

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

VS.

NO. 030-1906

**LARA THRASH, PRINCIPAL BROKER
SHERRY C. POLLES, SALESPERSON
G. LEE BOYETTE, PRINCIPAL BROKER
ASHLEIGH JENKINS, BROKER/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 G. Lee Boyette, Broker, and Ashleigh Jenkins, Salesperson and others and the Commission was advised that there has been an agreement reached resolving the issues charged as to these Respondents. By entering into this Agreed Order, these Respondents waive their rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent Lara Thrash, sometimes hereinafter "Respondent Thrash," is an adult resident citizen of MS, whose last known business address of record with the Commission is 6184 US Hwy 98W, Ste. 100, Hattiesburg, MS. Respondent Thrash is the principal broker of Coldwell Banker Don Nace, Inc. in Hattiesburg, MS and 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. As such, she 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.

Respondent Sherrye C. Polles, sometimes hereinafter “Respondent Polles,” is an adult resident citizen of Mississippi, whose last known office address of record with the Commission is 6184 US Hwy 98W, Ste. 100, Hattiesburg, MS. Respondent Polles is a salesperson under Principal Broker Lara Thrash with Coldwell Banker Don Nace, Inc. in Hattiesburg, MS and is the holder of a real estate license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended. As such, she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate agents under Mississippi law.

III.

Respondent Ashleigh Jenkins, sometimes hereinafter “Respondent Jenkins,” is an adult resident citizen of MS, whose last known office address of record with the Commission is 813 16th Ave., Laurel, MS 39440. Respondent Jenkins is a Broker/Salesperson under Principal Broker G. Lee Boyette and holds a real estate license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended. As such, she is subject to the provisions, administrative rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate agents under Mississippi law.

VI.

Respondent G. Lee Boyette, sometimes hereinafter “Respondent Boyette,” is an adult resident citizen of MS, whose last known business address of record with the Commission is 813 16th Ave., Laurel, MS 39440. Respondent Boyette is the principal broker of Woodland Realty Inc. and holds a real estate broker’s license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended. As such, he is subject to the provisions, administrative rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

V.

On April 15, 2019, this office received a sworn statement of complaint from Don & Jerrie Hartness. They were buyers represented by Respondent G. Lee Boyette through Respondent Salesperson Ashleigh Jenkins. The Hartness' had an accepted contract on selling their current home in Rankin County and were under contract to purchase a home located at 8 Parkview Drive, Ellisville, MS. This Ellisville, MS property was listed by Respondent Lara Thrash, through Respondent Sherrye C. Polles.

VI.

The Hartness' offer to purchase this Ellisville property was accepted on 2/12/19. A closing date was scheduled for 3/15/2019. The complaint stated that on 3/4/2019, Respondent Jenkins called the Hartness' saying that she had spoken with Respondent Polles who had said that there was a problem with the title but couldn't say exactly what it was. Ms. Hartness called the title office and was told that there was a large lien against the home. Three days before the scheduled closing, Respondent Jenkins called the Hartness' and told them that there was a \$60,000.00 IRS lien against the home. Respondent Jenkins related that Respondent Polles said that the sellers were hopeful the problem would be resolved by the closing date at 4 pm.

VII.

A final walkthrough was performed at 11 am on the day of closing. About 2 pm that afternoon, Ms. Hartness received a call from Respondent Jenkins saying that the IRS would not release the lien, so the closing did not occur. There was supposed to have been simultaneous closings of the Hartness' home in Brandon and their purchase of this home in Ellisville. Later that evening, the sellers offered to rent their Ellisville home to the Hartness' until the issue with the lien could be resolved and use the \$1000.00 earnest money as a rent deposit, but the Hartness' declined.

VIII.

On 6/12/2019, the Commission received a response from Respondent Thrash, who said that at the time Respondent Polles listed the Ellisville property, the seller stated that there was an outstanding tax lien of about \$15,000.00. Respondent Thrash said that the sellers were told it would have to be satisfied in order to close. It was not until later when the title search was conducted that the lien was determined to be \$60,000.00. To consider reducing the lien, Respondent Thrash said that the IRS required an appraisal. Hartness, however, was paying cash and so had elected to forego an appraisal as a condition of the contract. An appraisal was ordered and submitted to the IRS. As the closing date came without resolution of the IRS lien, the buyers chose not to extend the contract, letting the offer expire. The listing was then cancelled until the amount of the lien could be reduced. Based on the appraisal and the Hartness contract, the IRS later reduced the lien to \$5,740.00. This notice was given to Respondent Polles on 3/21/2019 with the caveat that the amount could change based on any future contract price and appraisal. Respondent Thrash said that the property was re-listed on the market on 3/24/2019 and under contract again, on 3/30/2019, with different buyers. That subsequent contract and appraisal were submitted to the IRS and approved. That deal closed on 6/5/2019.

IX.

Respondent Thrash added that she and Respondent Polles did not initially know the lien amount. Once they did, Respondent Polles was told by the closing attorney that they were under no obligation to disclose the lien issue while his office worked to reduce the lien. The property was not put back on market until the lien amount was reduced and could be paid at closing. Further, Respondent Thrash said that once they knew the Ellisville, MS closing was going to be delayed and that the Hartness family had already sold their Brandon, MS home, the sellers did offer to rent the home to the Hartness'. This offer was declined by the Harnesses'.

X.

