

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
BARBARA A. CALWHITE

RECEIVED
MAR 27 2014
MREC

Barbara A. Calwhite (Calwhite) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Calwhite's license as a broker salesperson, no. 1999022739, 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. 2012. The MREC and Calwhite jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Calwhite 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 Calwhite 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, Calwhite 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.

Calwhite 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. Calwhite stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Calwhite's license as a broker-salesperson, license no. 1999022739, 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 Calwhite in Part II herein is based only on the agreement set out in Part I herein.

Calwhite 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 Calwhite herein jointly stipulate to the following:

1. Calwhite holds a license as a real estate broker salesperson, no. 1999022739. At all times relevant herein, Calwhite's license has been current and active.
2. In December 2007, Calwhite was a broker-officer and the designated broker for Limited Associates, Inc., dba Century 21 Associates Ltd (Century 21 Associates).
3. In December 2007, Randall S. McWilliams Family Associates, L.P. and Mid-Town Management, Inc., sellers, and Carlson Gardner Properties, LLC, buyers, entered into a contract for the sale of commercial real estate described as 2008 S. Sergeant, Joplin, Missouri. Per the terms of the contract, the buyer paid \$10,000 to Century 21 Associates as earnest money.
4. On May 27, 2008, a mutual release was executed wherein the seller and buyer agreed that \$250 of the earnest money would be distributed to Fidelity Title Agency of Springfield, Inc. and \$9,750 would be distributed to the buyer.
5. Century 21 Associates failed to repay the \$9,750 to the buyer.

6. In April 2010, Calwhite executed a promissory note to the buyers Carlson Gardner Properties, LLC for \$10,000. The promissory note required monthly payments of \$300 starting on July 1, 2010 through April 1, 2013. Calwhite defaulted on the note by making only one payment on September 15, 2010. Calwhite has made no other payments.

7. On February 13, 2009, the MREC received a Closing of an Office Affidavit (Closing Affidavit) from Calwhite for Century 21 Associates, dated February 6, 2009. In the Closing Affidavit, Calwhite falsely certified that “I have complied with all the terms of 20 CSR 2250-8.155 . . .” Rule 20 CSR 2250-8.155(1)(A).5 requires, among other things, the following:

(1) Voluntary Closing.

(A) A real estate brokerage shall be closed in the following manner. The individual broker or the designated broker shall—

. . .

5. Maintain all escrow or trust accounts until all monies are transferred to a title company, an escrow company, or an attorney for closing of the transaction, or are otherwise properly disbursed as agreed to in writing by the parties having an interest in the funds[.]

8. As of the date it was closed, Century 21 Associates’ escrow account had a balance of \$17,500.

9. After Century 21 Associates was closed, Calwhite drafted multiple checks from the escrow account to herself and/or her husband, Anthony Calwhite, removing all of the funds from the escrow account.

10. Calwhite endorsed the checks from the escrow account by signing her husband's name, Anthony Calwhite, on the checks without his knowledge in order to deposit them into their joint personal account.

11. Calwhite's failure to maintain the buyer's escrow funds and her disbursement of the earnest money into her personal account constitute a violation of 20 CSR 2250-8.155(1)(A).5.

12. Calwhite further violated § 339.105.1, RSMo Supp. 2012, which requires funds of others to be maintained in an escrow account, and 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.

13. Calwhite further violated 20 CSR 2250-8.120(4), which states:

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds, and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo.

14. On December 6, 2010, the MREC received a Sworn Statement of Complaint and supporting documents (Complaint) from Mark Gardner of Carlson Gardner Properties, LLC. In December 2010, a copy of the Complaint was sent to Calwhite at her address registered with the MREC, with a written request that she respond to Gardner's allegations. Calwhite did not respond to the MREC's letter until April 4, 2011, in violation of 20 CSR 2250-8.170(1), which states:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

15. Calwhite's conduct, as stipulated to herein, would have constituted grounds to deny Calwhite licensure as a real estate broker under § 339.040, RSMo Supp. 2012, which 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

.....

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

16. Based on the facts stipulated to herein, cause exists to discipline Calwhite's real estate broker-salesperson license under § 339.100.2(1), (15), (16), and (19), RSMo Supp. 2012, which 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:

(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[.]

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. 2012.

1. **Calwhite's license is converted to a real estate salesperson license and placed on probation for FIVE years.** Calwhite's license as a broker-salesperson is converted to a real estate salesperson license and placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Calwhite shall be entitled to practice only as a real estate salesperson under Chapter 339, RSMo, as amended, provided Calwhite adheres to all the terms of this agreement.

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

A. Calwhite shall return her license as a broker-salesperson to the MREC within 30 days of the execution of this settlement agreement, and will be issued a real estate salesperson license.

B. Calwhite shall make repayments of at least \$500 per month until she has repayed \$9,750 to Carlson Gardner Properties, LLC. Calwhite shall submit proof of such payments to the MREC by the 10th of each month until she has repaid the debt.

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

D. Calwhite 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, Calwhite shall not place her real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040 or 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Calwhite may surrender her real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Calwhite applies for a real estate license after surrender, Calwhite 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.

E. Calwhite 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.

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

H. Calwhite 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 Calwhite's license as a real estate license under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

3. Upon the expiration of the disciplinary period, the real estate salesperson license of Calwhite shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Calwhite 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 Calwhite's license. Calwhite may apply for a real estate broker license after the conclusion of the disciplinary period, but must meet the full requirements for that license as set forth in § 339.040, RSMo.

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 Calwhite 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. 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 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.

9. 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.

10. Calwhite, 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.

11. Calwhite 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 Calwhite's license. If Calwhite desires the Administrative Hearing Commission to review this Settlement Agreement, Calwhite 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.

12. If Calwhite 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 Calwhite'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 Calwhite as allowed by law. If Calwhite 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

Barbara A. Calwhite 2/24/14
Barbara A. Calwhite Date

MISSOURI REAL ESTATE
COMMISSION

[Signature]
Janet Carder, Executive Director
Date: April 1, 2014

CHRIS KOSTER
Attorney General

[Signature]
Ross A. Brown
Assistant Attorney General
Missouri Bar No. 62771

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-4087
Telefax: 573-751-5660

Attorneys for the MREC