

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
DOUGLAS E. ANDERSON

Douglas E. Anderson (“Anderson”) and the Missouri Real Estate Commission (“MREC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Anderson’s licenses as a real estate broker, no. 1999132223, and as a real estate broker-officer, no. 2013010320, will be subject to discipline. Pursuant to § 536.060, RSMo (2000),¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo (Supp. 2013). The MREC and Anderson jointly stipulate and agree that a final disposition of this matter may be effectuated as described below, pursuant to § 621.045, RSMo (Supp. 2013).

Anderson acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and

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

substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC, at which time Anderson may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Anderson knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Anderson acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Anderson stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Anderson's licenses as a real estate broker, no. 1999132223, and as a real estate broker-officer, no. 2013010320, are subject to disciplinary action by the

MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Anderson in Part II herein is based only on the agreement set out in Part I herein. Anderson understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Anderson herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri, created and established pursuant to § 339.120, RSMo (Supp. 2013), for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, as amended, relating to real estate agents and brokers.
2. Anderson holds a real estate broker license, no. 1999132223, and a real estate broker-officer license, no. 2013010320. Anderson's licenses were current and active at all times relevant herein.
3. From September 12, 2011 through September 28, 2011, the

MREC conducted an audit and examination of Anderson's business records and escrow accounts, audit no. LF-612313 ("the audit").

4. The audit covered a period from September 2010 to September 12, 2011 for sales activities and August 2010 to August 2011 for property management activities ("the audit period").

5. During the audit period, Anderson had a property management escrow account at BancorpSouth, account no. xxxxx912 (hereinafter "the property management escrow account").

6. During the audit period, Anderson had a security deposit escrow account at BancorpSouth, account no. xxxxx920 (hereinafter "the security deposit escrow account").

7. At the time of the audit, TD Management Inc. was an unlicensed Missouri corporation organized by Anderson and his wife.

8. During the audit, TD Management Inc. was identified as the real estate broker in three management agreements held by Anderson.

9. Anderson collected rents, paid expenses, and charged monthly management fees on twenty-nine properties without a current written agreement with the property owners.

10. Anderson paid business expenses of the brokerage from the property management escrow account on at least one occasion.

11. At the time of the audit, the property management escrow

account had an identified overage of \$2,312.42. This overage was caused by a check clearing the bank for less than the amount listed in Anderson's register.

12. At the time of the audit, the property management escrow account had an identified shortage of \$19,120.77. This shortage was a result of the following discrepancies:

- a. On one occasion, a check cleared the bank that was listed as void in Anderson's register.
- b. On five occasions, checks cleared the bank for different amounts than were listed in Anderson's register.
- c. On two occasions, checks cleared the bank that were not recorded in Anderson's register at all.
- d. On five occasions, amounts from deposit slips produced by Anderson were not found on the bank statement.

13. Anderson failed to maintain the following records for the property management escrow account:

- a. Any type of check or deposit record prior to March 2011.
- b. Any deposit slips for the period from November 29, 2010 through February 20, 2011.
- c. Numerous tickets or records for deposits made between November 30, 2010 and August 31, 2011.

- d. Copies of receipts issued to tenants for cash payments.
- e. Twenty-eight voided checks.

14. The examiner noted the following additional issues related to the property management escrow account:

- a. Checks issued to Anderson from the property management escrow account did not include a related transaction and Anderson not could identify whether the checks issued to him were for payroll, broker expenses, and/or management fees.
- b. Three checks were not recorded in Anderson's register. Two of the unrecorded checks cleared the bank, as stated above.
- c. Ten checks were issued in Anderson's register to payee "none" in the amount of "0.00." Two of those checks cleared the bank for different amounts.
- d. Anderson deposited security deposit funds into the property management escrow account whenever a security deposit was received with a rent payment, but he did not regularly transfer security deposit funds to the security deposit escrow account.
- e. Anderson transferred a total of \$32,153.79 from the property management escrow account to the security deposit escrow account on four occasions between August 26, 2011 and

August 30, 2011, but the transfers did not include any related transactions.

- f. Eleven deposit slips contained cash but did not include a related transaction.
- g. One transfer and one withdrawal listed on the bank statement were not recorded in Anderson's register.
- h. Anderson's liability report showed owners with a negative account balance because Anderson paid owner expenses from the property management escrow account when that owner's balance was not sufficient to cover the expense.

15. On one occasion, Anderson disbursed funds from the security deposit escrow account when funds were not available, resulting in an overdraft to the account.

16. Anderson failed to retain the following documents for the security deposit escrow account:

- a. At least one voided check.
- b. One bank statement.
- c. A record of cash receipts.

17. The examiner(s) noted the following additional issues related to the security deposit escrow account:

- a. Anderson failed to complete monthly reconciliations on the

security deposit escrow account.

- b. There were discrepancies between a report prepared by Anderson and the security deposits indicated in the lease agreements.
- c. Anderson admitted to the examiner(s) that he believed the security deposit escrow account was approximately \$30,000 short prior to the audit, and that he had stopped using the security deposit escrow account to hold and disburse security deposits.
- d. There was a gap in check numbers that cleared the bank for the security deposit escrow account.
- e. Bank statements showed that four checks issued on Anderson's register for the property management escrow account cleared the security deposit escrow account.
- f. On one occasion, Anderson's record of expenses withheld from a security deposit did not match the owner's records or the vendor's invoice.

