

**IN THE SUPREME 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**

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

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***ORAL ARGUMENT REQUESTED***

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**BRIEF FOR APPELLANTS**

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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 justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

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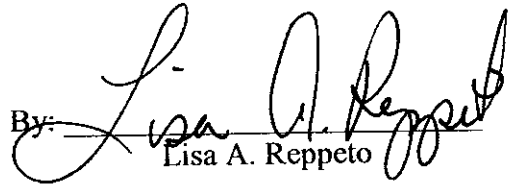
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So certified this, the 28<sup>th</sup> day of November, 2007.

By:   
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## **STATEMENT OF THE ISSUES**

- I. WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR DIRECTED VERDICT
- II. WHETHER THE TRIAL COURT ERRED IN ITS APPLICATION OF LAW WITH REGARD TO THE DEFENDANT'S FAILURE TO ADHERE TO ITS OWN REGULATIONS AND BYLAWS IN ITS TREATMENT OF THE PLAINTIFFS

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## **STATEMENT OF THE CASE<sup>1</sup>**

The Appellants, Duffy Morf and Karen Preston-Morf ("Morfs"), initiated the present action by filing their Verified Complaint and/or Application for Temporary Restraining Order and Preliminary and/or Permanent Injunction on December 18, 2006. (Rec. 1-42) In the Complaint, the Morfs alleged that the Appellee, North Central Mississippi Board of Realtors, Inc. Board of Directors ("NCMBR") failed to adhere to both the due process procedures authorized by, and issued punishments in excess of, those provided for in the bylaws adopted by NCMBR. (Rec. 4-6)

Trial of this matter was commenced on April 16, 2007. At the conclusion of the Morfs' case in chief, counsel for NCMBR moved for directed verdict. (TR 185) The trial court stated that, although the rules, regulations and procedures adopted by NCMBR were a "hodgepodge,"<sup>2</sup> the Court would "allow the ruling of the Board of Realtors to stand." (TR 186) An order reflecting this Ruling was entered by the trial court on April 17, 2007. (Rec. Ex Tab 2) The Morfs timely filed their notice of appeal on May 16, 2007 (Rec. 190) This matter is now ripe for review by this Court.

## **STATEMENT OF FACTS**

This case involves the imposition of what amounts to a death penalty to the Morf's real estate business by NCMBR for an alleged rule violation which was promptly corrected and

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<sup>1</sup> For the purposes of this brief, citations to the record on appeal are abbreviated as follows: "Rec." indicates a citation to the clerk's papers by page number; "Rec. Ex. Tab" indicates a citation to the Mandatory and Appellant's Record Excerpts by tab and, where applicable, page number; "TR" indicates a citation to the transcript of the trial held on April 16-17, 2007 and "TR Exh" indicates a citation to an exhibit offered at the trial held on April 16-17, 2007 by exhibit number and, where applicable, by page number.

<sup>2</sup> An observation noted by the Court repeatedly throughout the trial. (TR 35-36, 51, 83 157-158, 186)

which NCMBR admits caused no harm to anyone. NCMBR's justification for the severity of this punishment is limited to a "probation" imposed nearly a year earlier in another disciplinary proceeding. In both instances, NCMBR imposed punishments without following the procedures adopted and in excess of those provided for in its bylaws, rules and regulations.

Duffy Morf, a real estate broker, and his wife, Karen Preston-Morf, a real estate agent, are partners in an ERA Advantage Real Estate agency located in Oxford, Mississippi. (TR 112) In 2006, the Morfs' agency sold in excess of \$22,000,000.00 in real estate. (TR 112) Karen Preston-Morf is the agency's top agent, accounting for between seventy and seventy-five percent of the firm's listings and sales (TR 113)

In late December, 2001 and early January, 2002, the Morfs applied for membership in NCMBR in conjunction with their real estate agency. (TR Exh 14)(Rec. 52-53) In joining NCMBR, the Morfs also joined and paid dues not only to the local association, NCMBR, but also to the Mississippi Association of Realtors ("MAR") and the National Association of Realtors ("NAR"). As part and parcel of their memberships, the Morfs could use the title "Realtors." (TR 113) Additionally, membership allowed the Morfs to have a "lock-box" key which would provide access to properties listed by other members. (TR 113) Membership also provided the Morfs' firm with the ability to access and utilize the Multiple Listing Service ("MLS"). (TR 113) MLS is a database which provides for the collection and dissemination of listing information for the use and benefit of members. (TR Exh 2 at 342) Membership in NCMBR is vital to the Morfs' business as all of the Morfs' competitors in the Oxford market are members and have access to the lock-box system and the information provided by MLS. (TR 113-114) Without the ability to list on MLS and to see what properties are available for on MLS, the Morfs will be unable to compete in the Oxford market.

From 2002 until 2005, the Morfs were never disciplined in any way nor were they ever found to be in violation of any rule, regulation or ethical standard. (TR 130-131) indeed, Karen Preston-Morf had been a member since 1995 (prior to opening the ERA agency with her husband) and had never been disciplined for any reason during that time period either. In May of 2005, the Morfs were advised that they were being charged with the violation of an MLS rule requiring a signed extension by the property owner prior to extending a listing in the system. Contrary to the bylaws, rules and regulations of NCMBR, the MLS Board advised the Morfs telephonically that a hearing would be held before the MLS Board in less than twenty-four hours. (TR Exh 16) Morfs were not provided the names of those who would sit in judgment of them and were not permitted to offer evidence in their own defense in further violation of the bylaws, rules and regulations. (TR 120)(TR Exh 16)

Despite this being their first rule violation, Karen Preston-Morf (directly accused of the violation) was sanctioned by the imposition of a \$2,000.00 fine, was required to take eight hours of ethical training and was suspended from MLS for a period of ninety days. (TR Exh 4 at 72) Duffy Morf (accused of failing to adequately supervise his wife) was fined a \$750.00 dollar fine and received an administrative sanction in the amount of \$250.00. The Board further required him to take eight hours of ethical training and suspended him from MLS for thirty days. (TR Exh 4 at 75) These sanctions were far more extensive than allowed by the progressive discipline ladder provided for in the MLS Rules and Regulations. (TR Exh 3 at 305-306)

None of the sanctions imposed was suspended, yet NCMBR also stated that both Karen and Duffy were subject to a one-year "probation." (TR Exh 4 at 72, 75) The *only* definition of "probation" in the bylaws, rules and/or procedures adopted by NCMBR provides that: "'Probation' 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

Exh 5 at 29) It was undisputed at trial that *none* of the punishments imposed in 2005 were held in abeyance.

