

**IN THE SUPREME MISSISSIPPI COURT OF THE STATE OF MISSISSIPPI  
COURT OF APPEALS**

**DUFFY MORF, BROKER AND KAREN  
PRESTON-MORF, SALESPERSON**

**APPELLANTS**

**VS.**

**CAUSE NO. 2007CA00839**

**NORTH CENTRAL MISSISSIPPI BOARD OF  
REALTORS, INC. BOARD OF DIRECTORS**

**APPELLEE**

**APPEAL FROM THE CHANCERY COURT  
OF LAFAYETTE COUNTY, MISSISSIPPI**

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**REPLY BRIEF OF APPELLEE**

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**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

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Attorney for Appellees

Nicholas S. Brown

Attorney for Appellees

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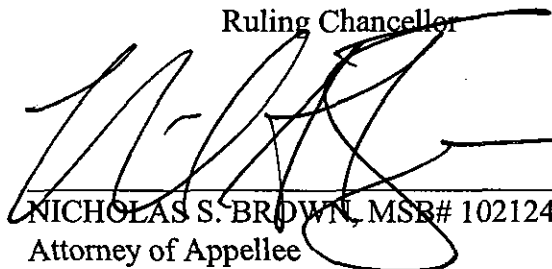
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Honorable V. Glenn Alderson

Ruling Chancellor

  
\_\_\_\_\_  
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**I. STATEMENT OF THE ISSUES**

- A. THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT'S MOTION FOR DIRECTED VERDICT.**
- B. THE TRIAL COURT DID NOT ERR IN ITS APPLICATION OF LAW AS TO RULE DEFENDANT'S ADHERED TO ITS RULES AND REGULATIONS IN DEALING WITH THE PLAINTIFFS.**

## **II. STATEMENT OF THE CASE**

### **A. COURSE OF PROCEEDINGS**

Mr. Duffy Morf and wife, Karen Preston-Morf (“Morfs”), the Appellants in this present action before the Court, commenced proceedings against the North Central Mississippi Board of Realtors, Inc. Board of Directors (“NCMBR”), Apellees, on December 18, 2006 (Rec. 001-042; Rec. Ex. Tab 1)<sup>1</sup>. The Morfs alleged that the NCMBR imposed sanctions that were not prescribed for in the NCMBR’s governing documents (Rec. 004). NCMBR then timely filed its Special Appearance for Motion to Dismiss and Motion to Stay Answer (Rec. 043-117; Rec. Ex. Tab 1), followed by its Special Appearance for Answer and Defenses (Rec. 0118-124; Rec. Ex. Tab 1) on January 16, 2007. Of perhaps even greater importance, NCMBR also served upon the Morfs its Special Appearance for First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions on January 16, 2007 (Rec. 125-126; Rec. Ex. Tab 1). Even though the Morfs’ discovery responses were due on February 19, 2007, the Morfs forwarded “attempted” responses on March 19, 2007 - 28 days after the request for admissions were deemed admitted according the Rule 36 of the Mississippi Rules of Civil Procedure (Rec. Ex. Tab 1).

As such, NCMBR filed its Special Appearance for Motion for Summary Judgment on March 21, 2007 (Rec. 131-188; Rec. Ex. Tab 1). The Court, having heard arguments of counsel, reserved its ruling on NCMBR’s Motion for Summary Judgment until after the trial; however, the trial court did acknowledge during the trial on the merits that said admissions were deemed admitted as a matter of law (TR 031-032). Further, during said trial, the Morfs were allowed to put on their case-in-chief; as their claims were found to be so meritless, the trial court granted NCMBR’s Motion for

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<sup>1</sup> For clarification, NCMBR herein adopts Appellants’ citation abbreviation scheme.

Directed Verdict (TR 185-186; Rec. 189; Rec. Ex Tab 2). The Chancellor, “after reviewing it [Ethics Manual] and reviewing the others,” ruled “that due process was had and it was not arbitrary and capricious; and I’m going to allow the ruling of the Board of Realtors to stand.” (TR 186).

## **B. STATEMENT OF THE FACTS**

Although the recurring motif of the Morfs in this action is to blur the facts as to confuse the trial court and this Court, the facts in this matter are straight-forward. The North Central Mississippi Board of Realtors is a private group comprised of voluntary members who join the group in a way to cooperate and compensate each other, to be designated as Realtors, and among other things, to have access to the Multiple Listing Service (MLS) (TR Ex 21 at 342; TR 8). The MLS contains the property listings members of the NCMBR have, along with the required detailed information about the subject property (TR 8-9; 113).

