

RECEIVED
FEB 05 2024

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MS REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

CASE NO. 2023-21

STEPHANIE ARNETT, Principal Broker

RESPONDENT

AGREED ORDER

I.

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 formal Complaint against Stephanie Arnett (hereinafter, "Arnett," or, "Respondent"). Prior to the hearing before the Commission, the parties announced their respective agreements as to the allegations of the Commission's Complaint and disciplinary actions for the Respondent, all as set forth herein. By entering into this Agreed Order, Respondent waives her right to an administrative hearing before the Commission with full due process and the right to appeal any adverse decision(s) which may have resulted from that hearing. Further, Respondent acknowledges, as evidenced by her signature affixed hereto, this Agreed Order must be approved by the Commission, and Respondent therefore expressly waives any objections she 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, the Respondent will retain her right to proceed to an administrative hearing before the Commission with full due process. Having reached an agreement in this matter, the Commission issues its Findings of Fact, Conclusions of Law and Disciplinary Order as follows:

FINDINGS OF FACT

II.

Respondent Stephanie Arnett, Principal Broker, (hereinafter, “Arnett,” or, “Respondent”) is an adult resident citizen of Mississippi and is the principal broker of Mississippi Magnolia, LLC, a real estate brokerage located at 17351 Mississippi Highway 182, Starkville, Mississippi, 39760. Arnett holds a Mississippi Broker License issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, *et seq.*, as amended, and, as such, is subject to all of the provisions, rules, regulations, and statutes governing sale and transfer of real estate and licensing of real estate brokers under Mississippi law. At all times relevant to this Complaint, Respondent Arnett was the principal and responsible broker for Mississippi Magnolia, LLC.

III.

On or about February 22, 2023, the Commission received a sworn complaint from a member of the public (hereinafter, “Complainant”), regarding the Complainant’s attempt to purchase residential property in Starkville, Mississippi, while represented as a client by Respondent Arnett in a disclosed dual agency role. Complainant submitted documentation to the Commission along with a sworn statement, variously alleging that the Respondent, had, in the course of the attempted purchase and its aftermath (as the parties were unable to reach agreement), engaged in conduct constituting violations of the Mississippi Real Estate Brokers License Act of 1954, Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and Regulations of the Commission. Thereafter, the Commission initiated its investigation of the matters alleged.

IV.

On or about May 12, 2023, after being served by the Commission with its Notice of Investigation and associated documentation including the Complaint materials, Respondent duly responded to the Complainant’s allegations, including with certain documents associated with the subject transaction.

V.

On September 6, 2022, Complainant signed a *Working With a Real Estate Broker* (WWREB) form provided by Respondent Arnett, designating Complainant a “client,” to Arnett

who was designated a “Disclosed Dual Agent,” since Arnett’s brokerage has listed the subject residential property for the sellers. A contract was entered into for a sale price of \$220,000.00, which included a home inspection contingency. Complainant deposited \$2,000.00 earnest money. Following the home inspection, on or about October 14, 2022, Complainant (citing substantial needed repairs) made a written offer to remove the inspection contingency if the seller would reduce the price to \$205,000 in lieu of repairs.

VI.

By a document dated October 20, 2022, the seller rejected the Complainant’s above-noted offer of \$205,000, and counter-offered with a price of \$214,000 in lieu of repairs. This amount was unacceptable to the Complainant, who did not reply. Thus, the inspection contingency was not removed, negotiations ended, and no final sale/purchase agreement was reached.

VII.

For a period of weeks following the failure to reach agreement, Complainant expected to recoup her \$2,000.00 earnest money, reflected in text messages discussing this with Arnett’s brokerage. On November 16, 2022, a salesperson of the brokerage sent an email to Complainant indicating “the legal department” had noted two dates: “(1) Buyer’s request for repairs was due 09.21.22; (2) Buyer’s requests for repairs was submitted 10.14.22.” The Complainant was told she would not be refunded the earnest money, which would be retained by the seller. Complainant protested to no avail, and, aggrieved, subsequently filed her complaint with the Commission. Respondent Arnett admitted in her Response that it was her decision to award the earnest money to the seller.

CONCLUSIONS OF LAW

VIII.