18. By conducting property management activities through an unlicensed corporation, Anderson violated § 339.020, RSMo (Supp. 2013), § 339.180.1 RSMo (Supp. 2013), § 339.200.1, RSMo (Supp. 2013), and 20 CSR 2250-4.070(1), which state as follows:

a. Section 339.020, RSMo (Supp. 2013), states:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

b. Section 339.180.1, RSMo (Supp. 2013) states in pertinent part:

1. It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required....

c. Section 339.200.1, RSMo (Supp. 2013) states in pertinent part:

1. It shall be unlawful for any person not holding the required license from the commission to perform any act for which a license is required by sections 339.010 to 339.180 and sections 339.710 to 339.860....

d. 20 CSR 2250-4.070(1) states:

Every partnership, association, or corporation must obtain a separate and distinct real estate broker license before transacting business as a broker pursuant to Chapter 339, RSMo.

19. By paying business expenses of the brokerage from the property management escrow account, Anderson failed to keep his personal and/or business funds separate from funds belonging to others. This action violated §

339.105.1, RSMo (Supp. 2013), which states:

Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

20. By depositing security deposit funds into the property management escrow account and failing to transfer those funds to a separate escrow account, Anderson violated 20 CSR 2250-8.220(2), which states:

All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management account(s), pursuant to section 339.105, RSMo, unless the owner(s) have agreed otherwise in writing.

21. By disbursing funds from the property management escrow account when an owner's balance was not sufficient to cover the disbursement, Anderson violated 20 CSR 2250-8.220(1), which states:

A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses

related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

22. By failing to retain records for his escrow accounts and failing to accurately record transactions on those accounts, Anderson violated §399.105.3, RSMo (Supp. 2013), which states:

In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

23. By failing to include the related transactions on checks and deposit tickets for the escrow accounts, Anderson violated 20 CSR 2250-8.120(6), which states:

Each check written on an escrow account or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related real estate transaction(s). Each check written on an escrow account for commission shall be made payable to the licensee to whom the commission is owed or to the firm's general operating account.

24. Anderson's conduct, as described above, constitutes a lack of competence to transact the business of a real estate broker and broker-officer in such a manner to safeguard the interest of the public.

25. Anderson's conduct, as described above, constitutes untrustworthy business dealings and/or demonstrates incompetence, misconduct, or gross negligence.

26. Based on the conduct and violations set forth herein, cause exists to discipline Anderson's licenses under § 339.100.2(1),(15), (16), (19), and (23), RSMo (Supp. 2013), which state:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

...

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*.[.]

27. Section 339.040.1, RSMo (Supp. 2013), states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo (Supp. 2013).

28. **Anderson's licenses are on probation.** Anderson's licenses as a real estate broker and a real estate broker-officer are hereby placed on PROBATION for a period of THREE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Anderson shall be entitled to practice as a real estate broker and broker-offer under Chapter 339, RSMo, as amended, provided that Anderson adheres to all the terms of this agreement.

29. **Terms and conditions of the disciplinary period.** Terms and conditions of the probation are as follows:

A. Anderson shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Anderson shall notify the MREC in writing within ten (10) days of any change in this information.

B. Anderson shall timely renew his real estate licenses, timely pay all fees required for license renewal and shall comply with all other

requirements necessary to maintain his licenses in a current and active status. During the disciplinary period, Anderson shall not place his real estate licenses on inactive status, as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Anderson may surrender his real estate licenses by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Anderson applies for a real estate license after surrender, Anderson shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Anderson shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Anderson shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Anderson shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Anderson shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Anderson's licenses as a real estate broker and broker-officer under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. **Broker Acknowledgement.** If at any time during the disciplinary period Anderson wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Anderson must obtain the Broker Acknowledgement form from the MREC.

H. **Quarterly Audit Reports.** Anderson shall, at his own expense, have quarterly audits of any trust or escrow accounts used by

Anderson and/or TD Management Inc. in conducting property management activities, including property management accounts and security deposit accounts, conducted and completed by an independent certified public accountant ("CPA") approved by the MREC. Within 15 calendar days of the effective date of this Settlement Agreement, Anderson shall submit to the MREC in writing a list of at least three CPAs, including the CPA's name, address and relationship to Anderson. The MREC may approve one of the listed CPAs or may require Anderson to submit additional names for consideration and approval. Anderson shall, at his own expense, retain an approved CPA to conduct and complete the quarterly audits. The quarterly audit for each account should contain a three-way reconciliation between the check register, the bank balance, and the owner balance(s). Such quarterly audits shall begin with the third quarter of 2014, ending September 30, 2014, and continue for TWO YEARS of the disciplinary period, ending with the third quarter of 2016, ending September 30, 2016. Within 30 days of the quarter's end date, Anderson shall cause the CPA who conducted the audit to mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that the CPA completed the quarterly reconciliation of the escrow account(s). All documents necessary to prove the reconciliation

should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the detail and documentation necessary to show that all discrepancies were identified and corrected.

30. Upon the expiration of the disciplinary period, Andersons' licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Anderson has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Anderson's licenses.

31. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

32. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Anderson of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

33. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically

mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered, except with respect to the findings of audit no. LF 612313, which are hereby fully resolved.

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

35. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement 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.

36. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

37. Anderson, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, 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 now 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 Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

38. Anderson understands that he may, either at the time this Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Anderson's licenses. If Anderson desires the Administrative Hearing Commission to review this Settlement Agreement, Anderson may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

39. If Anderson requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Anderson's licenses. If the Administrative Hearing Commission

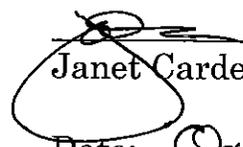
issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Anderson as allowed by law. If Anderson does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE



Douglas E. Anderson
Date: 9/16/2014

MISSOURI REAL ESTATE
COMMISSION



Janet Carder, Executive Director
Date: Oct. 17, 2014

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