Duffy Morf voluntarily applied to become a member of the NCMBR on January 9, 2002 (Rec. 054-055; TR Ex 14), after his wife, Karen Preston-Morf, had already done so on December 15, 2001 (Rec. 052-053). Per their individual applications, the Morfs agreed that if elected to membership of the NCMBR, they would “thoroughly familiarize” themselves and “abide by” all governing documents of the private group, including the Constitution, Bylaws, Rules and Regulations, and Code of Ethics (TR 137-138; Rec. 052-055; Rec. 132).

Duffy Morf is the Broker for ERA Advantage Real Estate in Oxford, Mississippi (Rec. 001). As a Broker, he is licensed through the State of Mississippi (TR 136). Duffy Morf is *not* licensed through the North Central Mississippi Board of Realtors (TR 136; TR 160-161; TR Ex 1 at 4). Karen Preston-Morf is a real estate agent with ERA in Oxford, Mississippi (Rec. 002). As a real estate agent/salesperson, she is licensed through the appropriate state regulatory agency; Karen



Preston-Morf is *not* licensed through the NCMBR (TR Ex 1 at 4; TR 160-161). Further, the NCMBR does not have the power or authority to revoke a real estate license from the Morfs, or any individual (TR 159). As a Broker, whatever wrongdoing a real estate agent/salesperson in the Broker's office does, the Broker will be responsible in some manner as well (TR 058; TR Ex 1 at 17; TR Ex 21 at 342).

If they had their way, the Morfs would also have this Court accept that the Morfs had no idea how hearing procedures are conducted by the NCMBR. In stark contrast, as early as July 9, 2004, in a letter from the NCMBR, the Morfs were told that upon review of information relating to certain allegations, they would be able to "appear before the NCMBR MLS Committee to present your case. You are entitled to have legal representation of your choice to appear with you at the time of the hearing" (TR 139). In further to blur the straightforward facts, the Morfs continuously directed the trial court and this Court to follow ethical hearing procedures. However, as early as May 3, 2005, the Morfs were aware of the procedures of an Ethics Complaint (TR 141-142; See Collectively TR Ex 15).

Despite efforts by the Morfs to suggest otherwise in a poor attempt to confuse the Chancellor and this Honorable Court, the present matter before this Court *does not involve any ethical violations* of any degree - a fact admitted by Duffy Morf (TR 155). The Chancellor saw through the Morfs' slighted attempt to confuse the court, as noted in an exchange between NCMBR's representative and the Chancellor (TR 045-048).

The Morfs were subject to sanctions in 2005, at which time, under advice of their counsel, the Morfs' wrote a letter to the NCMBR requesting information that "will be used to aid us in the preparation of our Board hearing on June 20, 2005" (TR Ex17). The information requested, such

as all members of the Multiple Listing Service Committee and NCMBR Board of Directors, was provided to the Morfs. (TR Ex17; TR 147-148).

On June 20, 2005, after a proper hearing conducted by the MLS Committee, an appeal hearing initiated by Duffy Morf was heard by the Board of Directors. At said appellate hearing, Mr. Morf was represented by counsel. As a part of his sanctions, the appellate body placed Mr. Morf on a "One-year probation. Any infractions during this period will be referred directly to the Board of Directors for review of your NCMBR Membership" (TR Ex4 at 073-075; TR 149-150).

On June 20, 2005, after a proper hearing conducted by the MLS Committee, an appeal hearing initiated by Karen Preston-Morf was heard by the Board of Directors. At said appellate hearing, Mrs. Morf was represented by counsel. As a part of her sanctions, the appellate body placed Mrs. Morf on a "One-Year Probation and any infractions during this period, will be referred directly to the Board of Directors for review of your NCMBR Membership" (TR Ex4 at 070-072; TR 149). At the MLS hearing, the Morfs were able to bring witnesses and ask questions before the MLS Committee, which the Morfs did (TR Ex 4).

In yet another attempt to lead the Chancellor and this Court astray, Morfs suggest that the probation they were subject to "means that another form of discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time which may not exceed one (1) year...." (TR Ex 5 at 29). *Again*, as the Chancellor realized, this provision is clearly under the heading "Definitions Relating to Ethics" (TR Ex 5 at 29), of which every party to this action has agreed that the allegations in this matter *do not involve ethical charges* (TR 045-048; 100; 155). The Morfs appealed the 2005 decision of the NCMBR to the Lafayette County Circuit Court and was subsequently dismissed for lack of subject matter jurisdiction on January 31, 2006 by the Honorable

Henry Lackey.

On June 19, 2006, *while both Duffy Morf and Karen Preston-Morf were still subject to a one-year probation*, both were found to be guilty of other infractions. Failure to not have a signed listing and failure to supervise an agent, which are both infractions, was not only admitted to as a matter of law, but by the Morfs' own counsel: "They had – they didn't have a listing pointed out, and we are not going to get into semantics of all of that" (TR 93; 124; TR Ex 18). The Morfs tell this Court that even though they committed the infractions and violations, they do not matter because "no harm was suffered by any individual or entity" (Appellants' Brief at 8). To rely upon this statement is ludicrous - the harm *is the violation itself*. If a listing is put into the MLS without a valid listing agreement, the NCMBR, brokers, agents, and the public-at-large are at risk to substantial harm (TR 36).

