BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 10-0136 RE
	)	
SHAUL I. JOLLES	)	
and	)	
JOLLES RE, LLC,	)	
	)	
Respondents.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

On or about December 17, 2012, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Shaul I. Jolles and Jolles RE , LLC,* No. 10-0136 RE. In that Decision, the Administrative Hearing Commission found that Respondents' Shaul I. Jolles' real estate broker associate license ((license no. 1999140744) and Jolles RE, LLC's real estate association license (license no. 2005029211) are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15) and (16) RSMo.[1]

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision 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 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 the appropriate disciplinary action against

[1]All Statutory References are to the Revised Statutes of Missouri, 2000, as amended unless otherwise indicated.

Respondents' licenses. All of the members of the MREC, with the exception of Doris Carlin, were present throughout the meeting. Further, each member of the MREC that was present for the hearing has read the Decision of the Administrative Hearing Commission. The MREC was represented by Assistant Attorney General Matthew Laudano. Although properly and timely notified, Respondents were not present and were not represented by 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 Order.

Based upon the foregoing the MREC hereby states:

I.

FINDINGS OF FACT

1. The MREC 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 MREC 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 MREC hereby adopts and incorporates by reference the findings of fact of the Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Shaul I. Jolles and Jolles RE, LLC,* No. 10-0136 RE, in its entirety and takes official notice thereof and hereby enters its findings of fact consistent therewith.

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

4. The MREC licensed Respondents Shaul I. Jolles as a broker associate, license number 1999140744 and Jolles RE, LLC as a real estate association, license number 2005029211. Respondents' licenses were current at all times relevant to this proceeding.

II.

CONCLUSIONS OF LAW

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

6. The MREC expressly adopts and incorporates by reference the conclusions of law and Decision issued by the Administrative Hearing Commission dated December 17, 2012, in *Missouri Real Estate Commission v. Shaul I. Jolles and Jolles RE, LLC,* No. 10-0136 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 dated December 17, 2012, Respondents' real estate licenses are subject to disciplinary action by the MREC pursuant to § 339.100.2 (15) and (16).

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

III.

ORDER

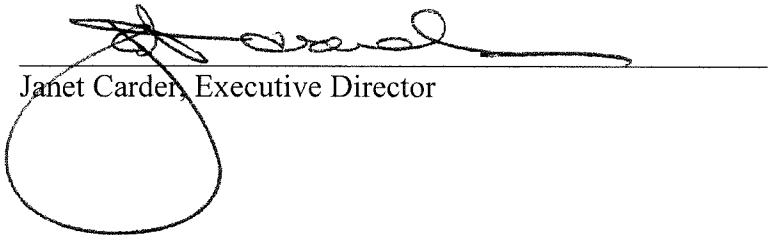
Having fully considered all the evidence before the MREC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that Shaul I. Jolles' real estate broker associate license (license no. 1999140744) and Jolles RE, LLC's real estate association license (license no. 2005029211) are hereby **REVOKED**. All evidence of

Respondents' licensure shall be returned to the MREC within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form.

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, EFFECTIVE THIS 12th DAY OF April, 2013

MISSOURI REAL ESTATE COMMISSION



Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri

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MO. ATTORNEY GENERAL

MISSOURI REAL ESTATE COMMISSION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10-0136 RE
	)	
SHAUL I. JOLLES and JOLLES RE, LLC,	)	
	)	
Respondents.	)	

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MREC

DECISION

Shaul I. Jolles ("Jolles") and Jolles RE, LLC ("the LLC") (together "Respondents") are subject to discipline under § 339.100.2(15), (16), or (19)[1] for failing to timely respond to inquiries from the Missouri Real Estate Commission ("MREC").

Procedure

On January 29, 2010, MREC filed a complaint seeking disciplinary action against Respondents' licenses. We served the LLC with our notice of complaint/notice of hearing and a copy of the complaint by certified mail on February 3, 2010. We served Jolles with the notice of complaint/notice of hearing and a copy of the complaint on May 1, 2010. Respondents did not answer MREC's complaint.

This Commission convened a hearing on the complaint on January 19, 2011. Assistant Attorney General Shannon T. Kempf represented MREC. Though we notified Respondents of the date and time of the hearing, neither Respondents nor anyone representing them appeared at

[1]Statutory references are to RSMo Supp. 2011 unless otherwise noted.

the hearing. We issued a decision on June 29, 2011 finding Respondents are not subject to discipline under § 339.100.2(15), (16), or (19). On July 15, 2011, MREC filed a motion to reopen the case to receive additional information. We granted that motion on July 22, 2011 and convened an evidentiary hearing. Shannon T. Kempf represented MREC. Neither Respondents or anyone representing them appeared at the hearing. MREC offered additional information into evidence and dismissed Count II of the Complaint.

Findings of Fact

1. Jolles is licensed as a real estate broker-associate, and his license was current and active at all relevant times.[2]

2. The LLC is licensed as a real estate association, and its license was current and active at all relevant times.

3. Jolles was the designated broker-associate for the LLC at all relevant times.[3]

4. On December 7, 2007, Respondents notified MREC of a change of business address. MREC was notified that Jolles RE, LLC, was located at 1800 Baltimore, Floor #2, Kansas City, Missouri, 64108. This was Respondents' registered address with MREC at all relevant times.

