

**BEFORE THE MISSOURI REAL ESTATE COMMISSION**

MISSOURI REAL ESTATE COMMISSION	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 10-2373 RE
	)	
	)	
WILLIAM DAVID HEAD	)	
	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

On or about August 13, 2013, the Administrative Hearing Commission entered its Decision on Reconsideration in the case of *Missouri Real Estate Commission v. Marie E. Green and William D. Head*, No. 13-0435 RE. In that Decision on Reconsideration, the Administrative Hearing Commission found that Respondent William David Head’s real estate broker salesperson license (license no. 1999023348) is subject to disciplinary action by the Missouri Real Estate Commission (“Commission”) pursuant to § 339.100.2(2), (4), (15), and (16), RSMo.<sup>1</sup>

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the Decision on Reconsideration 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 Commission held a hearing on April 2, 2014, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent’s license. All of the members of the Commission were present throughout

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

the meeting. Charles Davis participated through conference call. Further, each member of this Commission has read the Decision on Reconsideration of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Craig Jacobs. Respondent having received proper notice and opportunity to appear did appear in person without legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

**FINDINGS OF FACT**

1. The Commission 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 Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision on Reconsideration and the record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Marie E. Green and William D. Head*, Case No. 13-0435 RE, issued August 13, 2013, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent appeared in person without legal counsel at the hearing before the Commission.

4. This Commission licensed Respondent William David Head as a real estate broker salesperson, license number 1999023348. Respondent's broker salesperson license was current at all times relevant to this proceeding.

## II.

### CONCLUSIONS OF LAW

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

6. The Commission expressly adopts and incorporates by reference the Decision on Reconsideration issued by the Administrative Hearing Commission dated August 13, 2013, in *Missouri Real Estate Commission v. Marie E. Green and William D. Head*, Case No. 13-0435 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 on Reconsideration dated August 13, 2013, Respondent's real estate broker salesperson license, number 1999023348, is subject to disciplinary action by the Commission pursuant to § 339.100.2(2), (4), (15), and (16), RSMo.

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

## III.

### ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision on Reconsideration of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate broker salesperson license of William David Head (license no. 1999023348) is hereby placed on THREE (3) YEARS PROBATION and William David Head must pay a civil penalty of \$1,000 by certified check made payable to the

“Missouri Real Estate Commission” and mail to the Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the date of this Order. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and § 339.205.8, RSMo. During Respondent’s probation, Respondent shall be entitled to practice under his respective license provided that Respondent adheres to all of the terms stated herein. The period of probation shall constitute the “disciplinary period.”

The terms and conditions of the disciplinary period are as follows:

A. Respondent shall keep the MREC apprised at all times, in writing, of Respondent’s current addresses and telephone numbers at each place of residence and business. Respondent shall notify the MREC within ten (10) days of any change in this information.

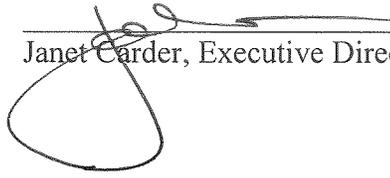
B. Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the MREC.

C. Upon the expiration and successful completion of the disciplinary period, Respondent’s respective real estate broker salesperson license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Respondent’s real broker salesperson license.

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

SO ORDERED, EFFECTIVE THIS 9<sup>th</sup> DAY OF April, 2014.

MISSOURI REAL ESTATE COMMISSION

  
\_\_\_\_\_  
Janet Carder, Executive Director

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

**FILED**

FEB 28 2014

COLE COUNTY  
CIRCUIT COURT

WILLIAM DAVID HEAD, )  
)  
Petitioner, )  
)  
v. )  
)  
MISSOURI REAL ESTATE )  
COMMISSION, )  
)  
Respondent. )

Case No.: 13AC-CC00681

**CONSENT JUDGMENT**

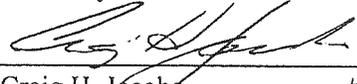
Petitioner and Respondent, by counsel, consent to the Court issuing a Judgment in this matter, as follows:

Pursuant to a settlement executed between the parties, the October 17, 2013 Findings of Fact, Conclusions of Law and Disciplinary Order of the Missouri Real Estate Commission for Case No. 10-2373 RE is set aside and William David Head's Missouri real estate broker salesperson license, license number 1999023348, is fully reinstated with all rights, privileges, and duties of licensure. This cause is remanded to the Missouri Real Estate Commission for a hearing pursuant to § 621.110, RSMo, for purposes of determining what discipline, if any, is appropriate to be imposed upon Petitioner's Missouri real estate broker salesperson license. This Judgment has no effect whatsoever on the Decision on Reconsideration of the Administrative Hearing Commission issued on August 13, 2013 in Case No. 10-2373 RE.