While currently trying to suggest otherwise, in all hearings before the NCMBR, the Morfs always knew what the charges were against them – the Court point-blank asked Mr. Morf, "Did you know what the charges were against you?" Mr. Morf responded, "I figured, yes, I figured out the charge, yes, sir." (TR 119).

On July 13, 2006, after a proper hearing conducted by the MLS Committee, an appeal hearing initiated by Duffy Morf was heard by the Board of Directors. At the MLS hearing, the Morfs were able to bring witnesses and ask questions before the MLS Committee, which the Morfs did (TR Ex 6; TR Ex 7; TR 122-126). At said appellate hearing, Mr. Morf was represented by counsel. As a part of his sanctions, the appellate body fined Mr. Morf \$1,500.00 and placed him on MLS Suspension for 45 days (TR Ex6). On July 13, 2006, after a proper hearing conducted by the MLS Committee, an appeal hearing initiated by Karen Preston-Morf was heard by the Board of Directors.

At said appellate hearing, Mrs. Morf was represented by counsel. As a part of her sanctions, the appellate body expelled Mrs. Morf from membership to the NCMBR for a one-year period (TR Ex 7).

In a subsequent attempt to blur the simple facts, the Morfs told the Court they should have been able to appeal to the Professional Standards Committee, rather than the Board of Directors. Yet, as testified to by Duffy Morf at trial, as per the *Model Rules and Regulations for an MLS Operated as a Committee of an Association of REALTORS®*, if the MLS Committee has a procedure established to conduct hearings, the MLS Committee's ruling may ***"may be appealed to the Board of Directors of the Association of Realtors within 20 days of the tribunal's decision"*** (TR 164; TR Ex 20 - Section 9 Enforcement of Rules or Disputes). As shown to the letters addressed to the Morfs from the Chairman of the MLS, the Morfs were afforded 20 days to appeal to the Board of Directors (TR Ex 18 Collectively). At trial, Mr. Morf readily admits that the procedure set in place was to go before the Board of Directors, and not the Professional Standards Committee, and the Rules and Regulations of the NCMBR state as such (TR 167). More specifically, Mr. Morf said "That's what the MLS rules read, and that's what I went by" (TR 167).

Perhaps in the Morfs' best effort yet to confuse the Chancellor and this Honorable Court is in the application of Section 7, which consists of a bullet-list of violations, and Section 9, which covers all other violations of the Rules and Regulations; however, after reviewing the rules of the NCMBR, the Chancellor saw through this attempt to otherwise muddy the waters by the Morfs, as the Court said: ***"It's – it's clear to me that you have come under Section 9."*** (TR 130). Mr. Morf even admitted at trial that for failure to comply with any other rule, other than those outlined in Section 7, Section 9 *will* apply (TR 168).

The Morfs, apparently grasping at straws, told the Chancellor and this Court that the sanctions imposed were “far in excess of the specific progressive discipline schedule set forth in the very rules the Morfs were accused of violating” (Appellants’ Brief at 10). This could not be further from the truth, as noted in the very words of Mr. Morf. When asked what his monetary fine was, Mr. Morf responded \$1,500.00 - when asked what the harshest monetary fine *could be*, Mr. Morf acknowledged that it is \$5,000.00 (TR 171-172). Similarly, when asked the number of days he was suspended from the MLS, Mr. Morf said 45 days - when asked what the harshest suspension *could be*, Mr. Morf acknowledged it to be 60 days (TR 172). When directed to page 237, Section 21 of Exhibit 5, the following exchange was had in reference to Karen Preston-Morf’s *one-year* sanction, Mr. Morf admitted that the sanction could have been for *three (3) years* (TR 173-174).

The Morfs made a futile effort to pull at the Chancellor’s heart strings, and such effort is being made at this Honorable Court, in that the sanctions given to the Morfs would be of a detriment to the Morfs’ business (TR 114; Appellants’ Brief at 9). Although the Morfs would have this Court believe otherwise, membership in the NCMBR is *not* required to sell real estate in a particular area (TR 159). Despite these faulty efforts, the Morfs *are* able sell real estate in the Oxford area *without* utilizing the Multiple Listing Service (TR 159-161). In fact, the Morfs, at the time of trial, had sold a number of “agent-owned” units in a development owned by them without the use of the Multiple Listing Service (MLS) (TR 113; 161). The trial court memorialized this fact as well (TR 183-184). The Court also noted that just because the Morfs chose to implement a corporate structure that made Mrs. Morf, who is a *non-broker*, a partner in the business with the broker, “I think it speaks for itself. If she does not leave the firm, then others cannot use the Multiple Listing ... that’s – that’s part of the punishment” (TR 73). Finally, as a member of a private group, the Court vocalized that it is a

privilege, and not a right, to participate in the Multiple Listing Service. (TR 67).

