**BEFORE THE MISSOURI REAL ESTATE COMMISSION**

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| MISSOURI REAL ESTATE COMMISSION<br><br>Petitioner,<br><br>v.<br><br>KISTER COMPANY INC.<br>and<br>GEORGE H. KISTER,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 10-2188 RE |

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

On or about September 15, 2011, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Kister Company Inc. and George H. Kister, No. 10-2188 RE.* In that Decision, the Administrative Hearing Commission found that Respondents Kister Company Inc.'s and George H. Kister's real estate licenses (license nos. 000004424, 1999022500 and 1999014759) are subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.105.2 (15) 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 February 15, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action

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

against Respondents' licenses. All of the members of the MREC, with the exception of Doris Carlin, were present throughout the meeting. Jan Hunt, Twila Hillme and Charles Davis participated through conference call. 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 Ross Brown. 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 Sections 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. Kister Company Inc. and George H. Kister, Case No. 10-2188 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 Kister Company Inc. as a real estate corporation, license number 000004424, and George H. Kister as a broker-officer, license

number 1999022500 and as a broker, license number 1999014759. Respondents' licenses numbered 000004424 and 1999022500 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 September 15, 2011, in *Missouri Real Estate Commission v. Kister Company Inc. and George H. Kister, Case No. 10-2188 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 September 15, 2011, Respondents' real estate licenses are subject to disciplinary action by the MREC pursuant to § 339.105.2 (15), RSMo.

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 the real estate licenses of Kister Company Inc. and George H. Kister (license nos. 000004424, 1999022500 and 1999014759) are hereby **REVOKED**. All evidence of Respondents' licensure shall be returned to the Commission within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form.

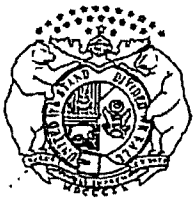
The MREC will maintain this Order as an open, public record of the MREC as provided in Chapters 339, 610, and 324, RSMo (as amended).

**SO ORDERED, EFFECTIVE THIS 23rd DAY OF February, 2012.**

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director

# Before the
# Administrative Hearing Commission
# State of Missouri



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| MISSOURI REAL ESTATE COMMISSION | ) | |
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| Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 10-2188 RE |
| | ) | |
| KISTER COMPANY, INC., and GEORGE H. KISTER, | ) | |
| | ) | |
| Respondents. | ) | |

## DECISION

George H. Kister and Kister Company, Inc. ("Kister Company") are subject to discipline for not cooperating with the Missouri Real Estate Commission's ("MREC") request for an audit of their escrow accounts and real estate records.

### Procedure

MREC filed a complaint on November 22, 2010, seeking disciplinary action against the licenses of Kister and Kister Company. We served a notice of complaint/notice of hearing and a copy of the complaint on Kister by certified mail on March 14, 2011. Kister did not file an answer. We also served the Secretary of State of Missouri with notice of the complaint/notice of hearing and a copy of the complaint by certified mail, as registered agent of Kister Company, which had been administratively dissolved at the time the complaint was filed.

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We continued the hearing from June 14, 2011, to June 30, 2011, on this Commission's motion. A hearing on the complaint was held on June 30, 2011. MREC was represented by Assistant Attorney General Ross Brown. Though notified of the date and time of the hearing, neither Kister nor anyone representing him or Kister Company appeared. This case became ready for decision on August 31, 2011, when the last brief was filed.

**Findings of Fact**

1. Kister is licensed by the MREC as a real estate broker officer and as a real estate broker, and Kister Company is licensed by the MREC as a real estate corporation. These licenses were current and active at all relevant times. Kister was the designated broker for Kister Company.

2. From January 16, 2009 through April 19, 2010, Kister Company's registered address was 225 S. Meramec Avenue, Suite 211, St. Louis, Missouri, 63105.

3. MREC randomly selected Kister and Kister Company for an audit of their real estate business activities and escrow accounts on or about January 16, 2009. MREC sent a letter to Kister at Kister Company's registered address notifying the company of its selection and that an MREC examiner would visit Kister Company's place of business within the next thirty days to conduct the audit.

4. An MREC examiner assigned to audit Kister Company called Kister's registered phone number on February 5, 2009, and left a message notifying Kister Company of the audit.

5. On February 12, 2009, Kister's attorney contacted the MREC to explain his client would be unable to submit to the audit due to a pending divorce and restraining order that prevented Kister from accessing the company's real estate records.

6. MREC's examiner called Kister's registered phone number on September 16, 2009, and left a message informing Kister MREC would contact him in a year to conduct the audit.

7. On January 8, 2010, MREC recommenced its attempts to contact Kister by telephone, only to discover the registered phone number was disconnected.

8. MREC made another attempt to contact Kister by telephone on January 26, 2010, but Kister's registered phone number was still disconnected.