Nearly eleven months later, an assistant in the Morfs' office, Angela Visser, entered two listings that had not yet been finalized with a signed agreement from the sellers. (TR 124)(Rec. 162-63) Both of these listings were input into the MLS system by Ms. Visser on Thursday, May 11, 2006 thinking that they were in "suspense" and, therefore, would not be viewed as an active listing. (TR 123-124) Upon learning that these listings had been activated in the MLS system, the Morfs immediately took steps to remove the listings. (TR 124) Indeed, these listings were withdrawn on Monday, May 15, 2006. (Rec. 162-163) Further, the Morfs took immediate steps to bring this mistake to the attention of NCMBR's Amanda Stone. (TR 124) It was undisputed at trial that the error was promptly corrected and absolutely no harm was suffered by any individual or entity.<sup>3</sup> (TR 105-106, 124, 134-135)

In an undated letter, NCMBR advised the Morfs that their presence was required at a hearing in the NCMBR offices on May 31, 2006.<sup>4</sup> (TR Exh 13) This letter did not specify any particular rule violated by the Morfs except to generally cite a violation of Section 1 of the MLS Rules and Regulations by Karen Preston-Morf. (TR Exh 13) The letter did not identify before what body the Morfs were to appear nor did the letter identify any individual who would be determining the Morfs' guilt or innocence as required by the rules, regulations and procedures adopted by NCMBR. (TR Exh 13) Likewise, the letter failed to indicate any right to representation by counsel. (TR Exh 13) Inasmuch as the error had already been corrected and

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<sup>3</sup> On the contrary, written listing agreements were, in fact, obtained by the Morfs on May 21, 2006.

<sup>4</sup> This hearing actually took place on June 6, 2006. (TR 122)(TR Exh 18)

the Morfs' themselves had promptly advised the NCMBR of the error, the Morfs did not anticipate that any sanctions would be upon them. (TR 132-133)

After appearing as instructed, the Morfs were advised that they would receive harsh sanctions as a result of the withdrawn listings. (TR Exh 18) Duffy Morf was to be fined \$1,500.00, subjected to a forty-five day suspension from MLS and required to attend a mandatory full orientation session. (TR Exh 18) Moreover, Karen Preston-Morf was expelled from NCMBR for one year. (TR Exh 18) This expulsion means that no one in the Morfs' business can utilize MLS, any other benefit of membership in NCMBR, until Karen, who is responsible for seventy to seventy-five percent of the firm's business, is either reinstated or terminated from her own business. (TR Exh 18)(TR 114)

In both the 2005 and 2006 disciplinary actions, the initial hearings were held before members of the MLS Committee. (TR Exh 4, TR Exh 18) NCMBR advised the Morfs that they could appeal the initial sanctions imposed by filing a Notice of Appeal to the NCMBR Board of Directors. (TR Exh 18) The Morfs proceeded with their appeals in the manner instructed. (TR Exh 19) Notwithstanding, these procedures imposed by NCMBR were not in accordance with the procedure expressly incorporated in its bylaws providing for a hearing before the Professional Standards Committee. (TR Exh 5 at 236-237) At trial, NCMBR's representative admitted that it was the Board's policy to *only* allow for a hearing before the MAR Professional Standards Committee.

Despite the foregoing, the trial court apparently determined that NCMBR had adhered to its own bylaws, rules and regulations in imposing the sanctions at issue. For the reasons set forth below, this ruling was in error and should be reversed by this Court.

## SUMMARY OF THE ARGUMENT

The concept of due process is, at its core, the notion of fairness. When applied to discipline imposed by a private professional organization, like NCMBR, due process requires that the organization adhere to and follow its own bylaws, rules and regulations with regard to disciplining its members. This requirement extends both to process and procedures the organization uses to determine whether discipline is warranted, and to the specific discipline imposed. In the present case, NCMBR failed to adhere to its own bylaws, rules and regulations in both regards. Specifically, NCMBR failed to comply with its own notice requirements, failed to provide the Morfs the time required to prepare to meet the charges against them, and simply skipped a hearing specifically required under its bylaws. Likewise, NCMBR imposed punishments on the Morfs far in excess of the specific progressive discipline schedule set forth in the very rules the Morfs were accused of violating.

There was no factual issue at trial regarding the procedures and punishments actually exacted. Rather, the evidence presented was primarily focused on establishing what rules, regulations and bylaws applied, and the interpretation of the same. Under Mississippi law, this type of controversy is analyzed with reference to basic contract principals. The following discussion will examine, in detail, the relevant documents and their clear meaning when read as a whole. Under this approach, there can be no doubt that NCMBR failed to follow its own rules. By contrast, the positions taken by NCMBR at trial to justify its actions requires a piecemeal reading of the relevant documents. Such a piecemeal approach results in isolated interpretation of rules that must be read together. Indeed, the Chancellor found this fragmented interpretation to be quite confusing. The trial court repeatedly referred to the regulatory scheme adopted by NCMBR as a "mess" and a "hodgepodge" which he doubted could be unraveled by either this Court or the "Chief Justice of the United States Supreme

Court.” *See, infra*. In light the trial court’s confusion, it is puzzling that it adopted the NCMBR’s interpretation as opposed to the Morfs’ interpretation, given the Hornbook principle that ambiguous or contract language is construed against the drafter. The trial court’s disregard of its own findings and analysis can rightly be considered an abuse of discretion.

Be that as it may, issues of interpretation are matters of law which are reviewed *de novo* by this Court. As such, the Morfs’ respectfully request that this Court reverse and render the trial court motion to dismiss and direct judgment in their favor.

## STANDARD OF REVIEW

Although stated as a motion for directed verdict, the present case arises from the trial court's grant of a motion to dismiss pursuant to Miss. R. Civ. P. 41(b) offered NCMBR at the close of the Morfs' case in chief. *See, Aronson v. University of Mississippi*, 828 So. 2d 752, 755 (Miss. 2002)(citing *Buelow v. Glidewell*, 757 So.2d 216, 220 (Miss.2000)). Pursuant to Rule 41(b), the trial court is "to consider the evidence fairly and to give it such weight and credibility as the trial judge finds is appropriate." *Id.* In applying this standard, the trial court should not grant the motion where the plaintiffs' evidence, if left unrebutted, "would entitle the plaintiff to judgment" and the plaintiff has offered proof as to the essential elements of his claim. *Id.* This Court should defer to any findings of fact made by the trial court but reviews all legal conclusions *de novo*.