### **III. SUMMARY OF ARGUMENT**

This case is simple. A determination made by a private body against its private members, according to its private rules and regulations is being called into question because the rule-breakers do not like their punishment. The North Central Mississippi Board of Realtors has an important interest in assuring the integrity of its members and those operating under its auspices. The Board has established certain regulations setting forth the standards of conduct a Realtor must practice in conformity with in order to retain the privilege of being a member with the NCMBR. In certain prescribed circumstances, such as those at bar, the NCMBR is entitled to impose an interim suspension and/or fine. These may be so imposed following a prompt evidentiary hearing, and subsequent appeal, if requested. The hearing and subsequent appeal are for the purpose of fleshing out and definitively determining the issues whenever it has been satisfactorily established that probable cause exists to believe that a Realtor has taken action contrary to the rules of the NCMBR.

As such, this is a private matter, between a private Board, and its private members, of which the Board has the sole province to dictate conduct of its members and impose suspensions and fines for violations thereof, of course, while acting according to their own procedures. There is an in-house right of appeal, which was satisfied clearly by the words of the Plaintiffs in their Complaint and throughout these proceedings.

Simply, Plaintiffs agreed to abide by the Bylaws, Rules and Regulations, and Code of Ethics per their Membership Application. Clearly defined in these documents are the maximum punishments allowed, and pursuant to case law in this State, this private board met its duty owed to Plaintiffs.

Of most important note is that neither Duffy Morf's nor Karen Preston-Morf's license was revoked. After finding substantial evidence in the evidentiary hearing and appeal, the NCMBR merely suspended the Broker from the Multiple Listing Service and imposed fines, both of which were well within the Board's schedule of maximum suspensions and fines. While after finding the same substantial evidence in the evidentiary hearing and appeal, the Salesperson was expelled from membership for a one-year period, not simply for the what the NCMBR found in the most recent hearing and appeal, but for committing another violation *while still within her previous one-year probationary period*. Such action by the NCMBR is clearly provided for in their governing documents, and yet again, the sanctions were well within the Board's maximum schedule of sanctions. These inherent rights to govern members of the NCMBR rest exclusively with the NCMBR in order to maintain its reputation and assure the integrity of its members to those with whom the members deal. Most importantly, the NCMBR is not a governmental agency or entity, nor any subdivision thereof, nor receiving any federal or state funds. Membership in the NCMBR is a voluntary privilege, and in no way a right.

In any event, through numerous flawed attempts to muddy the issues, the trial court saw through the efforts to instill confusion, and clearly found that due process was afforded to the Morfs and that the actions of the Board were not arbitrary and capricious. If there was an iota of confusion left with the trial court, a Motion for Directed Verdict would never have been granted; however, as it is crystal-clear, the Board acted well within its governing documents. Therefore, the NCMBR prays the Order of Dismissal of the trial court be affirmed.

#### **IV. ARGUMENT**

##### **A. THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT'S MOTION FOR DIRECTED VERDICT.**

At the close of the Morfs' case-in-chief, the NCMBR made its Motion for Directed Verdict according to Mississippi Rules of Civil Procedure 41(b), as the Morfs' already heightened burden of proof in appealing a private Board's decision to the courts was in no way met. Upon such motion made before a Chancellor, without a jury, the judge "should review the evidence fairly, and not in the light most favorable to the plaintiff, which is the applicable standard for a motion for directed verdict." *Milligan v. Milligan*, 2007 MSCA 2005-CA-01413-051507 (¶14) (Miss. Ct. App. 2007), citing *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359, 369 (Miss. 1992). "The result is that the ruling [for involuntary dismissal] is practically equivalent to a finding of fact." *Id.*, citing *Ainsworth v. Callon Petroleum Co.*, 521 So. 2d 1272, 1274 (Miss. 1987). As such, the applicable standard of review for such a motion "is one of substantial evidence and manifest error." *Id.*, citing *Stewart v. Merchants Nat'l Bank*, 700 So. 2d 255, 259 (Miss. 1997).

Upon motion made according to Miss. R. Civ. P. 41(b), if the Chancellor would find for the Defendant, "the case should be dismissed." *Century 21*, 612 So.2d at 369. "[G]enerally, when there are no specific findings of fact, this Court will assume that the trial court made determinations of fact sufficient to support its judgment." *Id.* at 367. In the Chancellor's ruling of the case at hand, after conclusion of the Morfs' case-in-chief, he stated that after a complete review of the record and the arguments of counsel and witness testimony, due process was had by the Morfs and the Board's actions were not arbitrary and capricious (R 189; Rec Ex Tab 2).

