BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION	**COMPLAINANT**
VS.	**NO. 073-1811**
MARY CURRIE, BROKER **MARK WILSON, BROKER and** **BRENDA MCRAE, 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 Mary Currie, Broker, Mark Wilson, Broker, and Brenda McRae, Salesperson and the Commission was advised that there has been an agreement reached with Mark Wilson, Broker, resolving the issues brought against him in this complaint. By entering into this Agreed Order, this Respondent waives his rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent Mary Currie, sometimes hereinafter "Respondent Currie", is an adult resident citizen of TN whose last known address of record with the Commission is 1717 Windebank, Collierville, TN 38017. Respondent Currie 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, she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. Respondent Currie became the responsible broker for Respondent Brenda McRae.

II.

Respondent Mark Wilson, sometimes hereinafter "Respondent Wilson", is an adult resident citizen of TN whose last known address of record with the Commission is 6220 Forest Grove Dr., Memphis TN 38119. Respondent Wilson 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 the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law. Respondent Wilson was, initially, the responsible broker for Respondent Brenda McRae.

Respondent Brenda McRae, sometimes hereinafter "Respondent McRae," is an adult resident citizen of Miss., whose last known address of record with the Commission is 8054 Malone Rd., Olive Branch, MS 38654. Respondent McRae is the holder of a real estate salesperson's license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.,* as amended and so she is subject to the provisions, rules, regulations and statutes governing the sale and transfer of real estate and licensing of real estate brokers under Mississippi law.

III.

The MREC received a complaint from Kayla Yon alleging that Broker Mary Currie and Salesperson Brenda McRae (Coldwell Banker Maurey-Collins) were guilty of several misrepresentations during a failed real estate transaction for a home located at 1150 Malone Road in Nesbit, MS. The allegation further states that the licensees allowed individuals who were not "deeded" owners of the property to improperly sign documents in the capacity of owner/seller and further that the licensees' actions demonstrated bad faith, untrustworthiness, dishonesty, fraud and improper dealing with the listing/marketing of this property.

IV.

On 4/6/18, the buyer, Kayla Yon, submitted an offer on this home with a response time expiring on 4/7/18 at 3:00 p.m. An expression of acceptance from the "sellers", listed as Michael and Christina West, was received on the morning of 4/8/18 *via email*. Later that day, Brenda McRae (selling agent) notified the buyer's agent (Sharon Thornton, Crye-Leike Hernando) that a second offer had been received and so she (McRae) needed to see what the sellers wanted to do with it. Respondent McRae suggested that they could do multiple offers, so Thornton contacted her Broker (Robert Clay) to clarify whether the email indicating that the "sellers" had previously accepted the offer was binding, since the "sellers" were not able to properly sign and return the offer at that time. An official, signed contract was finally received on 4/11/18 with a closing set for 5/24/18. The contract included a request for a survey and a legal easement documented on the property. The "sellers" replied that these two requests already existed. The contract stated that the "sellers" were to provide "in writing" the ownership of the driveway and easement rights. However, no such document was never produced. Complainant (Yon) said that throughout the process of closing, it was evident that there was not a land survey or legal easement on file.

V.

On 5/1/18, The "sellers" informed the buyer (Yon) that during a follow-up visit (after the home inspection) they ("sellers") had ordered a survey because they were now unsure of where the property line lay in relation to the driveway. The survey also revealed a variance at the back part of the property of approximately 35 feet more than the length of the property. The 35 ft. variance contains a fence and a detached garage, which was listed as part of the property. The variance would also require the neighboring property owner to sign, relinquishing rights to this portion of property. On 5/17/18, Respondent McRae informed Sharon Thornton (buyer's agent) via text that "She (neighbor) has refused to sign anything, *but don't tell the buyers that*."

Complainant Yon continued to have a problem receiving a correctly signed contract. The Warranty Deed showed titled belonging to Thomas and Rhonda Little. However, the "sellers" were listed as Michael and Christina West. The Buyer's agent (Sharon Thornton) brought this to the sellers' agent's (Brenda McRae) attention on 4/5/18. McRae said that the Littles are Christina's parents and were purchasing the home for Michael and Christina, and the deed had not yet been changed over. At that time, Sharon Thornton requested an updated contract with the correct sellers' names listed. On 5/4/18, an updated contract with the correct sellers' names listed was received. The complainant (Yon) said it appeared that the signatures of the "Littles" on the contract were identical to Christina West's handwriting, so Yon asked if there was a Power of Attorney enabling Christina to sign for her parents. On 5/16/19, the buyer (Yon) was informed that a POA had been executed to allow Christina to sign for the Littles since the Littles did not live locally. However, on 5/24/18, the buyer (Yon) was still receiving incorrectly signed documents that did not denote Christina signing per the POA, for her parents.