## ARGUMENT

### I. DISMISSAL SHOULD BE REVERSED BECAUSE NCMBR FAILED TO COMPLY WITH ITS OWN RULES, REGULATIONS AND PROCEDURES

#### A. NCMBR Was Required to Comply With its Own Rules, Regulations and Procedures.

The present case is, at its essence, a case of contract interpretation. Specifically, the Court below was called upon to determine whether NCMBR complied with its own bylaws, rules and regulations with regard to procedures utilized in adjudicating alleged rule violations and in imposing punishments for those alleged violations against the Morfs

In the proceedings below, both the Morfs and NCMBR relied on this Court's holding in *Multiple Listing Service of Jackson v. Century 21 Cantrell Real Estate, Inc.*, 390 So. 2d 982 (Miss. 1980). In *Cantrell*, a real estate agent was granted an injunction against three punishments (probation, suspension and a fine) imposed by the Jackson Board of Realtors and MLS listing service for alleged violations of MLS rules. *Cantrell*, 390 So. 2d at 983. This Court upheld the reversed the injunction with regard to probation (as the agent failed to exhaust her administrative remedies) and the suspension (with little discussion except to note that the organization was in full compliance its own rules and procedures). *Id.* at 983-84. The Court further affirmed the injunction as to the imposition of the fine, as the organization had failed to adopt a "*schedule* of maximum fines that may be imposed to which schedule each member has *agreed to be bound* by joining the association." *Id.* at 986 (emphasis added). This Court further noted:

To hold that an association might arbitrarily prescribe fines for each individual offense as it sees fit would make possible and invite an abuse of authority. A *fixed* reasonable fine, *in the nature of liquidated damages*, for injuries sustained because of unprofessional or unethical conduct would be sustained. But an arbitrary fine, such as the one imposed here, cannot be enforced.

*Id.* (emphasis added). In reaching its decision, it is clear that this Court employed basic contract law and principles.

Indeed, in *Communications Workers of America, Local 10517 v. Gann*, 510 So.2d 781 (Miss.1987), this Court specifically applied basic contract law to analyze an organization's recourse against a member for failure to abide by its rules and regulations. *Gann* involved a labor union's attempt to judicially force payment of fines imposed against eleven members for continuing to work during a strike. *Gann*, 510 So. 2d at 782. Inasmuch as the union failed to demonstrate that the fines imposed pursuant to a "uniform ***predetermined methodology*** . . . ." this Court held the fines unenforceable, citing *Cantrell*. *Id.* at 782. Further, this Court applied basic contract law in determining the meaning of the union's bylaws with regard to what punishments and remedies were available for addressing the serious infractions of the eleven members. *Id.* at 784 ("[w]e are bound to follow firmly established ***basic contract law***, and not do violence to its principles.")(emphasis added).

*Cantrell* and *Gann*, both of which primarily address the enforceability of fines, appear to comprise the entire body of jurisprudence with regard to judicial review of the imposition of sanctions by a private professional/trade organization.<sup>5</sup> Neither case addresses the present circumstance wherein the Morfs assert that NCMBR failed to follow its own explicit hearing and notice procedures, and its imposition of penalties contrary to and in excess of an explicit written schedule of penalties. Thus, the same type of analysis is appropriate and applicable.

The association at issue is a professional association vital to the existence and continued viability of the Morfs' business. The current sanctions, if upheld, will significantly harm the

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<sup>5</sup> There is an additional case, *Evanish v. Berry*, 536 So. 2d 7 (Miss. 1988), which addresses the appeal of a decision to expel members of a private social club. In that case, it appears to have been undisputed that the club acted in "strict accordance with the bylaws . . ." *Evanish*, 536 So. at 7.

Morfs' business and ability to compete in the Oxford market, and will stigmatize the professional and personal reputations of the Morfs. As such, procedures and disciplinary action not in accordance with the bylaws and rules should not be upheld. Indeed, this is consistent with opinions from Mississippi's sister jurisdictions. See, *McCune v. Wilson*, 237 So.2d 169, 172 (Fla. 1970)("[d]isciplinary action against a member of a professional organization, although falling short of expulsion from occupation, may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers. For this reason, it is suitable and proper that an organization, whether a domestic or foreign nonprofit corporation, or a nonchartered nonprofit association, be held to reasonable standards of due process and fairness, *especially those inherent in its own by-laws, rules or customs.*")(emphasis added); *Salkin v. Ca. Dental Assn'*, 224 Cal.Rptr. 652, 356-57 (Ca. Ct. App. 1986); *Van Daele v. Vinci*, 282 N.E.2d 728, 731 (Ill. 1972)("[a]lthough the courts in this State have traditionally been reluctant to interfere in the internal operations of associations, this strong possibility that an important economic interest of the plaintiffs was affected by an improper administrative proceeding gives the court power and the duty to act. We agree with the view expressed by the Supreme Court of New Jersey that said: 'We are here concerned with and therefore deal solely with an organization, membership in which may here . . . be viewed as 'an economic necessity'; in dealing with such an organization, the court must be particularly alert to the need for truly protecting the public welfare and advancing the interests of justice by reasonably safeguarding the individual's opportunity for earning a livelihood while not impairing the proper standards and objective of the organization.")(internal citations omitted).

**B. NCMBR Failed to Comply With Its Own Procedures**

**1. the procedures adopted**

The bylaws adopted by NCMBR specifically provide for certain notice and hearing procedures to be employed whenever a member has been accused of violating the rules. In Section VI, the bylaws provide, in pertinent part, as follows:

Section 2. Any member of the Board may be reprimanded, fined, placed on probation, suspended, or expelled by the Board of Directors for a ***violation of these Bylaws and Board Rules and Regulations*** consistent with these Bylaws, ***after a hearing as provided in the Code of Ethics and Arbitration Manual of the Board . . .***

...

Section 3. Any REALTOR® may be disciplined by the Board of Directors for violations of the Code of Ethics or ***other duties of membership, after a hearing as described in the Code of Ethics and Arbitration Manual for the National Association of REALTORS®*** as set forth in the Code of Ethics and Arbitration Manual of the National Association . . .