**NEWMAN, COMLEY & RUTH P.C.**

**CHRIS KOSTER**  
**Attorney General**

  
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**ATTORNEYS FOR PETITIONER**

**ATTORNEYS FOR RESPONDENT**

SO ORDERED AND ADJUDGED.

  
\_\_\_\_\_  
Honorable Jon E. Beetem

2/28/14  
\_\_\_\_\_  
Date

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE COMMISSION, )  
 )  
 ) Petitioner, )  
 )  
 ) vs. )  
 )  
 ) MARIE E. GREEN and )  
 )  
 ) WILLIAM D. HEAD, )  
 )  
 ) Respondents. )

No. 10-2373 RE

**DECISION ON RECONSIDERATION**

William D. Head is subject to discipline because he misrepresented that the buyer in a real estate transaction paid the down payment when it was the seller who actually paid it, and thus misrepresented the sales price of the property. Upon the motion for reconsideration by the Missouri Real Estate Commission (“the MREC”), as discussed later, we issue this decision deleting references to causes to discipline Marie E. Green.

**Procedure**

On December 22, 2010, the MREC filed a complaint seeking to discipline Green and Head. On February 18, 2011, Green was served with a copy of the complaint and our notice of hearing/notice of complaint by certified mail. On April 14, 2011, Head was served with a copy of the complaint and our notice of hearing/notice of complaint by personal service.

On November 15, 2011, we held a hearing on the complaint. Assistant Attorney General Kevin Hall represented the MREC. Head appeared *pro se*. Neither Green nor anyone representing her appeared. The matter became ready for our decision on July 17, 2012, the date the last written argument was filed.

On July 9, 2013, we issued a decision finding cause to discipline Green and Head. On July 11, 2013, the MREC filed a motion to amend to amend our decision and notice of dismissal as to Green. The MREC stated that it reached a settlement with Green soon after the hearing, but its attorney failed to dismiss Green from the case. The MREC asked us to amend our decision to remove the findings of fact and conclusions of law regarding Green. By order dated August 2, 2013, we granted the motion to reconsider our decision.<sup>1</sup> We issue this decision upon reconsideration. While we do not remove Green from the Findings of Fact, we remove references that determine whether there is cause to discipline her.

#### **Findings of Fact**

1. Green held a real estate salesperson license issued by the MREC on July 23, 1986. Green's license was at all relevant times, current and active. Her license was cancelled on March 10, 2011.
2. Green was at all relevant times, employed by Reece and Nichols Realtors, Inc.
3. Head's current real estate broker-salesperson license was active at all relevant times.<sup>2</sup>
4. Head was at all relevant times employed by ReMax First Realtors ("ReMax") in Leawood, Kansas.
5. Head was the listing agent for David Smith for Smith's sale of a property located at 7405 East 56<sup>th</sup> Terrace, Kansas City, Missouri ("the property").
6. On September 6, 2006, Head listed the property at \$84,900.

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<sup>1</sup> *Woodman v. Director of Revenue*, 8 S.W.3d 154 (Mo. App., W.D. 1999).

<sup>2</sup> Petitioner's exhibit 1. The affidavit states that the license would expire on June 30, 2012. We have no further information on the status of the license.

7. On September 1, 2006, Head listed the property at \$79,000.

8. On September 25, 2006, Tina and Reginald Harris entered into a buyer's agent contract with Green. Tina Harris had met Green through her sister's boyfriend. Green asked Ms. Harris if she wanted to buy a home, and Ms. Harris said that she could not afford to do so. Green indicated that she could get approval, and they looked at several properties. Ms. Harris did not know Smith or Head before the transaction at issue. The Harrises had never purchased a home before. At the time of the hearing, both the Harrises were unemployed and had five children.

9. When Ms. Harris looked at the property in September 2006, she believed that the sales price for the property was \$79,000.

10. On October 20, 2006, Head listed the subject property at \$89,900.

11. On October 25, 2006, First United Mortgage pre-approved Harris for a loan totaling \$82,350 pursuant to a signed and executed sales contract for \$91,500. First United Mortgage acted as mortgage brokers to the transaction. The true lender was America's Wholesale Lender in the state of Colorado.

12. On November 4, 2006, Harris and Smith entered into an initial real estate contract for \$91,500, with \$82,350 due to be financed, and approximately another \$9,150 due from Harris in the form of certified funds at closing ("the transaction"). The contract required that Smith pay \$4,941 in closing costs.<sup>3</sup> The closing date was changed to December 12, 2006.

