

**BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION**

**MISSISSIPPI REAL ESTATE COMMISSION**

**vs.**

**NO. 039-1907**

**CONSTANCE JEAN WEST, BROKER**

**RESPONDENT**

**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 Constance Jean West, Broker, and the Commission was advised that there has been an agreement reached resolving the issues brought forward in this complaint. By entering into this Agreed Order, this Respondent waive her right to a full hearing and her right to appeal to a circuit court. The Commission, then, does hereby FIND and ORDER the following:

**I.**

Respondent, Constance Jean West (sometimes hereinafter called "West" or "Respondent"), is an adult resident citizen of Mississippi whose office address of record with the Commission is 4101 Gautier-Vancleave Rd, Gautier, MS 39553. Respondent West is the holder of a Broker license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, and, as such, she is subject to the provisions, rules, regulations and statutes governing the real estate industry under Mississippi law and the administrative rules of the Mississippi Real Estate Commission.

## **II.**

On June 20, 2019 this office received a sworn statement of complaint from Mark I. Wallace who lives in Swarthmore, Pennsylvania. He filed a complaint against Principal Broker Constance Jean West whose office is located at 4101 Gautier-Vancleave Road, #5, in Gautier, Mississippi 39553.

## **III.**

Mark Wallace is a beneficiary of the Trust of Homer Wallace and Shirley Wallace, created by his parents. His 89-year-old father, Homer Wallace, is the Trustee of the Trust. This Trust consists of some residential rental properties located in Gautier, MS. The complainant, Mark Wallace, believes that Broker West had taken advantage of Homer Wallace, Trustee, by attempting to purchase these properties for herself at a greatly reduced price, when compared to the actual value of the properties. In 2019, Complainant Wallace filed a legal action against his dad, Trustee Wallace in Jackson County Chancery Court to remove him as Trustee. At the time of the filing, Respondent West had been managing these Trust properties for approximately 25 years.

## **IV.**

Mark and his sister, also a beneficiary, believed that their father no longer has the mental ability to act as Trustee and wanted him removed from that position. On May 10, 2019, Chancery Court Judge Tanya Hasbrouck conducted a hearing on temporary matters that included testimony. The Trustee, Homer Wallace, flew in from his current California residence to attend. Respondent West was present but was instructed by the Judge to wait outside the Courtroom. On May 13, 2019, an Order was issued which included a mandate that Homer Wallace was not to transfer or dissipate the assets, including the Gautier properties, until further review was completed by the Court.

## V.

Right after this May 10, 2019 hearing, Trustee Wallace and Respondent West were driving back to her office. Trustee Wallace asked West to find a buyer for the properties or purchase them herself. Respondent West says she replied that Homer should talk with his attorney to see if it was possible to sell them. Homer said he had spoken with the attorney that created the Trust and was told he could sell them, per the terms of the Trust. Respondent West said she suggested he give them to his children, and that Trustee Wallace replied that he did not want to do that, due to their recent actions. Respondent West said she told him she might know of some investors who were always looking for investment properties. Trustee Wallace flew back to California that evening (May 10, 2019) and called Respondent West a couple of days later to see if there was any update. Respondent West said she was unable to purchase any properties herself at that time, and Homer gave her verbal permission to disclose rental rates and basic income and expense information to interested investors. West said that at no time was Homer pressured or manipulated by her to sell the trust properties for any price or on any terms. Respondent West claims that it was strictly Homer's idea to sell the properties in order to end the Trust and his dealings with his children.

## VI.

Respondent West reached out to potential buyers and found one investor, REIS, Inc., that made an offer on 5 of rental properties. This offer was accepted by Trustee Wallace in late May and documentation was provided to his trust attorney, Nathan Prescott, for submission to the Court for approval at the next hearing that was scheduled for July 17, 2019. This Buyer did not intend to withdraw his intention to purchase and was willing to wait on Court approval. The listing contract expired July 31, 2019 but West had notified Trustee Wallace and the trust attorney by email back on July 02, 2019 that she didn't want to be involved in this transaction anymore, because of the family drama, and asked attorney Prescott to prepare a purchase contract, if the court approved any

sale. Respondent West stated then that she still had the Buyer's earnest money in her trust account but would transfer it to a closing attorney or Attorney Prescott until the legal issues are resolved. She awaited their response, instead of following Commission Rule 3.4 regarding earnest money. By telephone interview, West revealed that she later transferred the earnest money in February of 2020.