(TR Exh 1 at 7)(emphasis added) In Article VII, entitled "Profession Standards and Arbitration," the bylaws provide:

Section 1. The responsibility of the Board and Board Members relating to the enforcement of the Code of Ethics, ***the disciplining of Members***, and the arbitration of disputes, ***and the organization and procedures incident thereto, shall be governed by the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS®,*** as amended from time to time, which ***is by this reference incorporated into these Bylaws***, provided, however, that any provision deemed inconsistent with state law shall be deleted or amended to comply with state law.

(TR Exh 1 at 9)(emphasis added)

The 2006 Code of Ethics and Arbitration Manual of the National Association of Realtors® (hereinafter "Manual") was introduced at trial as Exhibit 5. This document is clearly and expressly incorporated by reference with regard to the hearing procedures and the disciplining of NCMBR members for rule violations. Although, NCMBR's Will Knotts made an attempt to identify the Bylaws themselves as the Ethics and Arbitration Manual identified in the

above-referenced sections of the bylaws, he ultimately had to admit that, other than the document admitted as Exhibit 5, NCBMR has no other Ethics and Arbitration Manual. (TR 49-51)

The Manual sets forth the various notice requirements and procedures that must be followed in the investigation and determination of alleged rule violations. Section 7 of the Manual provides that any required notice or document must be either hand delivered or sent via registered or certified mail. (TR Exh 5 at 32) Section 7 also requires that any notice of hearing “*shall* include the names of the members of the tribunal and be given not less than twenty-one (21) days before hand.” (TR Exh 5 at 32)(emphasis added).

Section 12 of the Manual provides as follows, in pertinent part:

The *duties of membership include* the following:

...

(b) to *abide by the* bylaws of this Board and *its rules and regulations*

...

Subject to any *preliminary consideration by* any administrative body of the Board or its *subsidiary MLS*, any allegations or charges *that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the Code of Ethics and Arbitration Manual of the National Association of Realtors®* as from time to time amended.

(TR Exh 5 at 35)(emphasis added) Section 13 of the Manual provides that the *after* review by the Professional Standards Committee, the Directors may then take disciplinary action against the member accused. (TR Exh 5 at 35)

With regard to the hearing itself, the Manual provides that the accused member is entitled to the following notice and procedural protections with regard to an alleged violation of a membership duty:

- service of a complaint setting forth the alleged violation; (TR Exh 5 at 43)

- the right to file a written response to the allegations in the complaint within fifteen days after service; (TR Exh 5 at 43)

- notice of the names of the members of the Professional Standards Committee and the opportunity to challenge any such member as qualified to serve on the Hearing Panel within fifteen days of such notice. (TR Exh 5 at 43)

As noted above, the Directors do not have the authority to impose punishment until *after* a hearing before the Professional Standards Committee. Even then, the Manual imposes an affirmative duty on the Directors to ensure “that the rights of all members are safeguarded and the Board or Association is operated in a legally prudent manner *consistent with the provisions of its governing documents.*” (TR Exh 5 at 49) Indeed, this duty is imposed regardless of whether or not the member appeals any recommendation of disciplinary action by the Professional Standards Committee Hearing Panel. (TR Exh 5 at 49)

## **2. actual procedures employed did not conform**

It is undisputed that the Morfs were afforded *none* of the procedural and notice requirements set forth above with regard to either the 2005 sanctions or the 2006 sanctions at issue herein. With regard to the 2005 disciplinary action, the evidence at trial indicates the following:

- that the Morfs were not given written notice at least twenty one days before trial in the manner required by Sections 7 and 12 of the Manual. (TR Exh 16) (TR 101-102)

- the Morfs were not provided the opportunity to have this matter heard before a Hearing Panel comprised of members of the Professional Standards Committee, much less the right to be informed of the identity of the Committee members and the opportunity to challenge prior to the hearing. (TR 45-46)

- further, the record reveals that sanctions were imposed by the Board without a recommendation by a Hearing Panel composed of members of the Professional Standards Committee.

- Instead, the Board simply ignored the fact that these important safeguards were omitted and imposed sanctions anyway. (TR Exh 4)(TR Exh 16) These deficiencies alone warrant reversal in light of the fact that the severity of the 2006 sanctions was based solely on the wrongful imposition of the 2005 sanctions. Be that as it may, the same deficiencies exist with regard to the 2006 sanctions.

The Morfs were notified that they were to appear for a hearing via an undated letter that appears to have been written some time after May 19, 2007 (TR Exh 13) The letter advised the Morfs to appear on May 31, 2007, for a hearing on an alleged rule violation. (TR Exh 13) As such, the hearing date was set for less than twenty-one days after the notice was given. Further, the notice did not advise the Morfs of their right to submit a response within fifteen days, does not indicate that it was either hand delivered or sent by registered/certified mail and does not identify the members of any tribunal before whom the Morfs were to appear. (TR Exh 13) Likewise, it is clear that the Morfs were **never** afforded a hearing before a Hearing Panel comprised of members of the Professional Standards Committee. (TR 44-46) (TR Exh 4) (TR Exh 18) Indeed, NCMBR has failed to appoint such a committee despite the fact that its bylaws specifically require the appointment of such a committee. (TR 44-47) (Exhibit 1 at 15)(“[t]he President **shall** appoint from among the REALTOR® members, subject to confirmation by the Board of Directors, the following standing committees . . . Grievance/Professional Standards”) Rather, NCMBR simply utilizes the MAR Professional Standards Committee for consideration of **ethical** violations only. (TR 45-46) The Board made no effort whatsoever to ensure that the

procedural protections adopted in the bylaws were afforded the Morfs when it imposed and affirmed the 2006 sanctions.

As such, the Court erred in finding that the Morfs were afforded due process consistent with NCMBR's bylaws.

**B. NCMBR Issued Sanctions In Excess and Contrary to its Own Express Schedule of Sanctions**

**1. express schedule of sanctions provided in the rules**

The MLS Rules and Regulations, in the form they existed during the relevant time periods, were admitted into evidence at trial as Exhibits 2 and 3. In both versions, the first six sections set forth the rules and regulations governing participation and use of the MLS. (TR Exh 2 at 343-352)(TR Exh 3 at 300-305) In both 2005 and 2006, Karen Preston-Morf was charged with violating rules related to listing procedures set forth in Section 1.