5. On February 25, 2008, MREC audited the LLC.

6. During the audit, MREC made a determination that Respondents were improperly using the fictitious name "The Nicholson Group."

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[2]MREC's complaint only seeks to discipline Jolles' real estate broker-associate license no. 1999140744. At the hearing, MREC provided information concerning a second real estate broker-associate license no. 1999085158 held by Jolles. Our decision only concerns Jolles' license no. 1999140744 because MREC did not provide Jolles with notice of its intention to discipline the other license he held. *See Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988).

[3]Under 20 CSR 2250-4.070(3)(C), a licensed partnership, association, or corporation must designate a broker-partner, broker-associate, or broker-officer to be responsible for contact with MREC on the business of the firm and to whom MREC may address its correspondence.

7. On August 22, 2008, MREC sent a letter to Respondents relating to the audit and requesting them to reply within thirty days with a letter indicating that they were no longer using the fictitious name "The Nicholson Group" or had registered the fictitious name with the Missouri Secretary of State.

8. MREC did not receive Respondents' response to the August 22 letter within thirty days.

9. On October 21, 2008, MREC sent a second letter to Respondents informing them that MREC had not received a response to its August 22 letter within thirty days as required by 4 CSR 2250-8.170(1).

10. The October 21 letter requested a response to the August 22 letter within ten days, but MREC did not receive a response from Respondents within ten days.

11. On November 18, 2008, MREC received a response from Respondents; however, the response did not address all of the issues raised by MREC's August 22 letter.

12. On November 18, 2008, MREC sent a letter again requesting Respondents to correct their fictitious name registration and to provide requested information to MREC within fifteen days.

13. MREC never received a response to the November 18 letter from Respondents.

14. On January 15, 2009, MREC mailed a letter to Respondents informing them that MREC had not received a response to its November 18 letter as required by 4 CSR 2250-8.170(1).

15. On February 24, 2009, MREC mailed a letter to Respondents informing them that no response to MREC's November 18 letter had been received. The letter further informed Respondents that they were scheduled to appear before MREC at 10:00 a.m. on April 8, 2009, at the Division of Professional Registration, 3605 Missouri Blvd., Jefferson City, Missouri.

16. MREC sent all letters to Respondents' registered address.

Conclusions of Law

We have jurisdiction.[4] MREC has the burden of proving by a preponderance of the credible evidence that Respondents have committed an act for which the law allows discipline.[5] "'Preponderance of the evidence' is defined as that degree of evidence that 'is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.'"[6] MREC meets this burden by substantial evidence of probative value or by inferences reasonably drawn from the evidence.[7]

MREC argues there is cause for discipline under § 339.100:

> 2. The [MREC] 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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> * * *
>
> (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 [MREC] 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[.]

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[4]Section 621.045.
[5]*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).
[6]*State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).
[7]*Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

I. Violation of Statutes and Regulations – Subdivision (15)

A. Failure to Respond to MREC Inquiries

MREC Rule 20 CSR 2250-8.170(1) states:

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

MREC mailed its written requests to Respondents' current address registered with MREC. Respondents failed to respond within 30 days. Therefore, Respondents are subject to discipline under § 339.100.2(15).

II. Grounds for Refusing to Issue a License – Subdivision (16)

Section 339.040.1 states:

> Licenses shall be granted only to persons who present . . . satisfactory proof to the [MREC] . . . that they:
>
> * * *
>
> (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

MREC asserts cause for discipline under § 339.100.2(16) because Respondents' failure to respond to MREC's written requests establishes that Respondents are incompetent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public as required by § 339.040.1(3). Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.[8] We follow the analysis of incompetency in *Albanna v. State Bd. of Regis'n for the Healing Arts*.[9]

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[8] *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).
[9] 293 S.W.3d 423 (Mo. banc 2009).

Incompetency is a "state of being" showing that a professional is unable or unwilling to function properly in the profession.[10] Respondents' continued failure to respond to MREC's numerous written requests demonstrates incompetence to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public. Therefore, Respondents are subject to discipline under § 339.100.2(16).

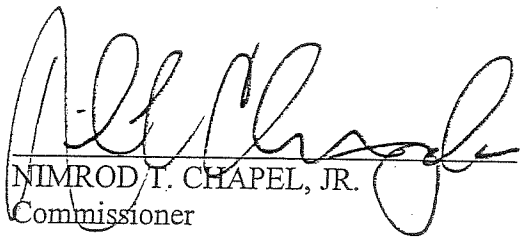
III. Other Conduct – Subdivision (19)

The adjective "other" means "not the same : DIFFERENT <any [other] man would have done better>."[11] Therefore, subdivision (19) refers to conduct different than that referred to in the remaining subdivisions of the statute. MREC points to the same conduct it has asserted before as supporting discipline under subdivisions (15) and (16). We have found cause for discipline under those subdivisions, and therefore, we do not find cause to discipline Respondents under § 339.100.2(19).

Summary

We find cause to discipline Respondents under § 339.100.2(15) and (16).

SO ORDERED on December 17, 2012.



NIMROD T. CHAPEL, JR.
Commissioner

[10] 293 S.W.3d at 436.
[11] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986).