

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

MISSISSIPPI REAL ESTATE COMMISSION

COMPLAINANT

vs.

NO. 48-1907

CHRISTA A. SAULTERS, Principal Broker

BARRY LEE MONDAY, 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 two complaints against Christa A. Saulters, Broker, and Barry Lee Monday, Salesperson and the Commission was advised that there has been an agreement reached among the parties resolving the issues brought forward in this complaint. By entering into this Agreed Order, the Respondents waive their rights to a full hearing and to any appeal. The Commission, then, does hereby find and order the following:

I.

Respondent, Christa A. Saulters (sometimes hereinafter called "Saulters" or "Respondent Saulters"), is an adult resident citizen of Mississippi whose last known address of record with the Commission is 119 Mayfair Rd., Hattiesburg, MS 39402. Respondent Broker Saulters is the holder of a resident 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 real estate brokers under Mississippi law and the administrative rules of the Mississippi Real Estate Commission.

II.

Respondent Barry Lee Monday (sometimes hereinafter called "Monday" or "Respondent Monday"), is an adult resident citizen of MS whose last known office address of record with the Commission is 9 Plaza Dr., Hattiesburg MS 39402. Respondent Monday is the holder of a resident salesperson license issued by the Commission pursuant to Miss. Code Ann. §§73-35-1, et seq., and, as such, he is subject to the provisions, rules, regulations and statutes governing real estate brokers under MS law and the administrative rules of the Miss. Real Estate Commission.

III.

On July 18, 2019 this office received a sworn statement of complaint from Kenneth W. Bilbo who lives at 110 Lake Shore Drive, Hattiesburg, MS 39402. His complaint was made against Salesperson Barry Lee Monday, then of Re/Max Real Estate Partners, located at 119 Mayfair Road in Hattiesburg, MS 39402. Salesperson Monday's Principal Broker was Christa Saulters.

IV.

Bilbo was the seller of property located at 57 Twin Oaks Trace in Hattiesburg, MS. Salesperson Crystal Green of Coldwell Banker Don Nace was Bilbo's listing agent and Respondent Monday represented the buyers. Closing was scheduled for 6/21/2019. The buyers had a closing scheduled for the sale of their home on 06/20/2019. Bilbo stated that about one week prior to the agreed upon closing date, Respondent Monday requested that his clients, the buyers, be allowed to take possession the day before closing. Bilbo refused to allow early possession of his home. Soon after, Green asked her client, Bilbo, to reconsider and sent Bilbo a Pre-Closing Possession Addendum and Declaration of Acceptance form. Bilbo refused and stated that the house is not the buyers until closed and funded. Around 6/19/2019, Salesperson Green called and asked Bilbo if he was agreeable to close a day early at 3:00 pm on 6/20/2019. Bilbo agreed but reiterated that the buyers were not to move in until after closing.

V.

The final walk through was set for 2:00 pm the day of closing (06/20/2019) and Bilbo told Green he would be late because he needed to first pick up a few boxes left in his home. Upon arriving at his home, Bilbo saw a moving van in front of his house unloading furniture and boxes into his home. The new owners were not present, but their daughter was at the house. She informed Bilbo that her parents' agent, Respondent Monday, had unlocked the door and gave them the keys. Bilbo took photos of this and called Green, who said she was unaware of this and did not offer any suggestions. Bilbo then contacted who he referred to as the "assistant Re/Max broker", David Saulters, who contacted both agents. Bilbo stated that both agents acted confused and ignorant as to how this happened. Saulters was apologetic but took no action on what Bilbo felt was a breach of contract. Bilbo said Saulters did say that he would be very pleased if Bilbo cooperated and closed on the property. The Broker of Coldwell Banker, Lara Thrash, did not intervene on his behalf. On 7/28/2019, Bilbo emailed the Commission photographs showing a moving van with open doors and some boxes on the ground at his home prior to closing. One photo shows an open front door to the home.

VI.

