

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
ANDREW W. DIELMANN REALTY COMPANY, L.L.C.

RECEIVED
FEB 27 2012
MREC

Andrew W. Dielmann Realty Company, L.L.C. (Dielmann Realty) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Dielmann Realty's license as a real estate association, no. 2005005209, 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. 2011. The MREC and Dielmann Realty jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Dielmann Realty acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

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

administrative hearing commissioner concerning the charges pending against it; 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 Dielmann Realty 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 it by law, Dielmann Realty 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 it.

Dielmann Realty acknowledges that it 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. Dielmann Realty stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Dielmann Realty's license as a real estate association, license no. 2005005209, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Dielmann Realty in Part II herein is based only on the agreement set out in Part I herein. Dielmann Realty understands that the MREC may take further disciplinary action

against it 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 Dielmann Realty herein jointly stipulate to the following:

1. Dielmann Realty is licensed by the MREC as a real estate association, license no. 2005005209. At all times relevant herein, Dielmann Realty's real estate license has been current and active.

2. Sandra S. Felkner (Felkner) was issued a real estate salesperson license, license no. 1999100798, on March 7, 1988.

3. Since October 21, 2005, Felkner has been affiliated with Dielmann Realty as a real estate salesperson, except that Felkner's license as a real estate salesperson expired on September 30, 2010, and was not renewed until October 27, 2011.

4. From October 1, 2010, through October 26, 2011, and by and through Dielmann Realty, Felkner continued to practice real estate without a current and active license.

5. Felkner's continued practice of real estate without a license constitutes a violation of § 339.020, RSMo Supp. 2011, which 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.

6. Felkner's continued practice of real estate without a license constitutes a violation of 20 CSR 2250-4.020.2, which states:

(2) Failure of a licensee to receive the notice and application to renew from the commission shall not excuse the licensee from the requirements for renewal contained in this rule. . . . Until a new license is procured, the holder of an expired license shall not perform any act for which a license is required.

7. Dielmann Realty's failure to assure that Felkner's license was current and active while affiliated with Dielmann Realty constitutes a violation of 20 CSR 2250-8.060, which states:

(1) Every broker shall maintain his/her license and the licenses of all associates in the regular place of business or branch office(s). The licenses shall be displayed to any member of the public on request.

8. Cause exists to discipline Dielmann Realty's real estate license pursuant to § 339.100.2(15), RSMo Supp. 2011, for violating and assisting and enabling Felkner to violate § 339.020, RSMo Supp. 2011, and 20 CSR 2250-4.020.2. Section 339.100.2(15), RSMo Supp. 2011, states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 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:

.....

(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*.[.]

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 §§ 621.045.3 and 621.110, RSMo Supp. 2011.

9. Dielmann Realty agrees to pay a civil penalty of \$2,500. Said penalty is authorized under § 339.205, RSMo Supp. 2011.

10. Dielmann Realty agrees to pay the \$2,500 civil penalty by certified check made payable to the "Missouri Real Estate Commission, State of Missouri" and mailed to Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Dielmann Realty shall postmark and mail or hand deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

11. Funds received pursuant to this agreement shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution. Section 339.205.8, RSMo. Supp. 2011.

12. In the event the MREC determines that Dielmann Realty has failed to pay any portion of the \$2,500 agreed upon herein or has violated any other term or condition of this

Settlement Agreement, the MREC may, in its discretion: (1) notify the Attorney General who “may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed” under § 339.205.4, RSMo Supp. 2011; (2) after an evidentiary hearing, vacate and set aside the penalty imposed herein and may probate, suspend, revoke, or otherwise lawfully discipline Dielmann Realty’s license under § 324.042, RSMo Supp. 2011; and (3) deny, discipline, or refuse to renew or reinstate Dielmann Realty’s license under § 339.205.7, RSMo Supp. 2011.

13. Upon the expiration of the disciplinary period, the license of Dielmann Realty shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Dielmann Realty 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 Dielmann Realty’s license.

14. 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.

15. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Dielmann Realty of

§§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

16. 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.

17. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC 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. Dielmann Realty agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

19. 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.

20. 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 339, 610, and 324, RSMo, as amended.

21. Dielmann Realty, together with its partners, members, managers, 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.

22. Dielmann Realty understands that it may, either at the time the 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

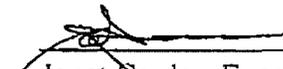
the parties constitute grounds for disciplining Dielmann Realty's license. If Dielmann Realty desires the Administrative Hearing Commission to review this Settlement Agreement, Dielmann Realty may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

23. If Dielmann Realty 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 Dielmann Realty's license. 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 Dielmann Realty as allowed by law. If Dielmann Realty does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

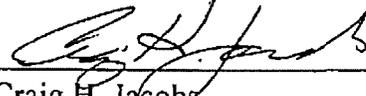
LICENSEE
ANDREW W. DIELMANN REALTY
COMPANY, L.L.C.

MISSOURI REAL ESTATE
COMMISSION

By: 
Andrew W. Dielmann
Title: President
Date: 2-23-12


Janet Carder, Executive Director
Date: February 27, 2012

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