

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 86-1911

SAM TIWANA, 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 against Sam Tiwana, Principal Broker. Prior to the hearing before the Commission, the parties announced their respective agreements as to the allegations of the Commission Complaint and disciplinary actions for the 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 rights to appeal any adverse decision which may have resulted from that hearing. Further, Respondent acknowledges this Agreed Order must be approved by the Commission and so expressly waives any objections he 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 his right to proceed to an administrative hearing before the Commission with full due process. 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 Sam Tiwana, sometimes hereinafter “Respondent” or “Tiwana,” is an adult resident citizen of Tennessee, whose last known address of record with the Commission is 9568 Gotten Way, Germantown, Tennessee 38138. Respondent Tiwana is the principal broker with Kaizen Realty, LLC in Germantown, Tennessee 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 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.

Respondent Tiwana is the principal broker for Kaizen Realty office in Germantown, Tennessee. Although Respondent Tiwana has several agents under him licensed in Mississippi and working out of his Tennessee office, at least one of Respondent Tiwana’s Tennessee agents engaged with a Mississippi licensee to “work” a real estate deal in Mississippi. Inquiry into Commission records showed that no co-operative agreement was or ever has been filed by this Respondent, making any real estate activity and/or commission fee split between these agents a violation of Mississippi statute. Additionally, upon interviewing this Respondent, he admitted that he had handled out of state referrals as a Mississippi broker without filing the statutorily required co-operative agreements, thus sending commission monies to out of state persons without proper authority.

III.

The Commission received notice from a Mississippi broker that Sandra Carranza, a Tennessee agent licensed under Respondent broker Sam Tiwana, had conducted real estate activity

to assist with a sales contract for a home located in Desoto County, Mississippi. The Commission investigation revealed this Tennessee agent met with her buyer clients and the Mississippi sales agents for the builder/seller at a model home in Desoto County, Mississippi. On that day, this Tennessee agent went with the buyers and the Mississippi listing agents to see no less than three homes in Desoto County, Mississippi. A proposed purchase contract was written on location of a model home in Mississippi, listing the Tennessee agent as the buyer's agent. This contract was taken by this Tennessee agent back to the Respondent's office in Tennessee for review by the Respondent.

IV.

During this same time period, another potential buyer, Morris Bell, contacted this Mississippi listing broker seeking to view a home in this same Mississippi subdivision. While at the model home and in the process of writing a contract offer, this potential buyer revealed he had an agent, Charles Hamm, yet another Tennessee agent under Respondent Tiwana. The Mississippi broker then wanted the buyer's agent present, so agent Hamm was called. Hamm wisely responded he could not attend that meeting because he was not licensed in Mississippi and suggested that the contract be written and returned to the Tennessee office for review. Yet Bell revealed to the Mississippi broker that he had been looking at houses in Tennessee the previous weekend with this Tennessee agent and had also rode with this agent to see houses in this subdivision in Mississippi.

V.

Upon visiting with Respondent Tiwana at his office of Kaizen Realty in Germantown, Tennessee to discuss his Tennessee agents operating in Mississippi, it was readily observed that no real estate licenses were on display. Instead, the licenses were being kept in a 3-hole binder in

a secretary's desk drawer.

CONCLUSIONS OF LAW

The above and foregoing acts and omissions of the Respondent constitute violations of 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, §73-35-11, §73-35-15, §73-35-21(1)(n) and Comm. Rules 3.1 which provide, in relevant parts:

§ 73-35-11. Nonresident may not act except in cooperation with licensed broker of state

It shall be unlawful for any licensed broker, salesperson or other person who is not licensed as a Mississippi resident or nonresident broker or salesperson and a licensed broker or licensed salesperson in this state to perform any of the acts regulated by this chapter...

The Mississippi broker shall require a listing or joint listing of the property involved. The written cooperative agreements shall specify all material terms of each agreement, including but not limited to its financial terms.

The showing of property located in Mississippi and negotiations pertaining thereto shall be supervised by the Mississippi broker. In all advertising of real estate located in Mississippi, the name and telephone number of the Mississippi broker shall appear and shall be given equal prominence with the name of the nonresident broker who is not licensed in this state.

§73-35-15. Location of business and responsible broker to be designated

- (1) Every person, partnership, association or corporation licensed as a real estate broker shall be required to have and maintain a definite place of business, which shall be a room either in his home or an office elsewhere, to be used for the transaction of real estate business, or such business and any allied business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license. In case of removal from the designated address, the licensee shall make application to the

commission before removal, or within ten (10) days after removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period.

§73-35-21(1)(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.

D. A responsible broker must maintain an office and display the license therein. If the broker has more than one office, the broker shall display a branch office license in each branch office. The broker is responsible for the real estate practices of those licensees.

F. 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.

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 Sam Tiwana shall be suspended for two months (sixty days), effective August 1, 2021.

2. Following the period of suspension, the license of Respondent Tiwana shall be on probation for a period of ten (10) months.

3. During the period of suspension, Respondent Tiwana 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 Tiwana'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 Tiwana expressly waives any objections he 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 his right to proceed to an administrative hearing before the Commission with full due process.

5. This Agreed Order shall be effective as to Respondent Tiwana 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:

Sam Tiwana DATE 7-6-2021
SAM TIWANA