## **VII.**

Homer Wallace called Respondent West in June of 2019 about selling his home at 1300 Rosemont Drive in Gautier, MS. He wanted to have it under contract as well before the next Court date on July 17, 2019 so that all sale contracts could be approved by the Court. West personally made an offer through one of her companies, Shelmar, LLC, that was accepted by Wallace, and it was forwarded to attorney Prescott to present at the next court hearing. Respondent West was informed by the Complainant in writing, on June 6<sup>th</sup>, that back in mid-May, the Chancellor had ordered that no transfers or transactions of these properties could occur until the Court reviewed the case. Subsequently, Respondent West withdrew that offer and a cancellation form was signed on June 27, 2019. Respondent West's offer to purchase this home was through Joe West Realty Inc. which was then an active brokerage firm. That company license was closed, per Respondent West's request, on June 21, 2019. Respondent West said that, at that time she made the offer, she had not been provided any court documents by Trustee Wallace or Attorney Prescott and she was not verbally informed that those properties could not be sold yet. She was provided a copy of the Court Order by the Complainant in the letter she received from him on June 06, 2019.

## **VIII.**

Respondent West provided a copy of the sales contract between Shelmer LLC (Respondent West's LLC) and the Wallace Trust, executed by West and Trustee Wallace on May 30, 2019, for the purchase of a Trust rental residence. The Disclosure section was left blank, with no information

as to whether the Buyer (Shelmar, LLC) received a PCDS before or after making an offer, although one was statutorily required. The Agency section to the contract was also left blank. The property was not listed for sale with a broker so there was no Listing Agreement. There was a WWREB form showing the Trust (Seller) as “customer”, although West has been the agent for the Seller for several years. There was a contract Addendum that stated there was no PCSD for the sale of this property; that the Seller has not lived in said property and that Buyer (West) had managed the property for several years and was familiar with said property and the needed repairs. There was also no required PCDS Informational Statement. Broker West included the Contract Cancellation dated June 27, 2019. Other documents provided by West included a copy of a Property Management Agreement and WWREB form signed and dated by Homer Wallace. Those documents revealed that Respondent West was managing these trust rental properties through her other licensed real estate company, Merit Management, LLC.

#### **IX.**

A copy of a sales contract, between Trustee Wallace and Victor Baronich for the purchase of the 5 Fish Hawk Dr. rental properties, was provided. This contract was marked as “dual agency”. A Dual Agency Agreement was provided. However, no WWREB forms for either of the principals were supplied. It was also stated in the contract that the PCDS would be provided after an offer was approved by the Court, instead of being provided when the offer to purchase was made. Also, in a telephone interview with Respondent West, she revealed that she finally transferred the earnest money to the Trust attorney in February of 2020, after withdrawing from involvement in July, 2019.

#### **X.**

The above and foregoing described acts of the Respondent Constance Jean West warrants sanctions being imposed against her and constitute violations of Miss. Code Ann. §73-35-21(n), §89-1-501, and MREC Rules 3.4 and 4.3 which state, in relevant part:

**§73-35-21(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.

#### **Rule 3.4 Earnest Money**

A. 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.

#### **Part 1601 Chapter 4: Agency Relationship Disclosure**

G. "Fiduciary Responsibilities" are those duties due the client in a real estate transaction are:

(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 4.3 Disclosure Requirements**

C. Brokers operating in the capacity of disclosed dual agents must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:

- (1) The seller, at the time an agreement for representation is entered into between the broker and seller, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.
- (2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.

### **DISCIPLINARY ORDER**

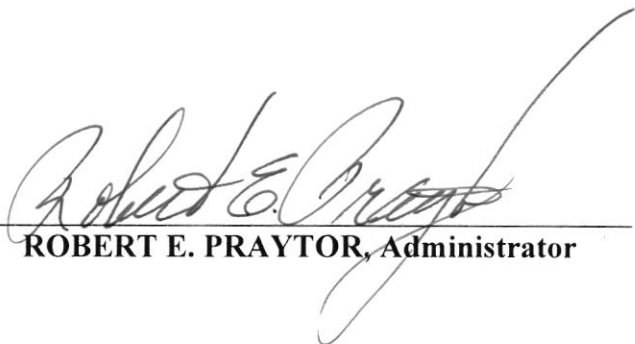
THEREFORE, by agreement, understanding and consent, the Commission ORDERS discipline as follows:

As to Constance Jean West, Broker, the Commission orders that her license incur a one (1) month full suspension, beginning April 01, 2020, 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 month of April, 2020. Said education cannot be completed online and will not be the same classes from the same provider as those used by this Respondent in the last renewal period. Further, these classes will be courses approved by this Commission and be in addition to the regular hours of continuing education already required of licensees for license renewal. Evidence of completion of these classes is to be provided to this Commission.

SO FOUND AND ORDERED this the <sup>14</sup>15 day of April, 2020.

**MISSISSIPPI REAL ESTATE COMMISSION**



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

AGREED:  DATE: 3/12/2020  
Constance Jean West, Broker