

234096

Hearing No. \_\_\_\_\_

**In the Matter of  
Andres S. Fernandez**§  
§  
§  
§**Before the Texas Real  
Estate Commission  
("Commission")****Texas Real Estate Sales Agent  
License No. 642551**§  
§**Sitting In Austin,  
Travis County, Texas****Agreed Order**

Andres S. Fernandez ("Respondent") neither admits nor denies the truth of the following Findings of Fact and Conclusions of Law but agrees to the entry of this Order and the assessment of an administrative penalty.

**Findings of Fact**

1. Respondent is a licensed Texas real estate sales agent, was a Texas real estate sales agent at all times relevant to this matter and performed an act in Texas constituting an act of a broker or sales agent as defined under Section 1101.002(1), Texas Occupations Code.
2. Starting on January 27, 2021, Respondent's sponsoring broker was Homebuying Homeselling Realty, LLC. On September 30, 2021, Respondent changed sponsorship to NB Elite Realty, LLC, whose Designated Broker was Nebojsa Bandovic.
3. On August 7, 2021, Respondent began the process to list the property located at 8009 Williamson Road, Austin, Travis County, Texas ("the Williamson Road property") for his then broker, Homebuying Homeselling Realty, LLC, and utilized a Residential Real Estate Listing Agreement Exclusive Right to Sell.
4. Respondent listed the owners of the Williamson Road property as Myra Flemings, Gwendolyn Thomas, Lucius Flemings, Jr., J.L. Flemings, Jeffrey Flemings, Lula Jefferson, Sharon Lewis, Donna Flemings Miller and Clovis Flemings ("the Flemings Group") and incorrectly listed the address for the Williamson Road property in paragraph 2 of the listing agreement as 4009 Williamson Road.
5. The Travis Central Appraisal District records showed that the owner of the Williamson Road property was Lila Ann Black, et al, and that the Williamson Road property consisted of 98.53 acres of undeveloped property with no structural improvements.
6. Lila Ann Black passed away April 7, 2001.
7. Between August 24, 2021, and September 19, 2021, each of the members of the Flemings Group individually executed a copy of the listing agreement for the Williamson Road property.

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8. Although the last member of the Flemings Group signed the listing agreement for the Williamson Road property on September 19, 2021, Respondent did not execute the listing agreement until October 8, 2021.
9. Although Respondent had listed the term of the listing agreement as beginning on August 7, 2021, Respondent failed to update the beginning date of the listing agreement at the point he finally signed the agreement on October 8, 2021.
10. Respondent failed to obtain any written documentation to confirm that Myra Flemings or those comprising the Flemings Group had legal authority to sell the Williamson Road property.
11. Although Myra Flemings had no power of attorney or other authorization to act for the other members of the Flemings Group, on October 8, 2021, Myra Flemings, individually, signed an Amendment to Listing that changed the listing price and further changed the listing brokerage for the Williamson Road property to NB Elite Realty.
12. On October 15, 2021 , Respondent placed the Williamson Road property in the Multiple Listing Service and identified the owner of the Williamson Road property as Lila Ann Black, et al. Respondent had failed to file the listing with the MLS no later than 5 days after the date the listing actually began.
13. On October 17, 2021 , Clear Morning Group, LLC ("the buyer") submitted an offer to purchase the Williamson Road property on a Commercial Contract – Unimproved Property, and listed Lila Ann Black, et al, as the owner.
14. As a part of the contract negotiations, Respondent prepared a new offer on a Farm and Ranch Contract, listing Myra Flemings, individually, as the owner of the Williamson Road property.
15. Respondent never shared the names of all of the members of the Flemings Group with the buyer .
16. Although Respondent filled in the effective date of execution of the contract as October 22, 2021, Myra Flemings did not sign the Addendum for Reservation of Oil, Gas, and Other Minerals that was a part of the contract until October 25, 2021.
17. On October 27, 2021, the buyer and Myra Flemings executed an Amendment to the contract to change effective date to October 25, 2021.
18. Although Respondent already had a written listing agreement for the sale of the Williamson Road property, he incorrectly completed the provisions regarding the payment of a commission by the seller on the bottom of Page 10 of the contract, which specifically instructs: "Do not sign if there is a separate written agreement of payment of Brokers' fees."

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19. On November 8, 2021, when the first title commitment that was issued for the Williamson Road property, the owners of the Williamson Road property was comprised of 33 individuals who were identified as the "Heirs at Law of Lila Ann Black, Deceased," but did not include Myra Flemings or any other members of the Flemings Group.
20. At that point, even though Respondent knew that neither Myra Flemings nor any members of the Flemings Group held any ownership interest in the Williamson Road property, Respondent continued to treat Myra Flemings as the owner of the Williamson Road property and/or as a person with the legal authority to sell the Williamson Road property.
21. Respondent knew or should have known that to have a binding contract, the contract needed to be signed by the buyers as well as by all of the owners of the Williamson Road property.
22. Respondent failed to seek the assistance of his broker regarding the unique issues he encountered in the transaction involving the listing and sale of the Williamson Road property.

#### **Conclusions of Law**

The acts and omissions on the part of Respondent set out in the Findings of Fact constitute the following violations that are cause for the suspension, revocation, or reprimand of Respondent's Texas real estate sales agent license pursuant to the specific statutes cited below and are further cause for the assessment of an administrative penalty against Respondent pursuant to Section 1101.701, Texas Occupations Code:

23. Section 1101.652(b)(1), Texas Occupations Code, by acting negligently or incompetently, while acting as a broker or sales agent; and
24. Section 1101.652(b)(19), Texas Occupations Code, by offering to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent, while acting as a broker or sales agent.

#### **Order**

IT IS ORDERED that Respondent is formally reprimanded for Respondent's actions in this matter.

IT IS FURTHER ORDERED that Respondent must pay an administrative penalty of \$2,000 by cashier's check or money order payable to the Texas Real Estate Commission.

IT IS FURTHER ORDERED that on or before 5:00 p.m., December 1, 2023, Respondent must provide the Commission's Enforcement Division with evidence of Respondent's completion of 30 hours in a Contract Law course as defined by Section 1101.003(2), Texas Occupations Code, from a Commission approved Education Provider. These hours are in addition to the Continuing Education (CE) hours required for the next renewal of the

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license subject to this Order and cannot be used as qualifying education for another license issued by the Commission. Failure to timely provide evidence of completion of the course as ordered automatically suspends the license subject to this order until the evidence of the course completion is provided to the Commission's Enforcement Division.

Chelsea Buckholz

9/25/2023

Chelsea Buchholtz                      Date  
Executive Director, Texas Real Estate Commission  
or  
Tony Slagle  
Deputy Executive Director, Texas Real Estate Commission

The undersigned Respondent states and affirms that Respondent enters into this Agreed Order of Respondent's own free will; that Respondent agrees to the entry of the above Findings of Fact and Conclusions of Law; that Respondent has been afforded all administrative remedies due Respondent under the law by the Texas Real Estate Commission; that Respondent, having been advised of Respondent's right to a hearing and to be represented by an attorney, waives these rights; and that Respondent waives all right to judicial review of this Order.

9/18/2023

Andres Fernandez

DATED:

Andres S. Fernandez  
Respondent

9/25/2023

Beverly S. Rabenberg

DATED:

Beverly S. Rabenberg  
Staff Attorney  
Texas Real Estate Commission