Immediately following the rules set forth in Sections 1-6, is Section 7, which is entitled "Compliance with Rules." This section initially sets forth as follows: "**Compliance with Rules:** For failure to abide by *these* MLS Rules and Regulations and *any* violations *within a quarter*, the following sanctions may be imposed for non-compliance . . ." (TR Exh 2 at 352)(Tr Exh 3 at 305) Consistent with Mississippi law requiring a schedule of maximum fines assessed in accordance with a predetermined methodology (*Cantrell and Gann, supra*), Section 7 then sets forth the following schedule:

**1<sup>st</sup> offense** – A warning issued to Participant that offense has occurred and that additional sanctions will be imposed if failure to comply with rules is not corrected within one (1) business day. For repeat offenses by the same agency in a four-month period, no warning call is warranted.

**2<sup>nd</sup> offense** - \$50.00 fine and Participant and/or subscriber will appear before MLS Committee. ***Failure to appear*** before the MLS Committee will lead to suspension of service and additional fines and sanctions will be determined by the MLS Committee and Board of Directors.

**3<sup>rd</sup> Offense and Subsequent Office [sic]** - \$100.00 fine levied against Participant and mandatory sixty (60) day suspension.

**Fourth Offense *within any four-month period*** will result in Participant and all affiliated subscribers being suspended from access to and use of the MLS service for a period of *up to 60 days*.

Any listings which does [sic] not fulfill the minimum requirements of the service, or contain false or misleading information, may be deleted from the service with approval by the majority vote of the MLS committee and with 24 hour notice to the Participant.

For *more than four (4) sanctions in any three (3) month period* the violations will be submitted to the MLS committee for possible *additional* sanctions including possible suspension of services as outlined *under Section 9*.

(TR 2 at 352-353)<sup>6</sup> Section Seven goes on to provide that “[v]iolations of rules and regulations includes *but is not limited to* . . . [f]ailure to provide complete and accurate information on any MLS listing . . . . Failure to timely file any listing with the service as required by Section 1 . . . .” With regard to both the 2005 sanctions and the 2006 sanctions, Karen Preston-Morf was charged with failing to comply with Section 1 listing requirement rules and regulations (TR Exh 16)(Tr Exh 18) In both instances, Duffy Morf was sanctioned vicariously for the same rule violations pursuant to rule 7.1 (TR Exh 4)(TR Exh 18)

Under the clear provisions of Section 7, sanctions for violations of Section 1 rules and regulations governing listing procedures, are to be imposed in accordance with the specific schedule set forth above. Any sanctions provided for in Section 9 *only* apply where there have been four or more sanctions imposed under Section 7 within a three month period. Until November, 2005, Section 9 did not even set forth any additional available sanctions. (TR Exh 3 at 307) It simply provided for a hearing before a Hearing Panel comprised of members of the

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<sup>6</sup> The schedule applicable at the time the 2005 sanctions were imposed is essentially the same except for the following: the first offense schedule did not contain the provision for repeat offenses within the same office and the second offense schedule did not provide for a mandatory appearance before the MLS Committee and the possibility of additional sanctions for failure to appear. (TR Exh 3 at 305)

MLS Committee “who may direct the imposition of sanction.” (TR Exh 307) In November of 2005, Section 9 was amended to authorize the following specific sanctions: (1) a written reprimand; (2) a fine not to exceed \$5,000.00; (3) a levy of administrative costs; (4) suspension of a Broker (Participant and all affiliated subscribers from using the MLS for up to 60 days or permanent suspension of the Participant from Multiple Listing Service. (TR Exh 2 at 354)

**2. the sanctions actually imposed are not authorized by the rules**

At trial, NCMBR argued that the progressive punishment schedule set forth in Section 7 did not apply to the sanctions imposed on the Morfs. (TR 34-35) Specifically, NCMBR’s Knotts testified that Section 7 was limited to “petty” infractions. (TR 35, 85-86) According to Knotts, “serious” infractions, like those charged against the Morfs, fall under and are sanctioned pursuant to Section 9 of the bylaws. (TR 34-35, 82) There are several obvious problems with this argument.

First, as noted by the trial court, Section 7 contains no such express limitation. (TR 35) On the contrary, Section 7 *expressly* applies to violations of Section 1 and specifically references failure to adhere to rules contained therein regarding listings posted on the MLS system. (TR Exh 2 at 353)(TR Exh 3 at 306) Karen Preston-Morf has *only* been charged with violations of Section 1 listing rules and these alleged violations occurred nearly a year apart. (TR 57, 76, 91) (TR Exh 18) Duffy Morf has *never* been directly accused of *any* violations himself but has simply been subjected to vicarious liability under Section 7.1 for Karen’s alleged violations of Section 1. (TR Exh 4) (TR Exh 18) Again, his alleged violations were nearly one year apart. The schedule set forth in Section 7 clearly applies but was ignored by NCMBR in imposing punishment against the Morfs.

Secondly, Section 9, as it existed relevant to the 2005 sanctions, failed to specify any particular sanction which could be imposed pursuant to application of that section. It simply

stated that the Board may impose "sanction." (TR Exh 3 at 307) As the only specific sanctions identified in the rules are set forth in Section 7, the Rules appear to limit additional sanctions to the schedule set forth in Section 7. (TR Exh 35) Certainly this provision makes no reference to the ability to impose any maximum fine (as required by Mississippi law), to assess administrative fees, to suspend a Broker or Participant from MLS for up to 90 days, to require any amount of additional training or to place anyone on probation of any kind, all of which were imposed on the Morfs in the 2005 sanctions. (TR Exh 3 at 307) The *only* sources for exacting *any form* of these penalties are found in NCMBR's bylaws and the Manual. However, the bylaws and the Manual expressly limit the ability to impose any such penalty until *after* a hearing held in accordance with the requirements of the Manual. (TR Exh 1 at 7)(TR Exh 5 at 35) As demonstrated above, no such hearing was ever held. Accordingly, the \$3,000.00 paid by the Morfs in fines and administrative fees, the suspensions and the probations imposed *for a first offense* were not authorized by the rules, were greatly in excess of the published schedule for the alleged violations and were imposed without affording the Morfs the procedural protections provided for in the bylaws through incorporation of the Manual.

