

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

VS.

NO. 04-1801

KENNETH R. WEST, BROKER;

RESPONDENT

AGREED ORDER

This cause came before the Mississippi Real Estate Commission (sometimes hereinafter “Commission”), pursuant to authority of §§73-35-1, *et seq.*, Miss. Code Ann. (1972), as amended, on a formal complaint brought against Kenneth R. West, Broker. Prior to this matter being set for hearing before the Commission, the parties announced their agreement as to disciplinary action. By entering into this Agreed Order, Respondent Kenneth R. West waives his right to a hearing with full due process and the right to appeal any adverse decision resulting from that hearing. 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 Kenneth R. West, Broker, sometimes hereinafter “Respondent” or “West” is an adult resident citizen of Mississippi whose last known address of record with the Commission is 110 S. 10<sup>th</sup> Ave., Hattiesburg, Mississippi 39401. Respondent West 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.

On or about January 30, 2018, the Commission received a sworn complaint from Rickey A. Shows, sometimes hereinafter “Shows.” Shows complained that he had purchased a home located at 218 Ford Dr., Petal, Mississippi 39465. The seller was Mrs. Sarphie through her son Jeff Sarphie with her Power of Attorney, sometimes hereinafter, collectively, “Sarphie.” Sarphie listed the property with Respondent Kenneth West.

## III.

Shows complained that shortly after closing on the property and taking possession, he was informed by an acquaintance employed by Five Star Foundation Repair that Respondent West had ordered and received an estimate to repair the foundation of the property which was not disclosed to Shows before he purchased the property. Shows complained that the estimate to repair the foundation was \$17,500.00. Shows complained that he had viewed the property with West prior to the purchase and had inquired about an area of the floor that did not appear level. Shows claimed Respondent West told him it was “nothing.”

## IV.

Shows complained that, after purchasing the property, he learned that there were significant plumbing issues in that only two of the seven or eight heaters were actually plumbed for gas service. Shows claimed he had not been given notice of the plumbing issue prior to purchase of the property.

V.

Upon receipt of Shows' sworn complaint, the Commission initiated an investigation. Respondent West provided a response to Shows' complaint. West claimed he had never shown the property to Shows and that Shows had actually viewed the property with Jeff Sarphie.

VI.

During the Commission investigation, a copy of the Property Condition Disclosure Statement ("PCDS") was obtained for review. Shows claimed that he had personally witnessed Respondent West complete the PCDS and that West then attached a signature page that contained Jeff Sarphie's signature. In his written response provided to the Commission, Respondent West denied that he had completed the PCDS and claimed he had received the PCDS from Sarphie. The PCDS, dated as signed June 5, 2017, was incomplete and/or inaccurate in numerous areas.

VII.

Respondent West admitted to the Commission that he had obtained the foundation repair estimate from Five Star Foundation and that he did not disclose the existence of the report to Shows. That foundation report/estimate was dated June 22, 2017, after the date of completion of the PCDS but the PCDS was not amended thereafter. Upon inquiry from the Commission Investigator, Jeff Sarphie claimed that Respondent West had not informed him of any necessity to amend the PCDS, which with respect to issues with the property foundation, reflected "unknown."

## VIII.

The section of the PCDS related to plumbing was left completely blank. Upon inquiry of Sarphie, the Commission Investigator was informed that Sarphie had no knowledge of the plumbing issue until Shows reported it after closing. However, Sarphie admitted that he had engaged a plumber in the past to fix a problem with a heater reported by his mother who was living in the house. During the Commission investigation, a statement was received from Julius Tisdale of Tisdale Plumbing reflecting that Tisdale had installed a heater and discovered the plumbing problem related to the other gas heaters in or about fall of 2017. Tisdale stated that he never returned to make the plumbing repairs as he was not interested in completing the job.

## IX.

Documents obtained during the Commission investigation reflect that the seller, Sarphie, had knowledge of both foundation and plumbing issues at least by the time the PCDS was presented to the buyer, Shows, which PCDS was never amended. Likewise, Respondent West had knowledge of a substantial foundation issue, by his own admission, which was not reflected on the PCDS nor otherwise disclosed to Shows.

## X.

In a response to the Commission inquiry, Respondent West claimed that he had suggested that Shows have his own inspection of the foundation conducted and that he had disclosed foundation issues on both a Multiple Listing Service (“MLS”) record and in a Craigslist advertisement for the property. Shows stated that he had never seen the referenced MLS record nor the Craigslist advertisement. Respondent West had a duty to