

**BEFORE THE
MISSOURI REAL ESTATE COMMISSION
STATE OF MISSOURI**

MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	Case No. 9-12-174
)	
BRIAN P. JOHNSON,)	
)	
Respondent.)	

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

Pursuant to notice and §§ 621.110, 339.100.3 and 324.042, RSMo,¹ the Missouri Real Estate Commission (“MREC”) held a hearing on April 3, 2013, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondent had violated the probationary terms of a prior MREC disciplinary order and if so, whether additional discipline of Respondent’s license was warranted. All of the members of the MREC were present throughout the meeting except for Doris Carlin. The MREC was represented by Assistant Attorney General You-Jin Han. Respondent was properly and timely notified of the hearing. Respondent Johnson did not appear individually or through legal 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 Disciplinary Order.

Based on the foregoing, the MREC states:

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

I.

FINDINGS OF FACT

1. The Missouri Real Estate Commission is an agency of the State of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of carrying out and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. The Respondent, Brian P. Johnson, held a real estate salesperson license (license number 2003031955), and said license was current and active at all times relevant to this proceeding.

3. On March 19, 2012, the Administrative Hearing Commission issued a default decision against Respondent in which it found that the MREC had cause to discipline Respondent under § 339.100.2(10), (15), (16), and (19), RSMo, based on Respondent's 1) failure to respond to MREC written inquiries within thirty days, 2) submission of a bad check to the MREC for payment of his transfer/status change fee, and 3) failure to pay the MREC either a replacement transfer/status change fee or the bad check replacement fee.

4. On July 9, 2012, the MREC issued its Findings of Fact, Conclusions of Law, and Disciplinary Order ("Disciplinary Order") placing Johnson's real estate salesperson license on probation for five years and imposed a civil penalty of \$250. The Disciplinary Order provided that the five-year probationary term would end upon the MREC's receipt of the civil penalty.

5. Paragraph 9 of Section III of the Disciplinary Order states:

Having fully considered all the evidence before the Commission, it is the ORDER of the Commission that Respondent, Brian P. Johnson (license no. 2003031955) is hereby placed on PROBATION, for a term not to exceed five (5) years, and must pay a civil penalty of \$250 by certified check made payable to the "Missouri Real Estate Commission" and mail to the Missouri State Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or had delivered within sixty 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. The period of probation shall constitute the “disciplinary period.” The period of probation shall end with receipt of the civil penalty. However failure to pay the civil penalty within sixty days of the date of this Order shall constitute a violation of the disciplinary period and shall be cause for additional discipline.

6. Johnson failed to pay the \$250 civil penalty by December 9, 2012, or by the April 3, 2013 hearing.

7. Johnson’s failure to adhere to the terms of his probation by failing to pay the \$250 civil penalty within sixty days of the Order is a violation of Paragraph 9 of Section III of the Disciplinary Order which provides cause to further discipline Johnson’s license under § 324.042, RSMo.

8. As a result of the foregoing, a Probation Violation Complaint was filed with the Missouri Real Estate Commission alleging that grounds existed for additional disciplinary action against Johnson’s real estate license, pursuant to § 324.042, RSMo.

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

10. On April 3, 2013, pursuant to notice and § 621.110, RSMo, this MREC held a hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondent had violated any terms of the 2012 Disciplinary Order, and if so, whether any additional discipline would be imposed against Respondent’s license. Respondent Brian P. Johnson was not present and was not represented by counsel. Petitioner was represented by You-Jin Han, Assistant Attorney General.

11. All the members of the MREC were present throughout the disciplinary hearing except Doris Carlin.

II.

CONCLUSIONS OF LAW

12 Respondent's failure to pay the civil penalty within 60 days of the issuance of the Disciplinary Order constitutes a violation of Paragraph 9 of Section III of his probation as imposed by the Disciplinary Order, thereby providing cause to further discipline Respondent's license under § 324.042, RSMo.

13. Pursuant to § 324.042, RSMo, the MREC has authority to impose additional discipline against Respondent Brian P. Johnson for violating any disciplinary terms previously imposed pursuant to the Disciplinary Order.

14. Section 324.042, RSMo, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

15. The MREC also retains jurisdiction over this matter pursuant to paragraph twelve (12) of the Disciplinary Order, which provides as follows:

The MREC retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the MREC. No order shall be entered by the MREC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREC as provided by chapter 536, RSMo.

16. Section 339.100.3, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license or by imposing a civil penalty not to exceed \$2,500 for each offense.

17. The MREC finds Respondent Brian P. Johnson has violated the terms and conditions of the July 9, 2012 Disciplinary Order as a result of the conduct identified in the Findings of Fact set forth above.

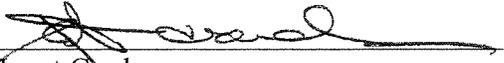
III.

ORDER

18. Therefore, having fully considered all the evidence before the MREC, it is the ORDER of the MREC that the real estate license of Respondent, Brian P. Johnson, license number 2003031955, is hereby **REVOKED**. All evidence of Respondent's licensure shall be returned to the Commission within 30 days of this Order.

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

So Ordered this 12th day of April, 2013.


Janet Carder
Executive Director
Missouri Real Estate Commission