BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION Petitioner, v. ASSIST2SELL PARTNERS REALTY LLC and BETTY LOU PAULEY, Respondents.	)))))))))))	No. 10-0695 RE

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

On or about September 30, 2011, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Assist2Sell Partners Realty LLC and Betty Lou Pauley, No. 10-0695 RE.* In that Decision, the Administrative Hearing Commission found that Respondents Assist2Sell Partners Realty LLC's and Betty Lou Pauley's real estate licenses (license nos. 2002002709 and 1999028003) are subject to disciplinary action by the Commission pursuant to § 339.100.2 (7), (15), and (23), RSMo, and § 339.100.2 (15) and (23), RSMo,[1] respectively.

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the MREC held a hearing on December 14, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard,

[1] All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondents' licenses. All of the members of the MREC were present throughout the meeting. Rosemary Vitale participated through conference call. Further, each member of the MREC that was present for the hearing has read the Decision of the Administrative Hearing Commission. The MREC was represented by Assistant Attorney General Daniel Jacob. Although properly and timely notified, Respondents were not present and were not represented by counsel. After being present and considering all of the evidence presented during the hearing, the MREC issues these following Findings of Facts, Conclusions of Law and Order.

I.

Based upon the foregoing the MREC hereby states:

FINDINGS OF FACT

1. The MREC is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The MREC has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. The MREC hereby adopts and incorporates by reference the findings of fact of the Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Assist2Sell Partners Realty LLC and Betty Lou Pauley, Case No. 10-0695 RE,* in its entirety and takes official notice thereof and hereby enters its findings of fact consistent therewith.

3. The MREC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion.

4. The MREC licensed Respondents Assist2Sell Partners Realty LLC as a real estate association, license number 2002002709, and Betty Lou Pauley as a broker, license number 1999028003. Respondents' licenses were current at all times relevant to this proceeding.

II.

CONCLUSIONS OF LAW

5. This MREC has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The MREC expressly adopts and incorporates by reference the conclusions of law and Decision issued by the Administrative Hearing Commission dated September 30, 2011, in *Missouri Real Estate Commission v. Assist2Sell Partners Realty LLC and Betty Lou Pauley, Case No. 10-0695 RE*, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated September 30, 2011, Respondents' real estate licenses are subject to disciplinary action by the MREC pursuant to § 339.100.2 (7), (15), and (23) and § 339.100.2 (15) and (23) respectively.

8. The MREC has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the MREC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that the real estate licenses of Assist2Sell Partners Realty LLC and Betty Lou Pauley (license nos. 2002002709 and 1999028003) are hereby **REVOKED**. All evidence of Respondents' licensure

shall be returned to the Commission within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form.

The MREC will maintain this Order as an open, public record of the MREC as provided in Chapters 339, 610, and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 16 DAY OF December, 2011.

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri

RECEIVED
OCT 3 2011
MO ATTORNEY GENERAL

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OCT 19 2011
MREC

MISSOURI REAL ESTATE COMMISSION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10-0695 RE
	)	
ASSIST2SELL PARTNERS REALTY, LLC, and BETTY LOU PAULEY,	)	
	)	
Respondents.	)	

DECISION

We grant the Missouri Real Estate Commission's ("MREC") motion for summary decision. Assist2sell Partners Realty, LLC ("Assist") and Betty Lou Pauley are subject to discipline because they allowed Jody John Martin to practice real estate when Martin did not have a valid real estate salesperson license, and Assist paid him commission on sales.

Procedure

On May 3, 2010, the MREC filed a complaint seeking to discipline Assist and Pauley. On May 18, 2010, we served Pauley and Assist with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. Pauley filed an answer on April 6, 2011. On June 28, 2011, the MREC filed a motion for summary decision citing Pauley's admissions. Pauley filed a response to the motion on July 12, 2011. Our Regulation 1 CSR 15-3.446(6)

provides we may decide this case without a hearing if the MREC establishes facts that (a) Assist and Pauley do not dispute and (b) entitle the MREC to a favorable decision.