The facts in this matter are not difficult. As voluntary members of the NCMBR (R 052-055;



TR 136), the Morfs agreed to “thoroughly familiarize” themselves and “abide by” the governing documents of the private group, including the Constitution, Bylaws, Rules and Regulations, and Code of Ethics (TR 137-138; Rec. 052–055). As early as July 9, 2004, the Morfs were aware of the procedures of MLS hearings (TR 139).

In 2005, after a proper hearing conducted by the MLS Committee, an appeal hearing initiated by Duffy Morf and Karen Preston-Morf was heard by the Board of Directors. At said appellate hearing, the Morfs were represented by counsel. As a part of their sanctions, the appellate body placed the Morfs on a one-year probation (TR Ex4 070-075; TR 149-150). This decision was appealed to the Honorable Judge Henry Lackey and was dismissed for lack of subject matter jurisdiction.

In 2006, *while both Duffy Morf and Karen Preston-Morf were still subject to a one-year probation*, both were found guilty of another infraction (TR 93; 124; TR Ex18). The Morfs brought witnesses with them and asked questions before the MLS Committee (TR 122-126). After the MLS Committee imposed sanctions against the Morfs, an appellate hearing was initiated and the Morfs were again represented by counsel. At said appellate hearing, sanctions were imposed against the Morfs pursuant to the NCMBR’s guidelines, discussed *infra* (TR Ex 6; TR Ex 7; TR 149-150).

Upon the Rule 41(b) motion made by NCMBR, as the evidence presented by the Morfs was so inept, the Chancellor correctly followed the rule that “if he would find for the defendant, the case should be dismissed. *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359, 369 (Miss. 1992). Of course, however, the Chancellor should “deny a motion to dismiss only if the judge would be obliged to find for the plaintiff if the plaintiff’s evidence were all the evidence offered in the case.” *Id.* Even after multiple attempts by the Morfs to otherwise contort factual issues to bewilder

the court, the Chancellor could nonetheless see through these ill-fated attempts.

1. From some strange reason, per their brief, the Morfs are attempting to suggest they were never given a chance to properly present their case before the Board at the various hearings. This assertion is dumbfounding. First, the documents speak for themselves. In the letters from the Board sent to Duffy Morf and Karen Preston-Morf in 2005, a lengthy discussion was given in reference to the Morfs being represented by counsel, due process was had, and questions were asked and answered by the Board and the Morfs (TR Ex 4). The Morfs further tell this Court they did not know whom they would be appearing before in 2005; however, in response to a letter signed by Duffy Morf and Karen Preston-Morf, a list of all members of the MLS Committee and Board of Directors was provided to them (TR Ex 17; TR 147-148).

Again, in the letters sent to the Morfs in 2006, the documents speak for themselves. While being represented by counsel at the hearing, the Board fluently discussed its findings (TR Ex 6; TR Ex 7).

Finally, the trial court did acknowledge during the trial on the merits that the hearings and their rulings were deemed admitted as a matter of law (TR 031-032). As pertinent here:

- As of May 2006, Duffy Morf was serving a one-year probationary period as prescribed by North Central Mississippi Board of Realtors on June 29, 2005.
- As of May 2006, Karen Preston-Morf was serving a one-year probationary period as prescribed by North Central Mississippi Board of Realtors on June 29, 2005.

(Rec. 132-133).

2. In flawed efforts to suggest that the Morfs were entitled to a Professional Standards Committee hearing, which are reserved for ethical complaints, in the stead of the Board of Directors, Duffy Morf admitted the present matter before the Court does not involve any ethical violations of

any degree (TR 155). The Chancellor even caught on to the Morfs' slighted attempt to confuse the court, as noted in the following exchange between NCMBR's representative and the Chancellor:

COUNSEL FOR MORFS: I would refer you to number 18 at the bottom of page 236 . . . the recipient of such a sanction, then however, may request a hearing before the Professional Standards Committee within twenty (20) days. Clearly the Code of Ethics, would you agree with me, contemplates situations where it's a non-ethical charge like we have here with the Morfs, a MLS violation, and what needs to occur . . .

THE WITNESS: In this situation that he [counsel for Morfs] is pointing out there was an ethics complaint filed, there was never an ethics complaint filed here.

THE COURT: I know it, but here is – what I'm reading here this has something – this Section 18.

THE WITNESS: Right.

THE COURT: Talks about a MLS Rule or Regulation violation.

THE WITNESS: It does in the event that an ethics complaint is filed, there was never an ethics complaint filed against Mrs. Morf.

