

BEFORE THE
MISSOURI REAL ESTATE APPRAISERS COMMISSION
STATE OF MISSOURI

FILED
SEP 26 2008

In the Matter of:)
) Case No. 2005-005448 PV
 DAVID D. HAND,)
)
 Certified Residential Real Estate Appraiser)

JOINT MOTION
FOR WITHDRAWAL OF REVOCATION AND CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARING
BEFORE THE MISSOURI REAL ESTATE APPRAISERS COMMISSION,
AND DISCIPLINARY ORDER

Respondent David D. Hand (“Hand”) and Petitioner Missouri Real Estate Appraisers Commission (“MREAC”) enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearing Before the Missouri Real Estate Appraisers Commission, and Disciplinary Order* (“Joint Stipulation”) for the purpose of resolving the Probation Violation Complaint filed against Respondent. Pursuant to § 536.060, RSMo,¹ the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the MREAC pursuant to § 620.153, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Respondent acknowledges that he is aware of and understands the various rights and privileges afforded him by law, including: 1) the right to a hearing of the charges against him; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against him proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against him; 5) the right to present evidence on his behalf at the hearing; 6) the right to a decision upon the record of the hearing on the complaint pending against him; 7) the right to a ruling on questions of law by the MREAC; 8) the right to a claim for attorneys' fees and expenses, and 9) the right to obtain judicial review of this Joint Stipulation and Disciplinary Order of the MREAC. Being aware of these rights provided Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Respondent further agrees to abide by the terms of this document as they pertain to Respondent.

Respondent acknowledges that he received a copy of the Probation Violation Complaint in this case, which was filed with the MREAC on April 17, 2007, and that the hearing of such matter was heard on August 8, 2007. After hearing, the MREAC determined to revoke Hand's certification as a state-certified residential real estate appraiser. Hand did not appear at the hearing. Hand claims that he personally was not aware of the service or the hearing. On August 27, 2007, Hand filed a Petition for Judicial Review in the Cole County Circuit Court, State of Missouri, Case No. 07AC-

CC00791, and Hand obtained an Order Staying Enforcement of the MREAC's Order revoking Hand's certification from the Cole County Circuit Court on August 29, 2007.

The MREAC and Hand hereby stipulate to the withdrawal of the MREAC's revocation of Hand's certification. Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the MREAC that Hand's certification as a state-certified residential real estate appraiser, certificate no. 2002009489, is subject to further disciplinary action by the MREAC in accordance with the provisions of § 620.153, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the MREAC and Respondent jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Probation Violation Complaint filed in this case, and request that the MREAC adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the MREAC's Findings of Fact and Conclusions of Law.

Joint Proposed Findings of Fact

1. Hand, is a state certified residential real estate appraiser, certificate number 2002009489.
2. On or about May 11, 2006, the MREAC and Hand entered into a Settlement Agreement ("Settlement Agreement") for the purpose of resolving the question of whether Hand's real estate appraiser certification would be subject to discipline.

3. The MREAC has jurisdiction over this matter pursuant to page 10, paragraph 6 of the Settlement Agreement, which provides, in relevant part:

6. If any alleged violation of this agreement occurred during the disciplinary period, the parties agree that MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Hand agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this agreement has occurred.

4. Pursuant to the Settlement Agreement entered into between Hand and the MREAC, Hand was placed on probation for a period of one year.

5. Section II, paragraph 2. D of the agreement provides as follows:

D. Within six months after the effective date of this Settlement Agreement, Hand shall submit verification to the MREAC of successful completion of a Fifteen (15)-hour approved national USPAP course, including examination.

6. Hand did not submit verification to MREAC of successful completion of the 15 hour USPAP course within 6 months of the effective date of the Settlement Agreement.

7. Hand=s conduct did not comply with the terms of the Settlement Agreement, providing cause to further discipline his certification as a real estate appraiser.

Joint Proposed Conclusions of Law

8. Section 620.153, RSMo, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee

may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

9. Hand's failure to comply with the original provision of his probation requiring him to complete the 15 hour USPAP course provides cause to discipline Hand's certification as a state-certified residential real estate appraiser pursuant to § 620.153, RSMo.

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding further discipline of Hand's certification as a state-certified residential real estate appraiser, subject to the following terms and conditions, and entered by the MREAC in this matter under the authority of §§ 536.060 and 620.153, RSMo. This disciplinary order shall become effective immediately upon the issuance of the consent order of the MREAC without further action by either party:

1. Probation. Hand's certification as a state-certified residential real estate appraiser, no. 2002009489, is hereby placed on PROBATION for ONE (1) YEAR from the effective date of this disciplinary order. The period of probation is referred to hereinafter as either "the probationary period" or "the disciplinary period". During the period of probation, Hand shall be entitled to practice as a state-certified residential real estate appraiser provided he pays all required fees, has maintained his certification current and active, and adheres to all the terms stated herein.

A. Hand shall submit written reports to the MREAC by no later than January 1 and July 1, during each year of the disciplinary period stating truthfully

whether there has been compliance with all terms and conditions of this Joint Stipulation. The first written report shall be submitted on or before January 1, 2009. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Hand is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Hand shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of the log shall be submitted to the MREAC by no later than January 1 and July 1 during each year of the disciplinary period. The first log shall be submitted on or before January 1, 2009. Each log submitted shall be current to at least 30 days prior to the respective due date. Hand is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Hand shall submit copies of his work samples for MREAC review.

C. During the disciplinary period, Hand shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Joint Stipulation, Hand shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

D. During the disciplinary period, Hand shall keep the MREAC apprised at all times in writing of his current work and home addresses and telephone numbers at each place of residence and employment. Hand shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

E. Hand shall timely renew his certification and timely pay all fees required for certification renewal and comply with all other MREAC requirements necessary to maintain his certification in a current and active state.

F. During the disciplinary period, Hand shall comply with all provisions of §§ 339.500 through 339.549, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes the state of Missouri and all other states and territories of the United States. Any cause to discipline Hand's certification as a real estate appraiser under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Joint Stipulation.

G. Hand shall accept and comply with reasonable unannounced visits from the MREAC's duly authorized agents to monitor compliance with the terms and conditions stated herein.

H. Hand shall appear before the MREAC or its representative for a personal interview upon the MREAC's written request.

I. If, at any time within the disciplinary period, Hand removes himself from the state of Missouri, ceases to be currently certified under the provisions of §§ 339.500 through 339.549, RSMo, or fails to keep the MREAC advised of all current places of residence and business, the time of absence, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

2. Upon the expiration of the disciplinary period, the certificate of Hand shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Hand has violated any term or condition of this Joint Stipulation, the MREAC may, in its discretion, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate.

3. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraphs of this Joint Stipulation without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the MREAC may choose to conduct a hearing before it to determine whether a violation occurred and may impose further discipline.

4. This Joint Stipulation does not bind the MREAC or restrict the remedies available to it concerning any future violations by Hand of §§ 339.500 through 339.549,

RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

5. This Joint Stipulation does not bind the MREAC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREAC or may be discovered.

6. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Hand agrees and stipulates that the MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

7. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

8. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

9. The parties to this Joint Stipulation understand that the MREAC will maintain this Joint Stipulation as an open record as required by Chapters 339, 610, and 620, RSMo, as amended.

10. Respondent, together with his heirs, assigns, agents, partners, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before

