy or omission of any information delivered pursuant to Sections 89-1-501 through 89-1-523 if the error, inaccuracy or omission was not within the personal knowledge of the transferor or that listing or selling agent...

§89-1-511 Each disclosure required ...and each act which may be performed in making the disclosure, shall be made in good faith. ... “[G]ood faith” means honesty in fact in the conduct of the transaction.

§89-1-513 The specification of items for disclosure ...does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation or deceit in the transfer transaction.

Rule 3.1E No licensee shall pay any part of a fee, commission, or other compensation received by such licensee ...except to another licensee...

Rule 3.1F Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written communication or 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 3.2E Every real estate contract must reflect whom the broker represents by a statement over the signatures to the parties to the contract.

Rule 4.1 Consumers shall be fully informed of the agency relationships in real estate transactions... This rule places specific requirements on Brokers to disclose their agency relationship. ...Compliance will be necessary in order to protect licensees from imposition of sanctions against their license by the Mississippi Real Estate Commission...

Rule 4.3A 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 the 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.

Rule 4.3B In a single agency, a real estate broker is required to disclose, in writing, to the party for whom the broker is not an agent, that the broker is an agent of another party in the transaction. The written disclosure shall be made at the time of the first substantive meeting with the party for whom the broker is not an agent. This shall be on an MREC Agency Disclosure Form.

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 J.E. Smith shall be suspended for one (1) month (thirty days) beginning March 1, 2020 or thereafter upon designation of a principal/responsible broker in place of Respondent Smith.
- 2. Following the period of suspension, the license of Respondent Smith shall be on probation for a period of eleven (11) months.

3. During the period of suspension, Respondent Smith 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 in a classroom setting. The mandatory continuing education hours shall be in addition to any hours required for renewal of Respondent Smith's license. Respondent shall furnish to the Commission written evidence of the satisfactory completion of the required courses.

4. This Agreed Order shall be effective upon execution by the Commission.

THIS the 11th day of FEBRUARY, 2020.

MISSISSIPPI REAL ESTATE COMMISSION

BY: Robert E. Praytor
ROBERT E. PRAYTOR

AGREED:

J.E. Smith
J.E. SMITH

DATE 2/6/20