VI.

As the closing date approached, it became evident that the sellers needed additional time to obtain and provide proper documentation. For this reason, the buyer (Yon) agreed to complete the required repairs per the appraisal, which included painting the permanent detached garage that was in question due to the variance issue. The sellers were focused on resolving the variance issue but had neglected to address the driveway easement that was required not only by contract but also by the appraiser. Respondent McRae advised them (sellers) that the survey showing the property line running down the center of the driveway was sufficient documentation, which was

an inaccurate statement. The buyer's side worked diligently to assist in resolving the issues so that the closing could stay on track for 5/24/18. Complainant (Yon) stated that the house was prematurely listed with issues that should have been addressed prior to listing and the listing had been for 30 days before she submitted an offer. The Complainant states that proper disclosure of information by Respondent McRae would have prevented unnecessary expenses on the buyer's part. As the buyer, Kayla Yon was ready, willing and able to complete any required tasks per the transaction but feels that there was a lack of reciprocation on the part of the sellers' side. The Complainant stated there were untimely responses, despite repeated requests, vital information withheld, and misleading actions by all parties involved with the sellers.

VII.

Broker Mary Currie's response states that, at the time of this transaction, Respondent Mark Wilson was the Principal Broker. Currie further stated that the buyer subsequently bypassed her agent, Sharon Thornton, and began negotiations directly with the sellers after the transaction failed to close. Currie said that the costs of the inspection, appraisal and water inspection were a part of the contract and were the buyer's costs and that the sellers filed litigation against the neighbor to resolve the property line issue. According to Respondent Currie, the property cannot be sold until the property line issues have been resolved. Currie said ownership should have been verified by the listing agent and the proper owners should have negotiated the documents, or used a specific POA, designating an individual to complete the transaction. Currie has since counseled the listing agent (Respondent Brenda McRae) regarding verifying legal ownership of properties to be listed and that Respondent McRae now understands the importance of checking the ownership prior to listing a property.

VIII.

Broker Mark Wilson's response states that at no point during the transaction was he ever contacted via email, text, or phone by Respondent McRae, buyer Kayla Yon or her agent and/or broker regarding any potential issues with the contract. He claims that Respondent McRae never informed him of any issues regarding a survey or easement issue. Respondent Wilson said he didn't know why the buyer bypassed her agent (Sharon Thornton), after Thornton said she couldn't get in touch with Respondent McRae. Respondent Wilson said the buyers negotiated directly with the sellers and paid for repairs *before* the transaction was to close. He said the buyer was reimbursed by the seller for repairs when the transaction didn't close, but the costs of the buyers' inspections were part of the contract. Wilson stated that the inspections were the buyer's responsibility but there were issues regarding the survey and property lines that were not resolved. Respondent Wilson clearly failed to properly supervise the actions of his agent, Respondent McRae, as his response reflects a passive, non-involved attitude of broker management.

IX.

Salesperson Brenda McRae's response states that when the offer was received from Yon, all parties were aware that the deed was in the Littles' name ("seller's" parents). The Littles had purchased the property for Christina and her family, and Christina borrowed against the property to pay her parents back. Once the "sellers" received the offer, a decision was made not to change the names on the deed because there would be a (90) day wait before the property could be sold. The names could be corrected at a later time. There was a request in the initial offer for the seller to provide a survey and that the boundaries be flagged. Respondent McRae claims that when the counteroffer was initiated, the request for the seller to provide a survey was removed and that the buyers signed off on it. McRae said the appraiser requested the survey, but she never received a

snapshot of the request for the survey from the appraisal. The sellers eventually ordered a survey and it showed there was a discrepancy with the boundaries, showing that there was 35 ft. on the back of the property that belonged to the next-door neighbor. Because of this discrepancy, a second survey was done, which again showed the issue. The next-door neighbor was asked to sign off on this discrepancy, but she refused to do so. The sellers filed litigation against the neighbor (Mrs. Thompson) because the property line issues could not be resolved. Respondent McRae claims she was always in contact with the sellers and the buyer's agent and that the buyer bypassed her own agent and directly negotiated with the sellers on items needing repair. McRae said that the seller and buyer had also discussed issues with the survey. The property transaction never closed, and the property went temporarily off the market, pending resolution of the survey variance issue. Respondent McRae claims neither party was aware of the survey issues until the survey was completed, and again, that the survey was on the appraisal requirements.