Findings of Fact

1. Pauley was licensed as a real estate broker by the MREC on December 9, 1996. Her license was current and active at all relevant times.

2. Assist was licensed as a real estate association by the MREC on January 25, 2002. Its license was current and active until June 28, 2010, when it closed its business.

3. Pauley was Assist's designated broker from January 25, 2002 until March 10, 2010.

4. Martin was licensed as a real estate salesperson by the MREC on January 5, 2005. His license was current and active at all times from January 5, 2005 until September 30, 2006, when it expired due to Martin's failure to renew.

5. From September 30, 2006, until August 2008, Martin continued to practice real estate through Assist.

6. During the time period between September 30, 2006 and August 2008, Martin received commission payments from Assist for his participation in the sales of at least 17 properties in Columbia, Missouri.

7. On August 17, 2009, the MREC issued Martin a new real estate salesperson license after Martin reapplied for licensure.

Conclusions of Law

We have jurisdiction over this case.[1] The MREC has the burden of proving Assist and Pauley have committed an act for which the law allows discipline.[2] The MREC argues there is cause for discipline under § 339.100.2(7), (15), and (23)[3] which provide:

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[1]Section 621.045. Statutory references are to RSMo Supp. 2010, unless otherwise noted.

[2]*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

[3]MREC also alleges cause for discipline under § 339.100.2(16) and (19), but provides no arguments in support. Therefore, we will not analyze those subdivisions.

> 2. The [MREC] 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:
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> * * *
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> (7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;
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> * * *
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> (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;
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> * * *
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> (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[.]

Section 339.020 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.

20 CSR 2250-8.020(1) states:

> Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. A broker shall not be held responsible for inadequate supervision if—

(A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instructions;

(B) Reasonable procedures have been established to verify that adequate supervision was being performed;

(C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;

(D) The broker did not participate in the violation;

(E) The broker did not ratify the violation; and

(F) The broker did not attempt to avoid learning of the violation.

Paid Commission—Subsection (7)

Pauley admitted that between September 30, 2006 and August 2008, Martin practiced real estate with Assist and was paid commission by Assist for his participation in sales. During this time period Martin did not have a valid license as a real estate salesperson and was in violation of § 339.020, which explicitly states it is unlawful for any person to act as a real estate salesperson without a license to do so. Therefore, we find cause to discipline Assist. As the designated broker for Assist, Pauley was responsible for supervising the real estate related activities pursuant to 20 CSR 2250-8.020(1). However, the MREC does not provide evidence that Pauley paid Martin any commission. Therefore, we do not find cause to discipline Pauley.

Enabling a Violation of Law—Subsection (15)

Martin continued to work for Assist after his real estate salesperson license expired. Assist enabled Martin to violate § 339.020 by allowing him to continue practicing real estate without a valid license. We find cause to discipline Assist. Pauley was responsible for supervising the real estate related activities. Practicing with a valid license is a real estate related activity. Keeping records of valid real estate licenses is a real estate related activity. Pauley

enabled Martin to violate § 339.020. There is no evidence that Pauley meets the six criteria under 20 CSR 2250-8.020(1) to avoid responsibility. We find cause to discipline Pauley.

Enabling Unregistered Practice—Subsection (23)

By employing Martin when he did not have a valid license, Assist enabled a person to practice real estate who was not registered to do so. There is cause to discipline Assist. Pauley was responsible for supervising the real estate related activities. Keeping records of valid real estate licenses is a real estate related activity. Pauley failed to do this and enabled Martin's unregistered practice. There is no evidence that Pauley meets the six criteria under 20 CSR 2250-8.020(1) to avoid responsibility. We find cause to discipline Pauley.

Summary

There is cause to discipline Assist under § 339.100.2(7), (15), and (23). There is cause to discipline Pauley under § 339.100.2(15) and (23). The hearing is cancelled.

SO ORDERED on September 30, 2011.

NIMROD T. CHAPEL, JR.
Commissioner