THE COURT: Just a minute. That doesn't say a thing about ethics – read it, read 18.

THE WITNESS: It says, "An ethics complaint has been filed with our Board alleging a violation of MLS."

THE COURT: Okay.

THE WITNESS: And there was never an ethics complaint filed to deal with this, it was the governing documents of the Bylaws that she was disciplined in, that was the alleged offense.

THE COURT: Okay.

THE WITNESS: This was not an ethics complaint.

THE COURT: *All right. I follow you. Go ahead.* (TR 045-048; Rec Ex Tab 3).

3. Even after establishing that this is a non-ethical issue in the present matter, the non-issue of a Professional Standards Committee continues. As stated by Appellants in their Brief, the

initial 2005 and 2006 hearings were held before the members of the MLS Committee (TR Ex 4, TR Ex 18). Upon being notified that their applicable sanctions could be appealed to the NCMBR Board of Directors (TR Ex 18), the Morfs did so. Once again, the Morfs are attempting to muddy otherwise crystal-clear waters by suggesting that such appellate procedures are not allowed as the Morfs should have been able to appeal to the Professional Standards Committee (Appellants' Brief at 9). As testified by Duffy Morf at trial, per the *Model Rules and Regulations for an MLS Operated as a Committee of an Association of REALTORS®*, if the MLS Committee has a procedure established to conduct hearings, the MLS Committee's ruling may "***may be appealed to the Board of Directors of the Association of Realtors within 20 days of the tribunal's decision***" (TR 164; TR Ex 20 - Section 9 Enforcement of Rules or Disputes). As shown to the letters addressed to the Morfs from the Chairman of the MLS, the Morfs were afforded 20 days to appeal to the Board of Directors (TR Ex 18 Collectively). At trial, Mr. Morf readily admits that the procedure set in place was to go before the Board of Directors, and not the Professional Standards Committee, and the Rules and Regulations of the NCMBR state as such (TR 167). More specifically, Mr. Morf said "That's what the MLS rules read, and that's what I went by" (TR 167; Rec. Ex Tab 3).

Appellants have the audacity to suggest to this Court that "NCMBR's representative admitted that it was the Board's policy to ***only*** allow for a hearing before the MAR Professional Standards Committee" (Appellants' Brief at 9). Conveniently omitted was the cite to this testimony, wherein the NCMBR representative repeatedly confirmed, after being badgered by Morfs' counsel, that the Board of Directors hears appeals and the Professional Standards Committee hears *ethical* complaints – ***as provided for by the Model Rules and Regulations*** (TR 044-045; Rec Ex Tab 3).

4. In yet another attempt to lead the Chancellor and this Court astray, the Morfs suggest

that the probation they were subject to “means that another form of discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time which may not exceed one (1) year ...” (TR Ex 5 at 29). *Again*, as the Chancellor realized, this provision is clearly under the heading “Definitions Relating to Ethics” (TR Ex 5 at 29), of which every party to this action has agreed that the allegations in this matter *do not involve ethical charges* (TR 045-048; 100; 105; Rec Ex Tab 3).

5. The Morfs have continually indicated to the Court that they were not aware of the allegations against them at the various hearings. As the facts do not lie, and as the Chancellor himself found out, the Morfs always knew what the charges were against them, as shown in the following exchange between the Court:

THE COURT: Let me ask you this, when you had your hearing before the North Central Mississippi Board of Realtors, did you know what the charges were?

THE WITNESS: It said according to Section such and such.

THE COURT: I asked you, did you know what the charges were against you?

THE WITNESS: I figured, yes, I figured out the charge, yes, sir.

THE COURT: All right, sir. Go ahead. (TR 119; Rec Ex Tab 3).

6. The Morfs made a futile effort to play on the emotions of the Chancellor, and such effort is being made before this Honorable Court, in that the sanctions given to the Morfs would be a detriment to the Morfs’ business (TR 114; Appellants’ Brief at 9). As the Morfs are able, *and do*, sell real estate without the utilizing the Multiple Listing Service (TR 159-161; TR 113), the Chancellor noted that it is the Morfs’ own self-created corporate scheme that is of detriment to them:

THE COURT: ... isn’t that a reason why they put these penalties in there? Isn’t that a way of spanking you?

THE WITNESS: It is a way of spanking you, your Honor, but normally this association is supposed to help its members, not put them out of business.

THE COURT: Well, they won't put you out of business, I don't believe, will they?

THE WITNESS: Well –

THE COURT: – They will drastically reduce your income, but it won't put you out of business.

THE WITNESS: Well, it will lose all of our agents, because they won't stay with us if they can't enjoin the MLS.

THE COURT: Well, from what I've – from what I'm seeing here you are suspended for 45 days.

THE WITNESS: No, because Karen is a partner of the firm, your Honor. So I would have to –

THE COURT: – Well, she – all right.