X.

The MREC also received a statement from the "seller", Christina West. West stated that the buyer requested a survey, but they (sellers) never claimed that a survey had ever been completed, nor had they ever received one themselves. West said that the buyer was not willing to provide a survey on her part and that they (as "sellers") were not willing to spend the money to order one. At the time of the counteroffer, West believed that the driveway was contained in the legal description, but, after reviewing the deed, it was determined that the driveway was not contained in the legal description. Upon speaking with their neighbor, the Wests learned that the property line runs down the middle of the shared driveway. After learning this information, the "sellers" decided that a survey was needed to provide written documentation showing the rights to the driveway. West claimed that when the buyer (Yon) viewed the property on 5/1/18, she was already aware that a survey had been ordered, so this was not her first knowledge of it.

West claimed that Yon was told that the driveway was not in the deed and that the survey was needed to show the property lines, including the driveway. A survey performed by Mark Forsythe determined that the back (east) line of the property was approximately a 35 ft. variance in favor of the next-door neighbor. This portion of property was completely fenced in and contained a playset and detached garage/storage shed. The "Sellers" drafted a deed for the neighbor (Mrs. Thompson) to sign. Upon speaking with Thompson on 5/16/18, they were told that all the property contained in the fenced-in area belonged to her. The "Sellers" checked county records to see if a survey had ever been recorded and to obtain copies of all deeds showing any transfer of the property originating from the neighbor (Thompson). The "Sellers" also obtained a property map from the Planning Commission, which was provided to Yon to see if that would satisfy the lender. The neighbor (Ms. Thompson) refused to sign a deed, stating that this transaction did not involve her and, after discovering the land actually belonged to her, decided that she did not want to sell this property. The "Sellers" said the Yons ultimately decided not to pursue the purchase. Later, a 2nd survey determined that a large part of the individual driveway does not belong to the sellers, in addition to the back 35ft. The "Sellers" said, per a contract addendum, that Yon was refunded $400 since the closing did not occur. As to the buyer's statement that the property had been on the market for 30 days prior to her offer, the "sellers" said no one was aware of the property issue until they looked at the deed and discovered that the driveway is not contained in the legal description.

XI.

On 2/4/19, the MREC received a statement from the buyers' agent, Salesperson Sharon Thornton. Thornton stated that on 4/5/18, David and Kayla Yon (the buyers) submitted an offer on a property located 1150 Malone Road in Nesbit, MS to the "sellers", Christina and Michael

West. The parties agreed on a closing date of 5/24/18, but the sale failed to close. Thornton said that there were issues with the property, including the sellers sharing a driveway with the next-door neighbor. Thornton consulted with her broker, Robert Clay, for advice on handling the situation. Clay advised her that, to protect the buyers, Thornton needed to make sure that there was an easement giving the buyers rights of usage and access and to have a maintenance agreement drawn up stating how repairs and upkeep would be handled between the sellers and their neighbor. Clay also advised Thornton that she needed to determine who owned the driveway.

XII.

Thornton said from the time the offer was presented (4/5/18) until the contract failed on 5/24/18, none of the documents associated with the listing or sale had the sellers' names correctly stated. When Thornton began to write the offer for the buyers, she noticed the names on the tax site didn't match the names on the PCDS for the property. Thornton texted Respondent McRae and asked if this property was in an estate. Respondent McRae informed Thornton that the sellers' parents (Thomas & Rhonda Little) bought the house for the Wests because the Wests had to move in quickly and that the Wests had later obtained a loan to pay back her parents (the Littles), but never had the deed names changed. Sharon Thornton asked Respondent McRae to provide an addendum correcting the sellers' names because a closing would not take place until this was done. Thornton stated that from the beginning, Respondent McRae had trouble getting things done in a timely fashion. The offer was to expire on 4/7/18 at 3 p.m. and, after not hearing from McRae, Thornton emailed her the offer and texted her at expiration time to see what the problem was. Finally, around noon on the 8th, Thornton received a counteroffer from Respondent McRae and forwarded it to the buyers. Both parties reached an agreement and Respondent McRae said that she would prepare a counter form stating the terms and would send

it over as soon as she had time. Later, McRae texted Thornton that the sellers had another offer and so there might be a multiple offer situation. Thornton texted back, stating that the buyers' considered their offer to be accepted, so McRae backed down and said she would send the counteroffer forms the following day, 4/9/18. Those documents weren't received until 4/11/18.