Bilbo stated he then left his house and went to the closing office of Joey Fillingane of Deep South Title. There, Green met Bilbo and told him they would conduct a "dry closing" and for him to sign all closing documents but know that he would not get any payment until the following day. The reason given Bilbo was that the buyers failed to bring funds in the amount of \$16,000.00 to the title company in time for the closing. Bilbo stated that Green requested he wait a few minutes, left the room, and then returned to say that the agents would wait on their commission in order to pay him first. After he requested to see the cashier's check, Bilbo proceeded with document review because Fillingane said the buyers had brought the \$16,000.00.

VII.

Respondent Monday responded to Bilbo's complaint, stating that Bilbo initially did state that he would not sign a 1-day prepossession addendum. However, the buyers were quite pleased when Bilbo later agreed to move the closing forward by 1 day. Salesperson Monday stated that he arrived at the residence to do the final walk through at 2:00 pm and was surprised to see the moving van there. The buyers had allowed the movers to follow them to the house. The closing was scheduled for 3:00 pm, so *Monday didn't feel the movers being early would pose any problem.* He sent Bilbo's agent, Green, a text to let her know about the movers because he knew her client Bilbo was coming back to his house just before closing to get some items. Monday said he told Green that no one would be moving any items inside until closing was confirmed. Respondent Monday said the daughter asked if she could stay at the house with the movers and Monday acknowledged that he allowed it because closing was to be in 30 minutes. To his understanding, nothing was moved into the house except to lay down paper on the wood floors for the movers. Monday said he did not leave any keys with the daughter but allowed her to stay at the house so she could keep an eye on things. However, when later interviewed, Monday was asked if he gave or left a key with the buyers after locking the residence upon completion of the walk through before leaving for the closing office. His reply was that he got the key from the lockbox to open it for the walk through, and that all doors were closed when he left. He could not remember if all doors were locked or not. He said he took the key with him to the closing.

VIII.

Monday said he and his buyers arrived at the closing office at 2:45 and were immediately allowed to sign the documents and were finished in about a half hour. At the closing, they learned that Bilbo was upset because he called the closing office thinking someone there gave out a key to his residence, allowing the buyers access. A few minutes later, Monday was

informed that Bilbo went to the Re/Max office to talk with David Saulters instead of coming to the attorney's office for closing. Green also received a call from Bilbo, who finally arrived at closing after 4 pm. Monday and the buyer were placed in another room as Bilbo was being belligerent and threatening to call the Sheriff. Monday said he told his client to make sure nothing was being moved in yet, so she called her daughter to make sure. Monday added that there was some confusion about funding the loan because he did not think funding would occur until the next day, Friday. Green told him that the closing office said they had the funds and would be able to fund everything that day. Monday said he thought they were doing a dry closing, which was what his text to Green said earlier in that week. There was no seller-signed PCDS Informational Statement provided by Barry Monday to his clients for them to sign.

IX.

The above and foregoing described acts of the Respondents, Christa A. Saulters, and Barry Lee Monday constitute violations of M.C.A. § 73-35-1, et seq., § 89-1-501 and MREC Administrative Rule 3.1 and 4.2:

Principal Broker Christa Saulters is in violation of **Rule 3.1 General Rules:**

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.

Salesperson Barry Monday is in violation of **§73-35-21:**

(1)(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 4.2 Definitions:

G. "Fiduciary Responsibilities" are those duties due the principal (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.

DISCIPLINARY ORDER

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

As to Christa A. Saulters, Broker, she is to be issued a Letter of Reprimand.

As to Barry Lee Monday, Salesperson, the Commission orders that his license incur a one (1) month full suspension, with 1 more month of suspension held in abeyance, followed by ten (10) months of probation, with both contingent upon both future compliance with all Mississippi Real Estate Statutes and Commission Rules and 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 the thirty (30) days of full suspension. This order begins April 01, 2020. Said education is to be completed in a classroom environment, rather than through Distance Education.

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.

SO ORDERED this the 15th day of APRIL, 2020.

MISSISSIPPI REAL ESTATE COMMISSION



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

Agreed: *Christa A. Saulters*
Christa A. Saulters, Broker

DATE: 3-31-2020

Agreed: *Barry Lee Monday*
Barry Lee Monday, Salesperson

DATE: 3-31-20