13. Sometime before the closing date, Green and Head discussed the inability of Harris to acquire the down payment required for their purchase of the subject property and the possibility of having Smith provide the funds needed for Harris' down payment.

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<sup>3</sup> Petitioner's exhibit 6 at p. 9.

14. After Head discussed with Smith the possibility of having Smith provide the down payment funds, Smith's wife proceeded to wire approximately \$10,000 into Harris' bank account.

15. On December 18, 2006, the parties met for closing and Harris learned that they were required to provide approximately \$10,000 as a down payment for the subject property. Harris was then informed by Green that Smith had transferred approximately \$10,000 into Harris' bank account, which was to be used as Harris' down payment.

16. Later that day, Harris obtained a cashier's check for the amount of \$10,894.07 and used the check as the down payment in their purchase of the subject property.

17. The residential real estate sale contract, including its financial addendum, executed by Harris and Smith on November 4, 2006, indicates that Harris would provide the balance of the purchase price in certified funds on or before the closing date. The settlement statement executed by Harris and Smith on December 15, 2006 indicates that Harris was providing cash in the amount of \$10,894.07.

18. Despite being aware of the fact that Smith was providing the funds for the down payment on Harris' purchase of the subject property, neither Head nor Green amended the residential real estate sale contract or the settlement statement executed by Harris and Smith to correctly reflect that the down payment funds had been provided by Smith.

19. Head never discussed the transaction with his broker or any representative of the lender for Harris' loan.

20. Gina Schnitz, the Mortgage Specialist with First United Mortgage, was instrumental in the transfer of funds for the sale of the property.

21. The Harrises lived in the home on the property from December 2006 until September/October 2008. The repairs were not made to the property, and the problems with the property included a furnace that leaked carbon monoxide, and a dishwasher that leaked water

into the basement. The Harrises were unable to make the mortgage payments and they lost the property to foreclosure.

### Conclusions of Law

We have jurisdiction to hear the complaint.<sup>4</sup> The MREC bears the burden of proving that there is cause for discipline by a preponderance of the evidence.<sup>5</sup>

#### I. Credibility

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992). When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony. *Id.*

Ms. Harris testified at the hearing and was a credible witness. She testified that, up until the closing date, she believed that she and her husband were purchasing the property for approximately \$79,000. Ms. Harris also testified that she was not aware that she and her husband would be required to provide any money for the purchase:

Q: And outside of a monthly payment, what was your understanding of any other obligations you had to the real estate loan that you were approved for?

A: Mr. Smith, I guess he – well, he told Marie to have me sign something setting up where I would make payments back to him for some points –

Q: Okay.

A: -- that he bought, that he purchased, because couldn't buy any. I didn't have any money.

Q: Did you have any money for a down payment at closing?

A: Not at all, no.

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<sup>4</sup> Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

<sup>5</sup> *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012).

Q: Even though the closing had been moved to December 2006, what was your understanding of the sales price for the property at that time?

A: That it was \$79,000.

Q: And even though the closing had been moved to December, what was your understanding of what down payment or what money you had to bring to closing?

A: None, none. I wasn't told of any money that I had to have as a down payment. She said I didn't need money for a down payment. She knew I didn't have money for a down payment.

Q: Okay. When you say "she," who are you –

A: Marie Green.<sup>6]</sup>

Head testified that Ms. Harris knew about the financial arrangements and the transfer of money into her account, and that the buyers were not harmed by the transaction. We do not see that Ms. Harris' knowledge would excuse the allegations against Head, and in any event, we believe Ms. Harris. She testified that she was harmed, in that repairs were never made, and she and her family lost the property through foreclosure, although she had been honest about her financial situation throughout the transaction.

Our Findings of Fact reflect our credibility determination.

## II. Objection Taken with Case

Head objected to a witness testifying that Head had referred to his conduct as a "scheme," and we took the objection with the case.<sup>7</sup> We sustain the objection.

## III. Objection to Head's Written Argument

The MREC objects to statements in Head's written argument because the facts he asserted were not in evidence. We make our findings of fact only on evidence contained in the record.

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<sup>6</sup> Tr. at 62-63.

<sup>7</sup> Tr. at 40.

#### IV. Cause for Discipline

The MREC argues that there is cause for discipline under 339.100.2:<sup>8</sup>

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:

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(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

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(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

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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;

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

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

Head admitted that he failed to review the settlement statement and failed to amend the

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<sup>8</sup> These grounds for discipline have not changed significantly since 2006.

contract.<sup>9</sup> He denied the other allegations.