XIII.

On 5/4/18, Thornton received notification from Realty Title that the abstractor couldn't proceed because of the mismatch between the names on the contract and the names on the deed. Thornton contacted Respondent McRae about this information, but McRae was slow regarding an addendum showing the correction to reflect the Littles as the owners. When the addendum finally arrived, on 5/15/18, it was signed as "Thomas and Rhonda Little" but was signed in the same handwriting as the original documents. Thornton texted Respondent McRae, asking if Christina West had a POA allowing her to sign for her parents. McRae texted back saying, "Yes. F & F is working on it". It turned out that Christina West did *not* have a POA at that time but produced it on 5/18/18, signed by Thomas and Rhonda Little on May 17th, giving Christina a 90-day limited POA. The POA was acquired (1) week prior to the contract expiration. On 5/23/18, Donna Taylor, with Realty Title, sent an email saying that FNF had forwarded the addendum with the same signatures she already had, but what was needed was the signature reflecting that Christina West was signing per the POA. West had signed her parents' names without denoting that she was signing with POA. At that point, the buyers wanted to extend the contract, but Broker Robert Clay (Crye-Leike) and Donna Taylor (Realty Title) agreed that there never was a legal contract to extend, due to the circumstances. The sellers believed that the driveway belonged to the neighbor and were told that the property line ran down the center of the driveway. They had a new survey done. It revealed that the property line ran down the center of the driveway and that there was 35 feet at the back of the property that belonged to the neighbor.

Thornton believed there would be an easement, giving permanent right of usage of the driveway to the buyers, which the sellers were trying to get the neighbor to sign. As part of the contract, the appraiser made that a condition of the loan, received by both Thornton and McRae on 5/11/18. Thornton said she made McRae aware that she (Thornton) had gone to the Chancery Clerk's office on 4/6/18 to see if there was a recorded easement. She found that there was nothing recorded about the driveway at all. Respondent McRae told Thornton that the seller was going to check the courthouse for record of the easement, but McRae never relayed this information to the Wests. Thornton stated that she asked for a copy of the survey several times, but the contract expired without her and the buyer ever seeing it. Thornton said the new survey findings could potentially put the buyers in harm's way on both the garage/fence encroachment, as well as the shared driveway, leading to possible future litigation. Respondent McRae learned that the sellers' neighbor refused to sign any document clearing up the property line discrepancy and said they could just ignore the new survey and use the GIS map from the Tax Assessor's office. McRae wanted to dispute the property line dispute and told Thornton not to tell her client/buyers that the neighbor wouldn't sign the document. Again, towards the end of the contract, Thornton was in Broker Robert Clay's office and, on a speaker phone call with Respondent McRae, McRae told Thornton that the neighbor refused to sign and said, "but don't tell the buyers". Thornton told Respondent McRae that she could not conceal this information from her clients.

XIII.

MLS records show that Respondent Brenda McRae listed the property on 3/2/18 and uploaded the PCDS into the MLS as well, making it available to any agents showing the property. The title owners of record (Thomas & Rhonda Little) were not listed as the sellers on the listing agreement or the Property Condition Disclosure Statement.

XIV.

The above and foregoing described acts and omissions of the Respondents Brenda McRae and Mark Wilson 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)(n) and Commission Rules 3.1A, which provide, in relevant parts:

> **§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 3.1A** 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.

DISCIPLINARY ORDER

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

As to Mark Wilson, Broker, the Commission orders that his license incur a two month suspension, held in abeyance, followed by four (4) months of probation; contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and also contingent upon him completing eight (8) hours of Mandatory Continuing Education (4 hours of Agency, 2 hours of Contract law and 2 hours of License Law) during that two months of license suspension in abeyance. This order begins the day of Commission approval. Said education may be completed through Distance Education, in light of Co-Vid 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 Mary Currie, Broker, this complaint is dismissed.

SO ORDERED this the 8th day of DECEMBER, 2020.

MISSISSIPPI REAL ESTATE COMMISSION

BY: _____
ROBERT E. PRAYTOR, Administrator

Agreed: _____ Date: 11/30/2020
Mark Wilson, Broker