9. MREC mailed a letter to Kister Company's registered address on January 26, 2010, notifying Kister of the previous attempts to reach him by telephone, and requesting Kister contact MREC's examiner within thirty days to schedule a date for the audit. The letter was not returned to MREC, nor did Kister contact MREC within the thirty-day period specified, or at all.

10. On February 26, 2010, MREC sent a third letter by certified mail to Kister Company's registered address, notifying Kister the audit was scheduled for April 19, 2010, at 9:00 a.m. The letter was returned to MREC, unclaimed.

11. On April 19, 2010, at 9:00 a.m., MREC examiner arrived at Kister Company's registered address, but Kister failed to appear for the appointment to provide access to his and the company's real estate records, including escrow accounts.

**Conclusions of Law**

We have jurisdiction to hear the case.[1] MREC has the burden of proving by a preponderance of the credible evidence that Kister and Kister Company engaged in conduct for which the law allows discipline.[2]

[1]Section 621.045. Statutory references are to RSMo Supp. 2010.
[2]*Missouri Real Estate Commission v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D., 1989).

## Cause for Discipline

MREC asserts there is cause for discipline under § 339.100.2(15), or alternatively, under § 339.100.2(19) RSMo, which provide:

> 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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> * * *
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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 33.710 to 339.860;
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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[.]

We examine below each of the regulations and statutes MREC maintains were violated by Kister and Kister Company and are cause for discipline of their real estate licenses.

### 1. Violation of § 339.105.3 and 20 CSR 2250-8.160(1)

MREC contends Kister and Kister Company violated § 339.105.3, which states:

> 3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

This statute is further amplified by MREC's rule 20 CSR 2250-8.160(1), which provides:

> (1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. . . .

After several failed efforts to contact Kister and Kister Company over the course of a year regarding a random audit, MREC's examiner attempted to conduct an audit of the company's escrow accounts and records on April 19, 2010, at the company's place of business during regular business hours. Neither Kister nor any representative of Kister Company appeared to make their escrow accounts and real estate records available for inspection. Because Kister and Kister Company failed to make their records available for inspection by MREC's examiner at the company's regular place of business, we find they violated § 339.105.3 and 20 CSR 2250-8.160(1). These violations are cause for discipline under § 339.100.2(15).

2. Violation of Section 20 CSR 2250-8.170

MREC maintains Kister and Kister Company also violated 20 CSR 2250-8.170(1), which states:

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

This regulation was adopted by MREC pursuant to §§ 339.010 to 339.180 and §§ 339.710 to 339.860.

MREC sent Kister letters on January 26, 2010 (by regular mail) and on February 26, 2010 (by both certified and regular mail), requesting a response within thirty days. Although the

letters sent via regular mail were delivered to Kister,[3] Kister never responded within the specified thirty day period, which is a violation of 20 CSR 2250-8.170(1). There is cause for discipline of Kister and Kister Company's licenses under § 339.100.2(15).

3. Violation of 20 CSR 2250-8.220

MREC argues Kister and Kister Company violated 20 CSR 2250-8.220(7), which provides:

> In addition to the notification required by section 339.105.2 RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the broker's property management escrow account(s) by the commission or its agent. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account.

MREC made several attempts to contact Kister and Kister Company regarding its intent to conduct an audit and examination of the licensees' real estate business activities, including escrow accounts. When the audit was finally scheduled for April 19, 2010, neither Kister nor a representative of Kister Company showed up at the company's place of business to meet with MREC's examiner. By refusing to consent to MREC's request to conduct an audit of its business accounts as required by 20 CSR 2250-8.220(7), a rule adopted pursuant to §§ 339.010 to 180 and §§ 339.710 to 339.860, we find further cause for discipline of Kister and Kister Company's licenses under § 339.100.2(15).

4. Additional Cause for Discipline under § 339.100.2(19)

MREC argues Kister and Kister Company are subject to discipline under § 339.100.2(19) for "any **other conduct** which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]" (Emphasis added.) This section specifically refers to "*other*" conduct, i.e., conduct different than referred to in the

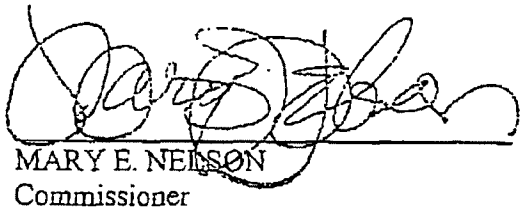
[3]The letters mailed by MREC via regular mail were not returned. Therefore, we presume delivery to Kister. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App., S.D. 1990)

remaining subdivisions of the statute. We have already found the conduct at issue is cause for discipline under § 339.100.2(15). There is no "other" conduct in evidence. Therefore, we find no cause for discipline under § 339.100.2 (19).

## Summary

There is cause to discipline the licenses of George H. Kister and Kister Company pursuant to § 339.105.2(15).

SO ORDERED on September 15, 2011.



MARY E. NELSON
Commissioner