Included in Respondent Thrash's response was a letter from Joey Fillingame, Esq. which stated that Respondent Polles did inquire of him, at the time of listing, if she could sell the property since she was aware of a federal tax lien. Fillingame replied there was a process that would have to be followed, but it was possible. Also included with the response was a contract for sale showing the date of the offer to purchase as 2/11/2019. The sellers countered that same day with Addendum #1. It was signed the next day. The signatures of all parties were electronic; however, the date of the buyer's signatures was 2/12/2020. There was also a First Right of Refusal Addendum signed by all parties at the same time as the previous Addendum, also showing the incorrect year of 2020. There was a home inspection performed by Home Inspector Joseph Rowell, and later an appraisal performed by Jason Boone.

XI.

As to the transactional documents related to the listing, the WWREB, Informational Statement, and Listing Agreement were all dated 11/27/2018 with an expiration date of May 27, 2019. Later, the original date that the Listing Agreement was signed was stricken and changed to 1/2/2019 but this change was not initialed by the seller/client. This change was due to the property being occupied by renters. Importantly, the listing agreement stated that homestead exemption was NOT in effect for the current year. The PCDS was incomplete, as parts B-1, D-5, F-5, I-4, I-9, and I-10 were blank, and the sellers' signatures were not dated. The seller answered part I-11 as "**unknown**", regarding whether homestead exemption had been filed for the current year. However, text messages dated 3/1/2019 between Respondent Jenkins and Don Hartness showed that Hartness instructed Respondent Jenkins to "make sure the couple have filed homestead exemption on the 8 Parkview home". Respondent Jenkins responded that "they live in another home and did not file homestead on the 8 Parkview home" and went on to say that "they (Hartness)

could file (for homestead) in January of 2020". The seller's agent had been licensed for more than two (2) years at the time of the transaction and each of their respective Principal Brokers had been licensed more than ten (10) years. They should have known that it was impossible to sign for a Homestead Exemption on that residence if the owners/sellers were not occupying that dwelling on the last day of the previous year. The immediate negative impact could have been an increase in the taxes on the residence for the year 2020. All licensees have a fiduciary obligation to disclose the consequences of such a situation to their clients during the negotiations. Delaying a closing for one reason could impact a client's position on another matter or issue. The PCDS was never modified to reflect the fact that the seller was not eligible for homestead exemption and no negotiations took place which would have established which party would be responsible for any difference in taxes caused by the oversight. Had this transaction closed, it is possible that in this particular instance the closing attorney would have discovered this issue but there was a better chance that it would not have become known until later in 2020, when new tax statements would have been issued to the Hartness', as the new owners.

XII.

A requested response for the transactional documents from the buyer's agent, Ashleigh Jenkins, was received. The WWREB form was checked buyer's agent and contained the clients' signatures but the date was 1/5/2018, not 2019. The Contract for Sale, signed and dated by the buyers on 2/11/2019, stated that the buyers had acknowledged receipt of a PCDS (line 128) but their signatures on the Informational Statement and PCDS are dated 2/14/2019. Also, the Agency relationship (line 174 on the Contract) had not been completed.

XIII.

The above and foregoing described acts and omissions of the Respondents constitute violations of, or actions contrary to, the Miss. 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)(n) and Commission Administrative Rules 3.1 A, 3.1 F and 4.2 G which provide, in relevant parts:

As to these Respondents:

Miss. Code Ann. §73-35-21(1)(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.”

§89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery

The transferor of any real property subject to Sections 89-1-501 through 89-1-523 shall deliver to the prospective transferee the written property condition disclosure statement required by Sections 89-1-501 through 89-1-523, as follows:

If any disclosure, or any material amendment of any disclosure, required to be made by Section 89-1-501 through 89-1-523, is delivered after the execution of an offer to purchase, the transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

§89-1-515. Amendment of disclosure

Any disclosure made pursuant to Sections 89-1-501 through 89-1-523 may be amended in writing by the transferor or his agent, but the amendment shall be subject to the provisions of Section 89-1-503.

Rule 4.2 G. (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 3.1 General Rules

F. 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.

As to Respondent Thrash:

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.

DISCIPLINARY ORDER

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

As to Lara Thrash, Broker, the Commission orders that her license incur a one (1) month suspension, held in abeyance, and followed by five (5) months of probation; contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent upon her completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during the first thirty (30) days after Respondent Thrash signs this order. Said education may be completed through Distance Education, in light of COVID-19 restrictions. Further, these classes will be courses approved by this Commission, be in addition to the regular hours of continuing education already required of licensees for license renewal and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Evidence of completion of these classes is to be provided to this Commission.

As to Sherrye Polles, Salesperson, the Commission orders that her license incur a one (1) month suspension, held in abeyance, and followed by five (5) months of probation; contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent upon her completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during the first thirty (30) days after Respondent Polles signs this order. Said education may be completed through Distance Education,

in light of current COVID-19 restrictions. Further, these classes will be courses approved by this Commission, be in addition to the regular hours of continuing education already required of licensees for license renewal and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Evidence of completion of these classes is to be provided to this Commission.

SO ORDERED this the 9th day of FEBRUARY, 2021.

MISSISSIPPI REAL ESTATE COMMISSION



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

Agreed: *Lara Thrash* Date: 1/13/21
Lara Thrash, Broker

Agreed: *Sherrye Polles* Date: 1/13/2021
Sherrye Polles, Salesperson