Likewise, the 2006 sanctions imposed on Karen Preston-Morf fall outside the identified sanctions set forth in the applicable version of Section 9. As an initial matter, it must be reiterated that Karen Preston-Morf was accused and punished for a violation of Section 1 listing rules. It is very clear that such violations (as well as Duffy Morfs' vicarious liability for such violations) fall under the progressive schedule of set forth in Section 7 (TR Exh 2 at 532-353) Notwithstanding, expulsion from membership in NCMBR, "including all membership rights and privileges and denial of all Board services, including access to MLS" for any period of time is simply not listed as an available sanction under Section 9. (TR Exh 2 at 354) Here again, the *only* possible sources for the imposition of this sanction is NCMBR's bylaws and the

Manual. The bylaws and the Manual specifically require a hearing in accordance with the requirements of the Manual *before* any such sanction may be imposed. (TR 1 at 7)

In short, under NCMBR's bylaws, its failure to provide a hearing in accordance with the requirements of the Manual precludes NCMBR's ability to exact the very sanctions it has imposed.

### **C. Trial Court Erred in Adopting NCMBR's Interpretation**

As set forth above, resolution of the present dispute requires application of basic contract principals. The primary argument at trial involved whether or not the sanctions imposed and procedure by which they were imposed complied with the bylaws, rules and regulations adopted by NCMBR. NCMBR's arguments at trial can best be described as wanting to have its cake and eat it. Specifically, NCMBR took the position that the notice and hearing procedures set forth in the Manual *only* applied to allegations of ethical violations. (TR 46-47) NCMBR argued that, where no ethical the alleged violations are asserted, NCMBR only needed to comply with the procedure set forth in Rule 9.1 of the MLS Rules and Regulations. (TR 48, 80-82) However, when challenged regarding the organization's authority to impose sanctions not referenced in the rules and regulations, NCMBR relied upon the bylaws which expressly *cannot be imposed until "after* a hearing as provided in the Code of Ethics and Arbitration Manual of the Board." (TR Exh 1 at 7, 9) (TR 82)

Conversely, it was the Morfs' position at trial that they were entitled to a hearing in accordance with the Manual for the imposition of *any* reprimand, fine, probation, suspension and/or expulsion according to the bylaws and the Manual, as expressly incorporated by the bylaws. (TR 1 at 7, 9)(TR 5 at 35) Further, it was the Morfs' position at trial that the violations alleged against the Morfs clearly fell within the specific discipline schedule set forth in Section 7

of the applicable version of the rules and regulations. (TR Exh 2 at 352-353)(TR Exh 3 at 305-306)

Both the United States District Court of Appeals for the Fifth Circuit and the Mississippi Supreme Court have recognized that contract interpretation is a question of law. *Quorum Health Resources, L.L.C. v. Maverick County Hosp. Dist.*, 308 F. 3d 451, 458 (5<sup>th</sup> Cir. 2002)(citing *Fina, Inc. v. ARCO*, 200 F.3d 266, 268 (5th Cir. 2000); *Am. States Ins. Co. v. Bailey*, 133 F.3d 363, 369 (5th Cir.1998); *Canutillo Indep. Sch. Dist. v. Nat'l Union Fire Ins.*, 99 F.3d 695, 700 (5th Cir. 1996)). See also, *Warwick v. Gautier Utility Dist.*, 738 So. 2d 212, 215 (Miss. 1999); *Mississippi State Highway Comm'n. v. Patterson Enters., Ltd.*, 627 So. 2d 261, 263 (Miss.1993). Under Mississippi law, “questions concerning the construction . . . are questions of law that are committed to the court rather than to the fact finder.” *Warwick*, 738 So. 2d at 215 (citing *Mississippi State Highway Comm. v. Patterson Enters., Ltd.*, 627 So. 2d 261, 263 (Miss.1993)). For the reasons set forth below, the trial court erred in its application of the law when it adopted NCMBR’s interpretation of the relevant documents.

**1. NCMBR’s interpretation of the documents only considers phrases in isolation, not whole documents**

Mississippi law mandates that “when construing a contract, the court will read the contract as a whole, so as to give effect to all of its clauses.” *Id.* (citing *Brown v. Hartford Ins. Co.*, 606 So. 2d 122, 126 (Miss.1992)). In applying basic contract law, the Court’s initial consideration is what was said, “since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy.” *Id.* (citing *Simmons v. Bank of Mississippi*, 593 So. 2d 40, 42-43 (Miss. 1992)). Indeed, this concept was directly applied by this Court in *Gann* when it determined that the words “fines, suspension or expulsion”

did not allow the imposition of all three nor did it authorize a judicial action to collect any fines imposed. *Gann*, 510 So. 2d at 783-84.

It is a basic tenet of contract law that isolated clauses are not to be examined in isolation but, instead, considered in the context of the whole document or documents comprising the contract. *Peoples Bank and Trust Co. v. Nettleton Fox Hunting & Fishing Ass'n*, 672 So. 2d 1235, 1237 (Miss. 1996)(“Particular words ... should not control[; rather,] the entire instrument should be examined.”)(citing *Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 352 (Miss. 1990) (citation omitted). Under Mississippi law, interpretation of any disputed contract provision must be considered in light of the “four corners” of the contract, the complete document, in order to determine the meaning in context of any disputed provision. *Leach v. Tingle*, 586 So. 2d 799, 801 (Miss. 1991)(“we do not read language such as this in isolation and out of context, but that we integrate it into the entire document and draw meaning from all that is relevant within the four corners of the contract.”). If the language used in the contract is “clear, definite, explicit, harmonious in all its provisions, and free from ambiguity throughout, the court looks solely to the language used in the instrument itself, and will give effect to each and all its parts as written.” *Royer Homes of Mississippi, Inc. v. Chandeleur Homes, Inc.*, 857 So.2d 748, 759 (Miss. 2003)(citing *Farragut v. Massey*, 612 So.2d 325, 330 (Miss.1992)). In this circumstance, “[t]he court shall read the contract as a whole, so as to give effect to all of its clauses.” *Id.* (citing *Warwick v. Gautier Utility Dist.*, 738 So.2d 212, 215 (Miss. 1999)).

