

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 10-0590 RE
)	
)	
ROBERT B. JONES,)	
)	
Respondent.)	

ORDER OF THE MISSOURI REAL ESTATE COMMISSION
DISCIPLINING THE REAL ESTATE LICENSE OF
ROBERT B. JONES

On or about March 14, 2011, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Silver Star Realty Inc. and Robert B. Jones, No. 10-0590 RE*. In that Decision, the Administrative Hearing Commission found that Respondent Robert B. Jones' real estate licenses (license nos. 2006030529, 2006027179, and 2000165411) are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15), (16), and (20).

The Commission 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 Cum. Supp. 2010, the Commission held a hearing on August 10, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's licenses. All of the members of the Commission, with the exception of Doris Carlin, were present throughout the meeting.

Rosemary Vitale participated through conference call. Further, each member of this Commission that was present for the hearing has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Daniel Jacob. Respondent was not present and was not represented by 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.

I.

Based upon the foregoing the Commission hereby states:

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo Cum. Supp. 2009, 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 Sections 339.010-339.205 and 339.710-339.855, RSMo (as amended).

2. The Commission hereby adopts and incorporates by reference the Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Silver Star Realty Inc. and Robert B. Jones, Case No. 10-0590 RE*, 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.

4. This Commission licensed Respondent Robert B. Jones as a real estate broker-officer, license numbers 2006030529, 2006027179 and 2000165411. Respondent's license number 2006030529, 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 issued by the Administrative Hearing Commission dated April 6, 2011, in *Missouri Real Estate Commission v. Silver Star Realty Inc. and Robert B. Jones, Case No. 10-0590 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 March 14, 2011, Respondent's real estate licenses are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15), (16), and (20).

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

III.

ORDER

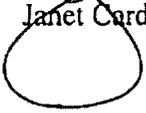
Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate licenses of Robert B. Jones (license nos. 2006030529, 2006027179, and 2000165411) are hereby REVOKED.

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

SO ORDERED, EFFECTIVE THIS 16th DAY OF August, 2011.

MISSOURI REAL ESTATE COMMISSION



Janet Carder, Executive Director


Before the
Administrative Hearing Commission
State of Missouri



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MO ATTORNEY GENERAL

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MAR 16 2011

MREC

MISSOURI REAL ESTATE COMMISSION,)
)
Petitioner,)
)
vs.)
)
ROBERT B. JONES &)
SILVER STAR REALTY, INC.,)
)
Respondent.)

No. 10-0590 RE

A handwritten signature, possibly "J", written in black ink.

ORDER

Robert B. Jones is subject to discipline under § 339.100.2(15), (16), and (20).¹

Procedure

On April 22, 2010, the Missouri Real Estate Commission ("MREC") filed a complaint seeking disciplinary action against Jones' three broker-officer licenses. We served Jones with our notice of complaint/notice of hearing and a copy of the complaint by certified mail on June 9, 2010. He did not file an answer.

This Commission convened a hearing on the complaint on October 15, 2010. Missouri Assistant Attorney General Daniel K. Jacob represented the MREC. Though we notified Jones of the date and time of the hearing, neither Jones nor anyone representing him appeared. This

¹Statutory references are to RSMo Supp. 2010 unless otherwise noted.

case became ready for our decision on January 3, 2011, when the Commission received the last item of evidence and closed the hearing record.

The complaint filed by the MREC on April 22, 2010 also sought disciplinary action against the real estate corporation license of Silver Star Realty, Inc. ("Silver Star"). We were unable to serve Silver Star with our notice of complaint/notice of hearing and a copy of the complaint. Neither Silver Star nor anyone representing Silver Star appeared at the hearing. The MREC requested additional time to obtain service on Silver Star. We have not received notice from the MREC concerning whether Silver Star has been served with a copy of the complaint. Therefore, we are deciding the disciplinary action against Jones only. The MREC shall inform this Commission by no later than March 21, 2011, whether it will proceed against Silver Star in this action:

Findings of Fact

1. The MREC is an agency of the State of Missouri created and existing under § 339.120 for the purpose of executing and enforcing the provisions of Chapter 339 of the Revised Statutes of Missouri relating to real estate salespersons and brokers.

2. Jones is licensed by the MREC as a real estate broker-officer with three licenses.² His three licenses were current and active at all relevant times.