THE WITNESS: – get rid of her.

THE COURT: That's right. There's ways around it. (TR 183-184; Rec Ex Tab 3).

The Court also noted that just because the Morfs chose to implement a corporate structure that made Mrs. Morf, who is a *non-broker*, a partner in the business with the broker, “I think it speaks for itself. If she does not leave the firm, then others cannot use the Multiple Listing ... that's – that's part of the punishment” (TR 73). Finally, as a member of a private group, the Court vocalized that it is a privilege, and not a right, to participate in the Multiple Listing Service. (TR 67; Rec. Ex Tab 3).

After thorough review, the fact-finding Chancellor, correctly ruled to dismiss the Morfs' action after fairly reviewing the facts. Neither substantial facts to the contrary, nor manifest error, exist in the Chancellor's decision.

**B. THE TRIAL COURT DID NOT ERR IN ITS APPLICATION OF LAW AS TO RULE DEFENDANT'S ADHERED TO ITS RULES AND REGULATIONS IN DEALING WITH THE PLAINTIFFS.**

While the NCMBR is not an administrative agency, per se, the case law on such an agency is most enlightening as to the role of this Honorable Court with respect to the evidentiary findings of the private NCMBR.

In reviewing an administrative agency's findings of fact the chancery court's and this Court's appellate authorities are limited by the "arbitrary and capricious standard of review." *Mississippi Real Estate Comm'n v. Hennessee*, 672 So.2d 1209, 1217 (Miss. 1996). Matters of law will be reviewed *de novo*, *KLLM, Inc., v. Fowler*, 589 So.2d 670, 675 (Miss. 1991), with great deference afforded an administrative agency's "construction of its own rules and regulations and the statutes under which it operates." *Mississippi State Tax Comm'n v. Mask*, 667 So.2d 1313, 1314 (Miss. 1995) (citations omitted).

After the Morfs presented their case and rested, the trial court clearly found there to be no "matters of law." Therefore, an agency's decision will not be disturbed on appeal absent a finding that it "(1) was [not] supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right of the complaining party." *Mask*, 667 So.2d at 1315 (quoting *Mississippi State Tax Comm'n v. Vicksburg Terminal, Inc.*, 592 So.2d 959, 961 (Miss.1991)). The Morfs have made no, and indeed cannot make any, allegations to satisfy even one of the factors necessary to place this private matter before the Court for an arbitrary and capricious review.

Even more on point is the case of *Multiple Listing Service of Jackson, Inc. v. Century 21 Cantrell Real Estate, Inc.*, 390 So. 2d 982 (Miss. 1980). The Court expressed approval of the

generally accepted rule that courts will not undertake to inquire the regularity of the procedures adopted and pursued by an association in deciding its own affairs (quoting *Evanish v. Berry*, 536 So.2d 7 (Miss. 1988)). More specifically in *Multiple Listing Service*, the suspension and probation of the Realtor were *upheld* because they were specified in the organization's constitution, bylaws, and rules and regulations; the only penalty enjoined by the Court was the fine because a maximum fine was not provided for. As interpreted, "[i]t was made clear that a fixed, reasonable fine would be upheld, but that the amount of penalty would have to be specified in advance to be judicially enforceable." *Evanish v. Berry*, 536 So.2d 7 (Miss. 1988). Or, in the words of the *Multiple Listing Service* court, a fine will be enjoined where the organization does not have in effect a "schedule of maximum fines that may be imposed to which schedule each member has agreed to be bound by joining the association." 390 So.2d at 986.

In the case at hand, both Duffy Morf and Karen Preston-Morf signed an agreement as found in Section 1 and Section 2 of their respective Membership Applications to "thoroughly familiarize" themselves and "abide by" all documents of the private Board, including the Constitution, Bylaws, Rules and Regulations, and Code of Ethics (TR 136-138; Rec. 052-055). Included in these governing documents are absolutely fixed, reasonable and specified penalties, as shown *infra*.

Throughout the proceedings, in a vain attempt to blur how rules are applied, Plaintiffs conveniently only cite to Section 7 of the Rules and Regulations of the NCMBR (Rec. 001-042). If read entirely, a bullet-list of violations subject to Section 7 is provided (TR Ex 21 at 353). At the end of this list reads, "For failure to comply with any other rule, the provisions of Section 9 *will* apply." (TR Ex 21 at 353). The Chancellor saw through this fickle attempt by the Morfs:

THE COURT: Why wouldn't you know [whether Section 7 or Section 9 would be



used]?

THE WITNESS: Because there's nothing – there's nothing that says that section – back in Section 7 it says, "Violation of Rules and Regulations included, but not limited to," it gives me a list, but not included to. And then over in 9 it doesn't tell me anything as to what --

THE COURT: – Well, it says this, what you are charged with, the violation you are charged with is it – is it one of the violations that is listed under section?