In the present case, the bylaws clearly require a hearing pursuant to the Manual prior to the imposition of **any** of the sanctions imposed against the Morfs in this case. (TR Exh 1 at 7, 9) In cases of rule violations, absent any allegation of an ethical violation, the Manual allows for a **preliminary** review by the subsidiary MLS Committee but, thereafter, requires that “**any allegations or charges that a member has violated any membership duty shall be referred to**

*the Professional Standards Committee for review in conformity with the procedures established in the Ethics and Arbitration Manual . . .*" (TR Exh 5 at 35)(emphasis added).

After review by a Hearing Panel comprised of members of the Professional Standards Committee, the Manual then provides for appeal to the Board of Directors with regard to any sanction imposed. (TR Exh 5 at 35)

Section 9 of the Rules, relied upon by NCMBR as providing the sole process and procedure required for imposition of the sanction at issue, does not mention review by the Professional Standards Committee as a required procedure between review by the MLS Committee and appeal to the Board of Directors. NCMBR apparently argues that this omission means that review by the Professional Standards Committee is not required. This position might have merit if Section 9 could be read in isolation without reference to the bylaws and the Manual incorporated therein. However, this is simply not allowed under Mississippi law. Under Mississippi law, contractual provisions must be interpreted so as to give effect to "each item of the written contents, and no item shall be stricken or rejected so long as it may be harmonized with the other items." *Manson v. Magee*, 534 So. 2d 545, 548 (Miss. 1988).

When the relevant documents are read together, and effect given to all parts, it is clear that review by the MLS Committee is merely a preliminary review to be conducted prior to referral to the Professional Standards Committee for a hearing in compliance with the requirements of the Manual. The recipient of a sanction pursuant to *this* proceeding may then appeal to the Board of Directors within 20 days. The latter interpretation gives meaning to *all* provisions of the relevant documents and, as such, should have been adopted by the trial court.

## **2. any ambiguity must be construed against NCMBR**

In situations where meaning is "not so clear (*e.g.*, different provisions of the instrument seem inconsistent or contradictory), the court will, if possible, harmonize the provisions in

accord with the parties' apparent intent." *Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 352 (Miss. 1990). One of the best known rules of contract construction provides that ambiguous contract terms are construed against the drafter. Indeed, this Court applied this rule of construction against the union in *Gann*: "Since the Union prepared the Constitution, this provision should be construed most strongly against it." *Gann*, 510 So. 2d at 783 (citing *Hinds v. Primeaux*, 367 So.2d 925 (Miss.1979); *Globe Music Corp. v. Johnson*, 226 Miss. 329, 84 So.2d 509 (1956); *Home Mutual Fire Ins. Co. v. Pittman*, 111 Miss. 420, 71 So. 739 (1916)).

In the proceedings below, the trial court repeatedly expressed its frustration with the confusing "hodgepodge" of rules, sanctions and procedures adopted by NCMBR. The following exchange between the trial court and NCMBR's Knotts with regard to the applicability of Sections 7 and 9 of MLS Rules and Regulations is telling:

THE COURT: Just a minute, I'm trying to get something straight. What was the plaintiff charged with?

THE WITNESS: She was charged with violation of MLS Rules and Regulations and the current Bylaws at the time. And his question is –

THE COURT: -- I know, I know, I know what his question is. Now then why do you have two separate penalties? One under the listings and then one under the Bylaws?

THE WITNESS: Because the rules and regulations that he keeps citing to *that particular section is for a small offense like –*

THE COURT: -- *It does not say that.*

THE WITNESS: Well, it clearly stipulates in there certain things like failure to provide a picture.

THE COURT: Wait, I know, but just a moment. *It does not say for petty offenses, what I am wanting to know is why don't you just have one set of penalties starting from a slap on the hand to expulsion, rather than have two sets of penalties, one in your MLS and then the other in you Bylaws?*

THE WITNESS: Because it – I believe, and **in my opinion** would be there are different seriousness of offenses, violation of not putting a picture in there versus absolutely undermining the entire MLS system is two different things.

And that's what the documents try to spell out, that if you forget to put a picture in there we are not going to kick you out of MLS. So if you do not have a valid listing agreement then you subject the – the Board and the brokers and the public to substantial harm at that point. A picture not being in the MLS does not harm the public, it is inconvenient to other brokers.

THE COURT: I know, but *this is what is confusing to the Court*. In the MLS you could – in your penalty provisions *you could put all of that down there if you wanted to, could you not?*

THE WITNESS: *We could*, but I believe we went by the model MLS documents provided by MAR and NAR. And there is model template that was given.

THE COURT: Well, it's *a poor model as far as I'm concerned*. . . .

(TR 35-36)(emphasis added)

This exchange is only one of several instances of frustration expressed by the Court. Throughout the trial, the Chancellor repeatedly noted the “hodgepodge” of penalties, rules and procedures. (TR 51)(“[y]’all have got a *mess*. This is *a hodgepodge mess*. *I don’t believe the Supreme – the Supreme Court could find their way through this.*”)(emphasis added) (TR 83)(“[w]ell, this is what is troubling me, though. *I don’t think the Chief Justice of the United States Supreme Court could keep up with these the way y’all have got them, you have so doggone many penalties everywhere. That’s what I can’t understand.*”) (TR 157-158)(“[w]ell y’all have just got a hodgepodge of regulations.”) Indeed, even in announcing its ruling from the bench, the Chancellor referenced the procedures, rules and regulations adopted by NCMBR to be a “hodgepodge.” (TR 186) If the Chancellor was confused to the point of wondering whether either this Court or the Chief Justice of the United States Supreme Court could understand what rules, procedures and penalties were applicable, it is inconceivable that ordinary members like Duffy and Karen Preston-Morf understood. Mr. Knott’s expression of his “beliefs” and “opinions” regarding the rules and bylaws further amplifies their ambiguity and lack of clarity. Clearly, the trial court found these provisions to be confusing, conflicting and ambiguous.

In light of the Chancellor's repeated acknowledgement of ambiguity, the trial court erred, as matter of law, in adopting NCMBR's interpretation of the relevant bylaws, rules and regulations. As such, the Chancellor's decision should be reversed.