Failure to Respond to MREC Inquiries Concerning Silver Star Audit Findings

3. On August 17, 2007, the MREC sent Jones a letter requesting that he respond to the MREC within thirty days concerning certain violations found in an audit of Silver Star that was conducted by the MREC on May 31, 2007. Jones did not respond within the thirty days as requested.

²The MREC issues a separate license to an individual for each entity in which he is licensed as a broker. Jones has three licenses because he is affiliated with three entities.

4. On October 3, 2007, the MREC sent Jones a second letter requesting a response to the MREC's August 17 letter. The MREC gave Jones until October 14 to respond to this letter. Jones did not respond.

5. On October 25, 2007, the MREC sent a letter to Jones advising him that he was scheduled to appear before the MREC on December 12, 2007 due to his failure to respond to letters from the MREC.³

6. On January 4, 2008, the MREC received a response from Jones.

7. On January 8, 2008, the MREC sent Jones a letter stating that it had received his response and requesting Jones to confirm whether his written office policy now included descriptions of agency relationships offered to the public as required by the Silver Star audit findings. Jones was requested to respond to this letter within fifteen days. Jones did not respond.

8. On February 11, 2008, a letter was sent to Jones noting that no response to the January 8 letter was received and that MREC rules required a response to inquiries within thirty days. The MREC requested Jones to respond by no later than February 22, 2008. Jones did not respond.

9. On February 28, 2008, the MREC sent a letter to Jones informing him that due to his failure to respond to previous correspondence, he was scheduled to appear before the MREC on April 9, 2008. Jones did not respond to the letter and did not appear before the MREC at the scheduled time.

³The MREC subsequently cancelled this meeting due to weather conditions before Jones was required to appear.

Failure to Pay Commissions

10. On March 17, 2008, Barbara L. Leonard sued Jones for unpaid real estate commissions. The suit was filed in the 16th Judicial Circuit Court of Jackson County, Missouri.

11. On July 25, 2008, Leonard received a default judgment against Jones in the amount of \$3,105.90 plus interest at the statutory rate and punitive damages in the amount of \$15,000. Jones has failed to pay the judgment.

Failure to Respond to MREC Inquiries Concerning Taxes Owed

12. On February 6, 2009, the MREC sent Jones a notice by both certified and regular mail to his registered address of 3910 NE Beechwood Dr., Lee's Summit, MO 64064 to inform Jones that the Department of Revenue ("DOR") had notified the MREC that Jones had not responded to its notice requiring him to file and/or pay his Missouri taxes. The MREC informed Jones that his licenses would be suspended on May 2, 2009, unless he took corrective action by that date. Jones did not respond.

13. On February 11, 2009, the DOR sent Jones a Notice of Balance Due-Individual Income to inform him that he had an outstanding balance due on his 2000 and 2001 Missouri individual income tax returns that must be resolved to avoid suspension of his professional license by operation of law.

14. On May 28, 2009, the MREC sent Jones a second notice by both certified and regular mail to his registered address to inform him that the DOR had informed the MREC that he had not satisfactorily responded to the previous notice from the DOR requiring him to file and or pay his Missouri taxes. The MREC's notice also informed Jones that his licenses were suspended by operation of law as of May 2, 2009, and that all licenses must be returned to the MREC within the next ten days.

15. On June 25, 2009, the MREC again sent Jones the second notice by both certified and regular mail to his registered address requesting him to return his professional licenses to the MREC. The MREC did not receive a response from Jones.

16. On July 20, 2009, a letter was sent to Jones by both certified and regular mail to his registered address informing him to appear before the MREC on August 12, 2009, unless he responded prior to the letter before August 7, 2009. Jones did not respond to the letter and did not appear before the MREC on August 12, 2009.

Kansas Disciplinary Action Against Jones

17. On December 18, 2008, the Kansas Office of Administrative Hearings issued an initial order against Jones in the case *In the Matter of Robert B. Jones*, Docket Number 2942, which disciplined the Kansas real estate broker license of Jones for the following violations:

- a. failing to respond to inquiries from the Kansas Real Estate Commission and failing to cooperate with an investigation by the Kansas Real Estate Commission in violation of Kan. Stat. Ann. 74-4202(b);
- b. failing to report a civil lawsuit for unpaid commissions filed against Jones and his companies in violation of Kan. Admin. Regs. 86-3-15(a)(1);
- c. failing to report the disposition of the civil lawsuit for unpaid commissions filed against Jones and his companies in violation of Kan. Admin. Regs. 86-3-15(a)(2);
- d. failing to report the default judgment in a civil lawsuit for unpaid commissions filed against Jones and his companies in violation of Kan. Admin. Regs. 86-3-15(a)(3);