THE WITNESS: No, it isn't.

THE COURT: So if it's not, wouldn't it go under Section 9 for failure to comply with any other rule?

THE WITNESS: It could, but it also says, "Violation of Rules and Regulations included but no limited to" - on the top of that under Section 7.

THE COURT: Well, I – I know, but it – it says, Included, but not limited to, it could be others but its' not listed there.

THE WITNESS: It's not listed, your Honor.

THE COURT: *It's – it's clear to me that you have come under Section 9.* (TR 130; Rec. Ex Tab 3).

As the violations committed by the Morfs did not fall under the bullet-list in Section 7, the Morfs were subject to Section 9. Mr. Morf admitted such at trial – that for failure to comply with any other rule, other than those outlined in Section 7, Section 9 *will* apply (TR 168; Rec. Ex Tab 3). This Section provides for sanctions and procedures for hearing requests that may be imposed.

As in the words of Mr. Morf, the governing documents of which he and Karen Preston-Morf agreed to be bound by contained fixed, reasonable and specified penalties:

- a. When asked what his monetary fine was, Mr. Morf responded \$1,500.00 - when asked what the harshest monetary fine *could be* under Section 9, Mr. Morf acknowledged that it is \$5,000.00 (TR 171-172; Rec Ex Tab 3).

- b. When asked the number of days he was suspended from the MLS, Mr. Morf said forty-five days - when asked what the harshest suspension *could be* under Section 9, Mr. Morf acknowledged it to be 60 days (TR 172; Rec Ex Tab 3).

When directed to page 237, Section 21, "Questions and Answers" of Exhibit 5, the following exchange was had in reference to Karen Preston-Morf's *one-year* sanction:

A: "Can our Board impose 'conditional' discipline? For example, can we stipulate that a respondent be suspended until a fine is paid?"

Q: Will you please read the answer, Mr. Morf?

A: "Yes. Although suspension may not be imposed as a sanction for greater than one (1) year *and expulsion for not more than three (3) years.*"

Q: Mr. Morf ... how long was your wife's expulsion for?

A: One year. (TR 173-174; Rec Ex Tab 3).

Simply, the Morfs agreed to abide by the governing documents of the NCMBR per their Membership Application. Clearly defined in these documents, and testified thereto by Mr. Morf, are the maximum punishments allowed, and pursuant to case law in this State, this private board met its duty owed to Plaintiffs by adhering to its own rules and regulations.

## V. CONCLUSION

This is a simple matter. In complete accordance with the governing documents of the private group, the Morfs were punished because of their own wrong-doings . The Board has standards in place to ensure that its members' interests are protected. In addition to its own members, the public-at-large relies on the members of this private group and expects them to perform according to the rules. The Morfs repeatedly broke the rules they agreed to abide by.


After at least *five* separate hearings on these matters, the facts and results always reveal the

same – the Morfs broke the rules and the NCMBR acted within its guidelines when considering the violations. In any event, thorough numerous flawed attempts to muddy the issues, the trial court saw through the efforts to instill confusion, and clearly found that due process was afforded to the Morfs and that the actions of the Board were not arbitrary and capricious. If there were any confusion left with the trial court, a Motion for Directed Verdict would never have been granted; however, as it is crystal-clear the Board acted well within its governing documents. Therefore, the NCMBR prays the Order of Dismissal of the trial court be affirmed.

**RESPECTFULLY SUBMITTED**, this the 21st day of December, 2007.

RESPECTFULLY SUBMITTED,  
NORTH CENTRAL MISSISSIPPI BOARD  
OF REALTORS, INC. BOARD OF  
DIRECTORS, APPELLEE

BY: 

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**CERTIFICATE OF SERVICE**

I, Nicholas S. Brown, Attorney of Record for the Appellee herein, do hereby certify that I have this date mailed by United States mail, first class postage prepaid, a true and correct copy of the above and foregoing to:

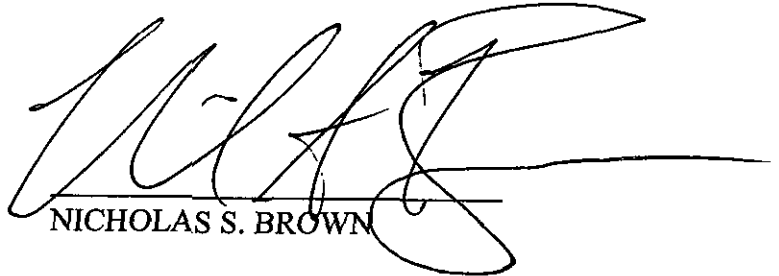
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THIS, the 21st day of December, 2007.

  
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