## **II. THE TRIAL COURT ERRED IN ITS DISMISSAL OF CLAIMS THAT THE SANCTIONS IMPOSED WERE NOT ARBITRARY AND CAPRICIOUS**

As set forth above, a Rule 41(b) motion to dismiss should be denied if the Morfs' evidence, left un rebutted, would entitle them to judgment or they failed to offer sufficient proof to establish the essential elements of their claim. *Aronson*, 828 So. 2d at 755. In their claim, the Morfs alleged that the penalties imposed by NCMBR were arbitrary, capricious, unreasonable and/or were not supported by substantial evidence. NCMBR's Motion to Dismiss was primarily addressed to this issue. (TR 185)

This Court has defined "arbitrary" and "capricious" in the following manner:

The terms "arbitrary" and "capricious" are open-textured and not susceptible of precise definition or mechanical application. We find helpful meanings North Carolina has assigned in a not-dissimilar context:

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done *without adequately determining principle; not done according to reason or judgment*, but depending upon the will alone, absolute in power, *tyrannical, despotic*, non-rational, implying either a lack of understanding of or a disregard for the fundamental nature of things.

"Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a *disregard for the surrounding facts and settled controlling principles....*

*Mississippi State Dept. of Health v. Southwest Mississippi Regional Medical Center*, 580 So. 2d 1238, 1239-40 (Miss. 1991)(citing *In Re Housing Authority of City of Salisbury*, 70 S.E.2d 500, 503 (N.C. 1982).

An action not supported by substantial evidence can be held to be arbitrary, unreasonable and/or capricious. See, *Electronic Data Systems Corp. v. Mississippi Div. of*

*Medicaid*, 853 So. 2d 1192, 1203 (Miss. 2003). “Substantial evidence is defined as ‘evidence which is substantial, that is affording a substantial basis of fact from which the fact in issue can be reasonably inferred.’” *Id.* (citations omitted).

At trial, Plaintiffs brought to the Chancellor’s attention the Sanctioning and Disciplinary Guidelines adopted by NCMBR in the Manual. (TR 5 at 62-66) None of the examples set forth in the guidelines – many of which involve repeated and intentional ethical violations resulting in actual harm – advise expulsion for a second offense occurring nearly a year after the first offense. (TR Exh 5 at 63-64)

The uncontradicted testimony at trial was that no harm whatsoever was suffered by anyone as a result of the alleged violations giving rise to Karen Preston-Morfs’ expulsion from NCMBR. (TR105-106) Indeed, this testimony was given by NCMBR’s Knotts. Further, it was uncontested at trial that the alleged “intentional” violation giving rise to Mrs. Morfs’ expulsion was promptly corrected and brought to NCMBR’s attention by the Morfs. (TR 124, 134-135) Further, the substantial impact and harm that will befall the Morfs’ business if Karen’s expulsion is allowed to stand was largely unchallenged at trial. (TR 73, 112-114)

Additionally, the evidence at trial indicated that the heavy sanctions imposed upon by the MLS Committee arose solely from a finding that the actions were “intentional,” a finding which itself was based solely upon the MLS Committee’s unauthorized imposition of “probation” on the Morfs in 2005. (TR 86) This “probation” was in contravention to the clear definition of the term adopted by NCMBR in its bylaws adopting the Manual.

As noted above, NCMBR’s bylaws expressly state that the disciplining of members is governed by the Manual, which is incorporated by reference into the bylaws. (TR Exh 1 at 9) Section 14 sets forth an exclusive list of *all possible disciplinary actions* that may be imposed in accordance with the sanctioning guidelines set forth in a later section. (TR Exh 5 at 36)

Throughout the Manual, in Section 14, in the discipline guidelines and in the definition section of the Manual, "probation" is defined to mean:

[A]nother 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. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended sentence. . . .

(TR Exh 5 at 29, 36, 64, 66) "Probation," as clearly defined by NCMBR's bylaws is limited to a suspended sentence to be imposed on occurrence of additional violations during the probationary period. "Probation" is *not* defined as the ability to presume an intentional violation nor does it contemplate "probation" as a separate sanction where there is no penalty held in abeyance. It was uncontested at trial, no penalty imposed on the Morfs was ever held in abeyance. (TR 43) Accordingly, they were never on "probation" as defined by the Manual. Inasmuch as the "probation" imposed on the Morfs was clearly outside the definition clearly provided for in NCMBR's own rules, it could not form the basis and justify the severe sanction of expulsion.

In light of the forgoing, it was error for the Court to dismiss the Morfs' claims that the sanctions imposed were arbitrary, capricious and unsupported by substantial evidence. As such, the trial court's ruling should be reversed.

## CONCLUSION

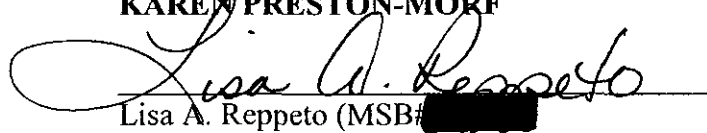
Inasmuch as NCMBR expects its members to adhere to all membership duties imposed by governing documents adopted by it, it is only fair that NCMBR be held to the same standard in its treatment of members accused of violations. This is the applicable standard of due process which was not afforded in the present action. In light of the foregoing, the Morfs respectfully request that this Court reverse dismissal of their complaint. The Morfs further request that this Court find that, in light of the undisputed facts, the Morfs were entitled to the injunctive relief sought in the proceedings below. Alternatively, the Morfs request remand for further proceedings in accordance with this Court's findings.

This the 28<sup>th</sup> day of November, 2007.

Respectfully Submitted:

**DUFFY MORF**

**KAREN PRESTON-MORF**

  
Lisa A. Reppeto (MSB# [REDACTED])

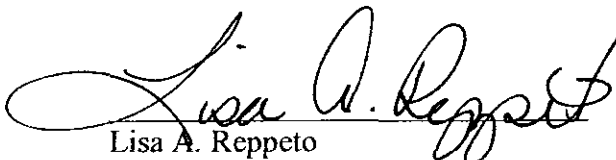
**CERTIFICATE OF SERVICE**

I, Lisa A. Reppeto, do hereby certify that I have this day served via U.S. Mail, a true and correct copy of the foregoing pleading upon the following counsel of record:

Honorable Glen Alderson  
Chancellor Lafayette County, MS  
Post Office Drawer 70  
Oxford MS 38655  
*Trial Judge*

Nicholas Brown, Esq.  
Hughes and Hitt  
510 Azalea Drive, Suite 100  
Oxford, MS 38655  
*Attorney for the Appellee*

THIS the 28<sup>th</sup> day of November, 2007

  
Lisa A. Reppeto