- e. failing to report that two felony charges for passing bad checks had been filed against Jones in Jackson County, Missouri, and his subsequent arrest for the same in violation of Kan. Admin. Regs. 86-3-15(a)(4)(B); and
- f. failing to complete and return a company change request form or otherwise notify the Commission that Jones had changed the company address of one of his companies in violation of Kan. Stat. Ann. 58-3047(d).

18. For the above violations, the Kansas Office of Administrative Hearings found cause to discipline Jones under Kan. Stat. Ann. 58-3050(a)(1), which provides:

(a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:

(1) The licensee has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder[.]

19. The Kansas initial order subsequently became a final order effective on January 23, 2009. As a result, Jones' license was placed on inactive status. Jones was also ordered to surrender his license, to submit monthly status reports concerning the two pending felony cases against him, and to pay fines totaling \$3,300.

20. On April 15, 2009, the Kansas Real Estate Commission's Summary Proceedings Order, Docket No. 3181, revoked Jones' license effective May 5, 2009, for failing to comply with the requirements of the prior final order by failing to submit monthly status reports about the two pending felony cases and for failing to pay the \$3,300 fine. This further discipline was authorized by Kan. Stat. Ann. 58-3050(a)(5), which provides:

(a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any

licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:

* * *

(5) the licensee has violated any lawful order or directive of the commission[.]

Conclusions of Law

We have jurisdiction to hear this complaint.⁴ The MREC has the burden of proving by a preponderance of the credible evidence that Jones has 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 The MREC meets this burden by substantial evidence of probative value or by inferences reasonably drawn from the evidence.⁷

The 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:

* * *

(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;

⁴Section 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)(citation omitted).

⁷*Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

* * *

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

(20) Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state[.]

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

The MREC asserts there is cause to discipline Jones under § 339.100.2(15) for violating the following MREC regulations.

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.

Jones failed to respond within thirty days to several letters from the MREC that were sent to his registered address. These failures to respond violated this regulation.

CSR 2250-8.155(2)(A)(3) states:

(2) Revocation/Suspension.

(A) Individual Broker or Corporation, Partnership, or Association. Upon the revocation or suspension of an individual broker, corporation, partnership, or association, the individual broker or designated broker shall –

* * *

3. Notify all licensees associated with the brokerage of the revocation/suspension and return all licenses held by the broker to the [MREC].

After his licenses were suspended by operation of law, Jones failed to return his licenses as the MREC requested, in violation of this regulation.

We find cause to discipline Jones 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:

- (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.

A. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others.⁸ Jones acted dishonestly and unfairly by withholding the commissions owed to another and continuing to do so even after judgment against him for the commissions was rendered by the court. We find that Jones' failure to pay over real estate commissions owed to another demonstrates a lack of good moral character.

B. Reputation

Reputation means "the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character [.]"⁹ Reputation is "a consensus view of many people[.]"¹⁰ The MREC presented no evidence of Jones' reputation.

⁸*Hernandez v. State Bd. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

⁹WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986).

¹⁰*Haynam v. Laclède Elec. Coop, Inc.*, 827 S.W.2d 200, 206 (Mo. Banc 1992).

C. Competency

Competency, when referring to occupation, is the “the actual ability of a person to perform in that occupation.”¹¹ Incompetency is a “state of being” amounting to an inability or unwillingness to function properly in an occupation.¹² The MREC alleges that Jones’ failure to pay a commission that he owed to an agent, and not satisfying the subsequent judgment against him, demonstrates that he is not competent to transact the business of a broker officer in such a manner as to safeguard the interest of the public. But the disciplinary statute does not state that licensees may be subject to discipline for “incompetent” acts; it states that a license shall be granted only if the prospective licensee is “competent.” This evaluation necessitates a broader-scale analysis, taking into account the licensee’s capacities and successes. Based upon the limited facts before us, the MREC has failed to make the broader showing that Jones is not competent to transact the business of a broker officer in such a manner as to safeguard the interest of the public.

Jones has demonstrated a lack of good moral character, which is sufficient grounds for refusing to issue him a license under § 339.040.1(1). Therefore, we find cause to discipline Jones under § 339.100.2(16).

