# Before the
# Administrative Hearing Commission
# State of Missouri

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| MISSOURI REAL ESTATE COMMISSION, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 11-0333 RE |
| | ) | |
| METRO HOUSING FINDERS, L.L.C. and MARK M. TENDAI, | ) | 20040194 |
| | ) | |
| | ) | |
| Respondents. | ) | |
| | ) | |

**CONSENT ORDER**

The licensing authority filed a complaint. Section 621.045[1] gives us jurisdiction.

On July 13, 2012, the parties filed a Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings and Disciplinary Order. Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. ***Buckner v. Buckner***, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 339.100.2(1), (3), (14), (15) and (23). We incorporate the parties' proposed findings of fact and conclusions of law into this Consent.Order. We certify the record to the licensing agency under § 621.110.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110.

SO ORDERED on July 17, 2012.

KAREN A. WINN
Commissioner

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

RECEIVED
JUL 17 2012
MREC

**BEFORE THE**
**ADMINISTRATIVE HEARING COMMISSION**
**STATE OF MISSOURI**

FILED
JUL 13 2012
ADMINISTRATIVE HEARING COMMISSION

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| **MISSOURI REAL ESTATE COMMISSION,**<br>3605 Missouri Boulevard<br>P.O. Box 1339<br>Jefferson City, Missouri 65102<br><br>Petitioner,<br><br>v.<br><br>**METRO HOUSING FINDERS, L.L.C.,**<br>1937 S. Glenstone Ave.<br>Springfield, MO 65804<br>(417) 889-3880<br><br>and<br><br>**MARK M TENDAI, III,**<br>4336 E. Linwood<br>Springfield, MO 65809<br>(417) 818-0118<br><br>Respondents. | ) | Case No. 11-0333 RE |

**JOINT MOTION FOR CONSENT ORDER,**
**JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,**
**WAIVER OF HEARINGS**
**BEFORE THE ADMINISTRATIVE HEARING COMMISSION**
**AND THE MISSOURI REAL ESTATE COMMISSION,**
**AND DISCIPLINARY ORDER**

Respondents Metro Housing Finders, L.L.C., ("Metro Housing Finders") and Mark M. Tendai, III, ("Tendai") and Petitioner Missouri Real Estate Commission ("MREC") enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and MREC, and Disciplinary Order* ("Joint Stipulation") for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("Commission")(1 CSR 15-3.446(4)) and pursuant to the terms of § 536.060, RSMo[1], as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREC pursuant to § 621.110, RSMo Supp. 2011 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Metro Housing Finders and Tendai acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the

[1]All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Administrative Hearing Commission ("AHC"); the right to a disciplinary hearing before the MREC at which time Metro Housing Finders and Tendai may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the AHC and the MREC. Being aware of these rights provided Metro Housing Finders and Tendai by operation of law, Metro Housing Finders and Tendai knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation. Metro Housing Finders and Tendai further agree to abide by the terms of this document as they pertain to them.

Metro Housing Finders and Tendai acknowledge that they received a copy of the Complaint in this case which was filed with the AHC on February 22, 2011. Based on the stipulations of fact and law as set forth further below and the parties desire to mutually resolve this case short of additional litigation including a formal hearing before the AHC, Metro Housing Finders and Tendai stipulate that the factual allegations contained in this Joint Stipulation are true and stipulate with the MREC that Metro Housing Finder's license as a real estate association, license no. 2004019416, Tendai's license as a real estate broker-officer, license no. 1999010483, and Tendai's license as a real estate broker-associate, license no. 2004019434, are subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, as amended and § 339, RSMo Supp. 2011.

## A. JOINT STIPULATION

Based upon the foregoing, the MREC, Metro Housing Finders, and Tendai jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and

conclusions of law as alleged in the Complaint filed in this case, and request that the AHC adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the AHC's Findings of Fact and Conclusions of Law.

**JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Missouri Real Estate Commission ("MREC") is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, as amended, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and 339.710 to 339.860, RSMo, as amended, relating to real estate salespersons and brokers.

2. The MREC originally licensed Mark M. Tendai, III ("Tendai") as a real estate broker-officer on August 8, 1995. Tendai's previous license number was his social security number. His current broker-officer license number is 1999010483.

