

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
RHONDA J. BARKLAGE

Rhonda J. Barklage (Barklage) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Barklage's license as a real estate salesperson, no. 1999096344, 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 Barklage jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Barklage acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; 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 her at the hearing; the right to present evidence on her 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 her; 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 Barklage 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 her by law, Barklage 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 her.

Barklage acknowledges that she 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. Barklage stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Barklage's license as a real estate salesperson, license no. 1999096344, 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 Barklage in Part II herein is based only on the agreement set out in Part I herein.

Barklage understands that the MREC may take further disciplinary action against her 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 Barklage herein jointly stipulate to the following:

1. Respondent Rhonda J. Barklage (“Barklage”) is licensed by the MREC as a real estate salesperson, license no. 1999096344. Barklage’s license is, and was at all relevant times herein, current and active.

2. On or about March 21, 2007, Barklage pled guilty in the Circuit Court of St. Charles County, Missouri, to one count Driving While Intoxicated, a class B misdemeanor, under § 577.010, RSMo 2000, which states in relevant part:

1. A person commits the crime of “**driving while intoxicated**” if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. . . .

3. On or about August 4, 2008, Barklage pled guilty in the Circuit Court of St. Louis County, Missouri, to one count Driving with an Excessive Blood Alcohol Content, under § 577.012, which states in relevant part:

1. A person commits the crime of “driving with excessive blood alcohol content” if such person operates a motor vehicle

in this state with eight-hundredths of one percent or more by weight of alcohol in such person's blood.

4. On or about September 10, 2010, Barklage pled guilty in the Circuit Court of St. Charles County, Missouri, to one count Driving While Intoxicated – Alcohol – Persistent Offender, a class D felony, under § 577.010, RSMo Supp. 2010, which states in relevant part:

1. A person commits the crime of “driving while intoxicated” if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. . . .

5. The crime of Driving While Intoxicated – Alcohol – Persistent Offender is a crime involving moral turpitude.

6. Barklage failed to notify the commission of any of the criminal offenses set forth above, and falsely represented that they had not occurred on the following license applications:

- a. Application to Renew Salesperson Application for the October 1, 2008 through September 30, 2010 renewal period;
- b. Application for License/Information Change signed by Barklage on or about February 27, 2009;
- c. Application for License/Information Change signed by Barklage on or about July 29, 2009;
- d. Application to Renew Salesperson Application for the October 1, 2010 through September 30, 2012 renewal period;

- e. Application for License/Information Change signed by Barklage on or about October 21, 2010; and
- f. Application for License/Information Change signed by Barklage on or about March 30, 2011.

7. Section 339.100.2, RSMo Supp. 2011, provides in part:

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:

.....

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

.....

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

.....

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

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

.....

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "material" means important information about which the commission should be informed and which may influence a licensing decision[.]

8. Section 339.040.1, RSMo Supp. 2011, setting forth the grounds for issuance of a real estate license, states:

1. 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.

9. Based on Barklages' failure to disclose the criminal matters on multiple license applications, cause exists to discipline her real estate sales person license pursuant to § 339.100.2(10) and (25), RSMo Supp. 2011.

10. Based on facts alleged above, Barklage has engaged in conduct that would be grounds for the MREC to refuse to issue a license under section 339.040, RSMo Supp. 2011, providing cause to discipline her license pursuant to § 339.100.2(16), RSMo Supp. 2011.

11. Barklage's guilty pleas to the crimes of Driving While Intoxicated and Driving With an Excessive Blood Alcohol Content, provides cause to discipline Barklage's license pursuant to § 339.100.2(18), RSMo Supp. 2011, in that Barklage pled guilty in a criminal prosecution under the laws of the United States 1) to an offense that is reasonably related to the qualifications, functions and/or duties of a real estate salesperson, 2) to an offense of which an essential element is fraud, dishonesty and/or an act of violence, and/or 3) to an offense which involves moral turpitude.

12. Barklage's conduct, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith, incompetence, misconduct, and/or gross negligence, providing cause to discipline Barklage's license under § 339.100.2(19), RSMo Supp. 2011.

13. Cause exists to discipline Barklage's license as a real estate salesperson pursuant to § 339.100.2(10), (16), (18), (19), and (25), RSMo Supp. 2011.

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.

1. **Barklage's license is on probation.** Barklage's license as a real estate salesperson is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Barklage shall be entitled to practice as a real estate salesperson under §§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, provided Barklage adheres to all the terms of this agreement.

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

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

B. Barklage shall timely renew her real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license(s) in a current and active status. During the disciplinary period, Barklage shall not place her real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Barklage may surrender her real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Barklage applies for a real estate license after surrender, Barklage 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. Barklage 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. Barklage 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, Barklage 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. Barklage 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.

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

4. 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.

5. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Barklage 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.

6. 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.

7. 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. Barklage agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. 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.

10. 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.

11. Barklage, together with her 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.

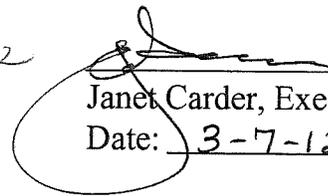
12. Barklage understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Barklage's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

13. If Barklage 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 Barklage'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 Barklage as allowed by law. If Barklage 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.

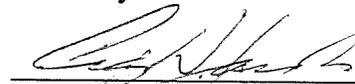
LICENSEE

MISSOURI REAL ESTATE
COMMISSION


Rhonda J. Barklage Date 2-26-12


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