A. Subdivision (2) – Misrepresentation

Head admitted that he failed to review the settlement statement and failed to amend the contract. The dictionary definition of “material” is “having real importance or great consequences[.]” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 765 (11<sup>th</sup> ed. 2004). Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit. *Id.* at 794 (11<sup>th</sup> ed. 2004).

The identity of the person paying the down payment is a material fact. Head made substantial misrepresentations in the conduct of his business in that the sales contract and settlement statement did not reflect the true selling price or that the seller was paying the down payment.

There is cause to discipline Head under § 339.100.2(2).

B. Subdivision (4) – Representing to Lender

Head argues that there was no misrepresentation to the lender because Schnitz knew exactly what was happening in the sale of the property. But, as the MREC argues, Schnitz worked for the mortgage broker, not the lender. The sales contract and settlement agreement both represented a sale amount greater than the buyer was paying and differing terms from those agreed upon, in that the seller was actually paying the down payment.

There is cause to discipline Head under § 339.100.2(2).

C. Subdivision (15) – Violation of Statutes/Regulations

Section 339.740<sup>10</sup> states:

1. A licensee representing a buyer or tenant as a buyer’s or tenant’s agent shall be a limited agent with the following duties and obligations:

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<sup>9</sup> Tr. at 10.

<sup>10</sup> RSMo. 2000.

(1) To perform all the terms of any written agreement entered into with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

Although the MREC argues that Head violated this statute, it appears to apply only to a licensee representing a buyer or tenant as a buyer's or tenant's agent. Head represented Smith, the seller. He did not violate this regulation.

Regulation 15 C.S.R. 60-9.110 provides:

Concealment, Suppression, or Omission of any Material Fact in General:

(1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

(2) Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.

(3) Omission of a material fact is any failure by a person to disclose material facts known to him/her or upon reasonable inquiry would be known to him/her.

(4) Reliance and intent that others rely upon such concealment, suppression or omission are not elements of concealment, suppression or omission as used in section 407.020.1, RSMo.

Head concealed information that Smith, rather than Harris, supplied the down payment.

There is cause to discipline Head under § 339.100.2(15).

#### D. Subdivision (16) – Cause to Deny License

Section 339.040 sets forth the requirements for licensure:

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 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.

#### 1. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others.

*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). This case presents evidence of bad acts in one transaction. We cannot say categorically that the one incident proves a lack of good moral character, but on these facts, Head violated his

duties and obligations imposed by statutes and regulations to protect the public from underhanded conduct.

There is cause to discipline Head under § 339.100.2(16).

### 2. Reputation

Reputation is the “consensus view of many people[.]” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). Reputation is not a person’s actions; it is “the general opinion . . . held of a person by those in the community in which such person resides[.]” *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4<sup>th</sup> ed. 1467-68)).

The MREC presented no evidence of Head’s reputation. There is no cause for discipline under § 339.100.2(16).

### 3. Competence

Competent is defined as “having requisite or adequate ability or qualities[.]” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 253 (11<sup>th</sup> ed. 2004). Again, this is one incident, but we accept the Board’s argument that the conduct of allowing the settlement statement to falsely reflect that Harris had provided the down payment at the time of closing was an intentional perversion of the truth to induce Harris’ lender to rely on it and supply funds – in other words, fraud. We find that Head is not competent to transact business in such a manner to safeguard the interest of the public.

There is cause to discipline Head under § 339.100.2(16).

### E. Subdivision (19) – Other Conduct

The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]” WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986). Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for discipline under

other subdivisions of § 339.100.2. There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

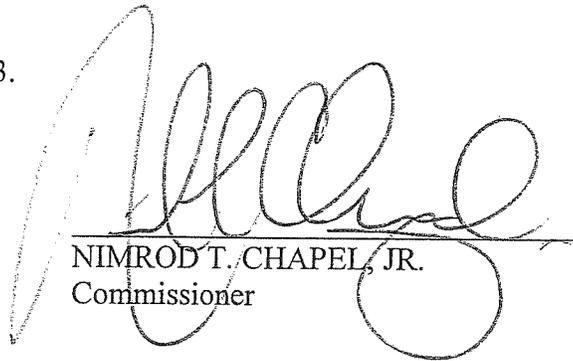
F. Head’s Arguments

In his written argument, Head points to his many years in real estate and his service to his profession. The Administrative Hearing Commission determines whether there is cause for discipline. Arguments such as Head makes may be made to the MREC when it determines the level of discipline to impose.

**Summary**

Head is subject to discipline under § 339.100.2(2), (4), (15), and (16). He is not subject to discipline under § 339.100.2(19).

SO ORDERED on August 13, 2013.



NIMROD T. CHAPEL, JR.  
Commissioner