3. The MREC also licensed Tendai as a real estate broker-associate on June 23, 2004, license number 2004019433. Tendai received a second real estate broker-associate license, license number 2004019434. Both real estate broker-associate licenses have been canceled.

4. At all times relevant herein, Tendai's real estate licenses were current and active.

5. Metro Housing Finders, L.L.C. is registered with the Missouri Secretary of State, charter no. LC0010176.

6. Metro Housing Finders, L.L.C. was licensed by the MREC as a real estate association on June 23, 2004. Its license number is 2004019416. Metro Housing

Finders, LLC, no longer has an active license issued by the MREC but did during the time periods at issue in this settlement agreement.

7. At all times relevant herein, Tendai was the designated broker of Metro Housing Finders, as defined by Section 339.710(12); RSMo, as cited below; and, as such, Tendai bears responsibility for his own conduct as well as that of Metro Housing Finders.

> For purposes of sections 339.010 to 339.180, and sections 339.710 to 339.860*, the following terms mean:
>
> > (12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company, professional corporation or corporation shall appoint a designated broker[.]

8. Tendai's real estate licenses are culpable for the conduct and violations revealed by the MREC's audit of Metro Housing Finders.

9. Commencing or about between December 7, 2009, and continuing through January 14, 2010, an MREC investigator conducted an audit and examination of Respondents' business records and escrow accounts (the "Audit") for the period of November 2008 through November 2009 (the "Audit Period"). During this audit the MREC investigator noted various record keeping errors.

10. Section 339.100.2, RSMo Supp. 2011 provides, in pertinent part:

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:

> (1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;
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> . . . .
>
> (3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others[.]
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> . . . .
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> (14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent[.]
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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 339.710 to 339.860*[.]
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> . . . .
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> (23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860* who is not registered and

currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*[.]

**A. Violations of Section 339.100.2(15), RSMo.**

*Violations of 20 CSR 2250-8.200(1) and Section 339.780.2 and .3, RSMo.*

11. The Audit revealed that Tendai and Metro Housing Finders managed properties (the "Managed Properties") for a period of time ranging from 1 month to 12 months without a signed management agreement in violation of Section 339.780.2 and .3, RSMo, and 20 CSR 2250-8.200(1).

12. 20 CSR 2250-8.200(1) provides:

> (1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

13. Section 339.780.2 and .3, RSMo Supp. 2011 provides in pertinent part:

> 2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.
>
> 3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or

> tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

14. The conduct of Tendai and Metro Housing Finders, individually and collectively, in managing properties without a signed written agreement constitutes a violation of Section 339.780.2, RSMo, and 20 CSR 2250-8.200(1), providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo.

**B. Violations of Sections 339.100.2(1),(3), and (15), RSMo.**

*Violations of Section 339.105.1, RSMo.*

15. The Audit revealed that there were at least thirty instances of shortages in property management escrow accounts controlled by Tendai and Metro Housing Finders in violation of Section 339.105.1, RSMo.

16. The Audit revealed that there were at least nine instances of overages in property management escrow accounts controlled by Tendai and Metro Housing Finders in violation of Section 339.105.1, RSMo.

17. Section 339.105.1, RSMo Supp. 2011 provides, in pertinent part:

> 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be

specifically identified and deposited to cover service charges related to the account.

18. The conduct of Tendai and Metro Housing Finders, individually and collectively, in failing to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing; provides cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(1), RSMo, as cited above.

19. The conduct of Tendai and Metro Housing Finders, individually and collectively, in failing within a reasonable time to account for or to remit any moneys coming into their possession, which belongs to others, provides cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(3), RSMo, as cited above.

20. In creating an identified/unidentified shortage(s) and/or in allowing such shortage(s) to occur and/or to remain in the various above-mentioned escrow accounts, and in creating an identified/unidentified overage(s) and/or in allowing overage(s) to occur and/or to remain in the various above-mentioned escrow account(s), Tendai and Metro Housing Finders, individually and collectively, failed to maintain the escrow account(s) in violation of Section 339.105.1, RSMo, providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo, as cited above.

## C. Violations of Sections 339.100.2(15) and (23), RSMo.

*Violations of §§ 339.020 and 339.180.1, RSMo. and 20 CSR CSR 2250-8.020(1) and (2)*

21. The Audit revealed that an employee of Metro Housing Finders was advertising and showing properties without a real estate license when she was not employed or retained by the owner(s) to manage the property(ies) in at least forty-five instances, in violation of §§ 339.020 and 339.180.1, RSMo.

