

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
BRICE K. DAVIS

Brice K. Davis (Davis) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Davis's license as a real estate salesperson, number 2007035184, 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 Davis jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Davis 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 substantial evidence; the right to cross-examine any witnesses appearing

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

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 Davis 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, Davis 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.

Davis 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. Davis stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Davis's license as a real estate salesperson, no. 2007035184, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter

621, RSMo, and §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Davis in Part II herein is based only on the agreement set out in Part I herein. Davis 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 Davis herein jointly stipulate to the following:

1. Brice K. Davis is licensed by the MREC as a real estate salesperson, license no. 2007035184. Davis' license was current and active at all relevant times herein.
2. In 2011 and/or 2012, Davis managed rental properties located in Springfield, Missouri, which were owned by Vicki Kennedy ("Springfield Properties").
3. Davis' duties with respect to the Springfield Properties in 2011 and/or 2012 included collecting and depositing rents and providing

maintenance services. As payment for his services, Davis received a percentage of the rents collected from the Springfield Properties from Kennedy.

4. Davis managed the Springfield Properties outside of the supervision of the brokerage company with which he was affiliated at the time, Murney Associates LLC (“Murney Associates”).

5. Murney Associates did not offer property management services during the relevant time periods and Davis’ property management was in violation of company policy.

6. In or about 2012, Davis assisted an individual who did not hold any MREC-issued real estate licenses in managing the Springfield Properties for valuable commission and/or consideration.

7. Section 339.010.1 and .2, RSMo Supp. 2012, which defines “real estate broker” and “real estate salesperson,” states in relevant part as follows:

1. A “real estate broker” is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

(1) Sells, exchanges, purchases, rents, or leases real estate;

(2) Offers to sell, exchange, purchase, rent or lease real estate;

(3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

(4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;

* * *

(6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

(8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

* * *

(10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

2. A "real estate salesperson" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, domestic or foreign who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned. The provisions of sections 339.010 to

339.180 and sections 339.710 to 339.860 shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor.

8. Section 339.200, RSMo, states in relevant part:

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. . . .

9. By managing the Springfield Properties without the authorization or knowledge of his broker, Davis engaged in the practice of a real estate broker without a real estate broker license in violation of § 339.020, RSMo.

10. Section 339.020, RSMo, provides as follows:

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.

11. Section 339.100.2, RSMo Supp. 2012, provides in relevant part as follows:

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:

* * * *

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

* * * *

(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;

12. Section 339.040.1, RSMo Supp. 2012, provides as follows:

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.

13. By engaging in the conduct described above, Davis accepted a commission or valuable consideration for the performance of acts referred to in § 339.010, RSMo Supp. 2012, from a person who was not the broker with whom he was associated at the time; therefore, cause exists for discipline under § 339.100.2(12), RSMo Supp. 2012.

14. By engaging in the conduct described above, Davis violated or attempted to violate and/or assisted or enabled another person to violate §§ 339.020 and/or 339.100.2(12), (15), (16), and/or (19), RSMo Supp. 2012; therefore, cause exists for discipline under § 339.100.2(15), RSMo Supp. 2012.

15. By engaging in the conduct described above, Davis failed to show good moral character and/or a good reputation for honesty, integrity, and fair dealing and/or competence to transact the business of a salesperson in such a manner as to safeguard the interest of the public; therefore, cause exists to discipline his license under § 339.100.2(16), RSMo Supp. 2012.

16. As described above, Davis engaged in conduct constituting untrustworthy, improper, and/or fraudulent business dealings and/or demonstrating bad faith and/or incompetence, misconduct, and/or gross negligence; therefore, cause exists to discipline his license under § 339.100.2(19), RSMo Supp. 2012.

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. 2012.

17. **Davis's license is on probation.** Davis's license as a real estate salesperson is hereby placed on PROBATION for a period of 2 YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Davis shall be entitled to practice as a real estate salesperson under §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, provided Davis adheres to all the terms of this agreement.

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

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

B. Davis shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Davis shall not place his 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, Davis may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Davis applies for a real estate license after surrender, Davis 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. Davis 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. Davis 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, Davis 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. Davis 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 Davis' license as a real estate salesperson under § 339.100.2

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y ~~339.532.2~~, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Davis agrees to pay a civil penalty of \$ 2,500. Said penalty is authorized under § 339.205, RSMo Supp. 2012.

H. Davis 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. Davis shall postmark and mail or hand deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

I. 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. 2012.

J. In the event the MREC determines that Davis 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. 2012; (2) after an evidentiary hearing, vacate and set aside the penalty imposed herein and may probate, suspend, revoke, or otherwise lawfully discipline Davis’ license under § 324.042, RSMo. Supp. 2012; and (3) deny, discipline, or refuse to renew or reinstate Davis’ license under § 339.205.7, RSMo Supp. 2012.

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

20. 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.

21. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Davis of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

22. 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.

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

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

25. 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.

26. 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.

27. Davis, 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.

28. Davis understands that he 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 Davis's license. If Davis desires the Administrative Hearing Commission to review this Settlement Agreement, Davis 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.]

29. If Davis 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 Davis'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 Davis as allowed by law. If Davis 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

Missouri Real Estate Commission

B-K
Brice K. Davis
Date: 2-24-2014

[Signature]
Janet Carder, Executive Director
Date: 3/19/14

CHRIS KOSTER
Attorney General

[Signature]
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