Though a September 21, 2022, due date for the buyer’s (Complainant’s) repair requests did appear in the contract, the seller did not claim a default immediately after September 21, 2022, passed without the delivery of the Complainant’s request for repairs, nor did the seller claim a default immediately upon the October 14, 2022, delivery of the offer to lift the home inspection contingency for a reduced price of \$205,000 in lieu of repairs. Instead, the seller entertained the

Complainant's \$205,000 offer to remove the inspection contingency and continued to engage in negotiations by extending the \$214,000 counteroffer on October 20, 2022. By these actions of the seller in continuation of contract negotiations and in ignoring the September 21, 2022, "due date," this "due date" was effectively waived by the seller.

IX.

Further evidence supporting the understanding among the parties that the September 21, 2022, "due date" had been waived is found in text messages, showing Respondent Arnett's salesperson T.C., on September 28, 2022 (a week past the September 21, 2022, "due date" for the delivery of buyer repair requests), stating to the Complainant: "*Hey no problem! Y'all go ahead and work on estimates for everything. The house will go back active for potential back up offer, but y'all take your time. (:*".

X.

Despite the documented facts noted above showing no default by the Complainant (whose default would be the only circumstance correctly resulting in an award of the Complainant's earnest money to the seller), Respondent Arnett made the decision to award the earnest money to the seller. This negligent or reckless error is magnified considering Arnett's fiduciary duty toward her client, the Complainant. However, immediately upon receipt of the formal Complaint in this matter, Arnett, unprompted, offered to reimburse and did reimburse the Complainant the full sum of \$2,000.00, which was verified by the Commission.

XI.

The above-noted reimbursement notwithstanding, the Commission and Arnett agree, as evidenced by their signatures affixed hereinbelow, that the foregoing described acts and omissions of Respondent Arnett, in failing to return the Complainant's earnest money when the Complainant had committed no contractual default, if proved at an administrative hearing by a preponderance of the evidence, would constitute violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and Regulations of the

Commission, specifically, Miss. Code Ann. §73-35-21(1)(n), and the below-noted MREC Rules which provide, in relevant parts:

- i. Miss. Code Ann. §73-35-21(1)(n): “The commission may ... revoke or suspend a license ... where the licensee is deemed guilty of: ... (n) Any act ... which constitutes or demonstrates ... incompetency ... or improper dealing. ...”
- ii. Rule 3.1(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 [as identified in §73-35-21(1)(n), noted above].”
- iii. MREC Rule 4.2(C): “‘Client’ shall mean the person to whom the agent owes a fiduciary duty. ...”
- iv. MREC Rule 4.2(F): “‘Disclosed Dual Agent’” shall mean that agent representing both parties to a real estate transaction with the informed consent of both parties, with written understanding of specific duties and representation to be afforded each party. There may be situations where disclosed dual agency presents conflicts of interest that cannot be resolved without breach of duty to one party or another. Brokers who practice disclosed dual agency should do so with the utmost caution to protect consumers and themselves from inadvertent violation of demanding common law standards of disclosed dual agency.”
- v. MREC Rule 4.2(G): “‘Fiduciary Responsibilities’ are those duties due to the principal (client) in a real estate transaction:

(1) 'Loyalty' - the agent must put the interests of the principal above the interests of the agent or any third party.

...

(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.

DISCIPLINARY ORDER

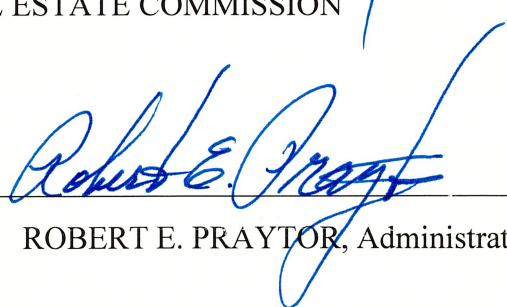
XII.

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:

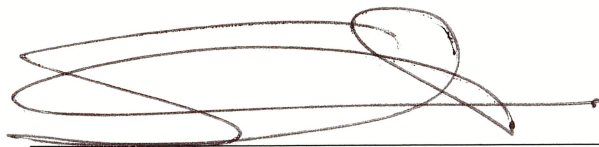
1. Letter of Reprimand

An official Letter of Reprimand will be placed in the Respondent's license file. If a similar violation were to be repeated by Respondent in the future, the sanctions imposed may be escalated.

THIS, the 21st day of FEBRUARY, 2023.4
MISSISSIPPI REAL ESTATE COMMISSION

BY: 
ROBERT E. PRAYTOR, Administrator

AGREED BY:



DATE 01.31.24

STEPHANIE ARNETT