III. Disciplinary Actions by Other State – Subdivision (20)

For there to be cause for discipline under this subdivision, we must find a disciplinary action in another state based upon grounds for which the revocation, suspension, or probation of a license would be authorized in this state. “Disciplinary action” is “any censure, reprimand, suspension, denial, revocation, restriction or other limitation placed upon the license of a

¹¹See Section 1.020(8), RSMo 2000 (defining “incompetent” in relation to occupation ability).

¹²*Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009).

person[.]”¹³ Since the term “grounds” is not defined by statute, we rely on its common and ordinary meaning as found in the dictionary:

2a : the foundation or basis on which knowledge, belief, or conviction rests : a premise, reason, or collection of data upon which something (as a legal action or an argument) is made to rely for cogency or validity[.]¹⁴

The technical definition of “grounds” is equivalent: “The basis of a suit; the foundation or fundamental state of facts on which an action rests[.]”¹⁵ The question, therefore, is whether the underlying facts upon which the disciplinary action of another state was based would support the revocation, suspension, or probation of a license in this state.

There is no question that the Kansas Office of Administrative Hearings took disciplinary action against Jones. His license was placed on inactive status by the initial order and subsequently revoked by the summary proceedings order. The grounds for such disciplinary actions in Kansas would support revocation, suspension, or probation in Missouri.

In the initial order, the Kansas Office of Administrative Hearings found cause for discipline under Kan. Stat. Ann. 58-3050(a)(1) for violations of the act or regulations. Missouri has an equivalent statutory basis for discipline under § 339.100.2(15). Kansas imposed discipline upon Jones for, among other things, failing to respond to inquiries from the Kansas Real Estate Commission and for failing to cooperate in their investigation. This conduct would violate MREC Rule 20 CSR 2250-8.170(1) and serve as cause for discipline. Such conduct would authorize suspension, revocation, or probation of a license under §§ 339.100.2(15) and (16). Kansas imposed discipline on several other grounds, including Jones’ failure to report

¹³ *Bhuket v. State ex rel. Missouri Bd. Of Regis'n for the Healing Arts*, 787 S.W.2d 882, 885 (Mo. App., W.D. 1990)(interpreting “disciplinary action” as a nontechnical term for purposes of § 334.100.2(8), RSMo Supp. 1984).

¹⁴ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1002 (unabr. 1986).

¹⁵ BLACK'S LAW DICTIONARY 704 (6th ed. 1990).

address changes, failure to report judgments against him, failure to report felony criminal charges filed against him for passing bad checks, and failure to meet other reporting requirements. A failure to report a change of address is a violation of MREC Rule 20 CSR 2250-4.040(1), and the repeated failure to adhere to such regulatory requirements would authorize suspension, revocation, or probation of a license under § 339.100.2(16).

The Kansas Real Estate Commission's summary proceedings order imposed additional discipline on Jones because he failed to pay the fines imposed upon him and failed to make the monthly status reports on the two pending felony cases as ordered by the previous initial order. This conduct would also support the imposition of additional discipline in Missouri under § 324.042.

The Kansas disciplinary actions are based upon grounds that would authorize the revocation, suspension, or probation of a real estate broker-officer license in Missouri. Therefore, we find cause to discipline Jones under § 339.100.2(20).

IV. Other Conduct – Subdivision (19)

Section 339.100.2(19) allows discipline against a licensee for:

[a]ny other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

The adjective "other" means "not the same : DIFFERENT <any [other] man would have done better>."¹⁶ 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 § 339.100.2(15), (16), and (20). There is no "other" conduct. Therefore, we do not find cause to discipline Jones under § 339.100.2(19).

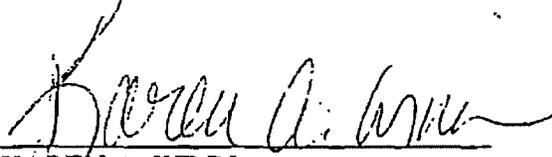
¹⁶WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

Summary

We find cause to discipline Jones under § 339.100.2(15), (16), and (20). We do not find cause to discipline Jones under § 339.100.2(19).

The MREC shall inform this Commission by no later than March 21, 2011, whether it will proceed against Silver Star in this action.

SO ORDERED on March 14, 2011.


KAREN A. WINN
Commissioner