22. Section 339.020, RSMo, as amended, provides:

> It shall be unlawful for any person, partnership, association, or corporation, foreign or domestic, to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

23. Section 339.180.1, RSMo, as amended, provides in pertinent part:

> 1. It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required. Upon application by the commission, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person or entity from:
>
> > (1) Offering to engage or engaging in the performance of any acts or practices for which a permit or license is required by this chapter upon a showing that such acts or practices were performed or offered to be performed without a permit or license[.]

24. In permitting an employee to advertise and/or show properties when the employee did not hold a valid real estate license and was not employed or retained by the owner(s) to manage the property(ies), Tendai and Metro Housing Finders, individually and collectively, assisted and/or enabled a person to violate § 339.020, RSMo, providing

cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo, as cited above.

25. In permitting an employee to advertise and/or show properties when the employee did not hold a valid real estate license and was not employed or retained by the owner(s) to manage the property(ies), Tendai and Metro Housing Finders, individually and collectively, assisted and/or enabled a person to violate Section 339.180.1, RSMo, providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo, as cited above.

26. In permitting an employee to advertise and show properties when the employee did not hold a valid real estate license and was not employed or retained by the owner(s) to manage the property(ies), Tendai and Metro Housing Finders, individually and collectively violated 20 CSR 2250-8.020(1) and (2), as cited above, providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo, as cited above.

27. In permitting an employee to advertise and/or show properties when the employee did not hold a valid real estate license and was not employed or retained by the owner(s) to manage the property(ies), Tendai and Metro Housing Finders, individually and collectively, assisted and/or enabled a person to practice or offer to practice a profession licensed and/or regulated under §§ 339.010 to 339.180, RSMo, who is not registered and currently eligible to practice under §§ 339.010 to 339.180, RSMo, providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(23), as cited above.

**D. Violations of Sections 339.100.2(14) and (15), RSMo.**

28. The Audit revealed that Tendai and Metro Housing Finders advertised a property(ies) without Tendai holding a currently effective written listing agreement or other written authorization in at least twelve instances, in violation of Section 339.100.2(14), RSMo, and 20 CSR 2250-8.090(1).

29. 20 CSR 2250-8.090(1) provides:

> (1) A licensee shall not advertise or place a sign upon any property offering it for sale or lease to prospective customers without the written consent of the owner or his or her duly authorized agent.

30. The conduct of Tendai and Metro Housing Finders, individually and collectively, in placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent provides cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(14), RSMo.

31. In advertising properties without a written listing agreement or other written authorization, Tendai and Metro Housing Finders, individually and collectively, violated Section 339.100.2(14), RSMo, and 20 CSR 2250-8.090(1), providing cause to discipline the real estate licenses of Tendai and Metro Housing Finders pursuant to Section 339.100.2(15), RSMo, as cited above.

**B. JOINT DISCIPLINARY ORDER**

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Metro Housing Finder's license as a real estate association, Tendai's license as a real estate broker-officer and

Tendai's license as a real estate broker-associate, subject to the following terms and conditions, and entered by the MREC in this matter under the authority of §§ 536.060 and 621.110, RSMo Supp. 2011. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Metro Housing Finder's and Tendai's licenses are voluntarily surrendered.** Metro Housing Finder's license as a state licensed real estate association is hereby VOLUNTARILY SURRENDERED. Tendai's license as a state licensed real estate broker-officer and Tendai's licenses as a state licensed real estate broker-associate are hereby VOLUNTARILY SURRENDERED. Metro Housing Finders and Tendai shall immediately return all indicia of licensure to the MREC.

2. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Metro Housing Finders and/or Tendai of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

3. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREC or may be discovered.

4. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

5. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. The parties to this Joint Stipulation understand that the MREC will maintain this Joint Stipulation as an open record of the MREC as required by Chapters 339 and 610, RSMo, as amended.

7. Metro Housing Finders and Tendai, together with their partners, heirs, assigns, agents, employees, representatives and attorneys, do hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or

administrative tribunal deems this agreement or any portion thereof void or unenforceable.

## III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREC in the above-captioned cause.

LICENSEE

6.5.12.

Mark M. Tendai, III Date

METRO HOUSING FINDERS, LLC

By: 6.5.12.

Date

Title: Member

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