BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION Petitioner, v. MARK D. FULKS and MUSTANG VALLEY PROPERTIES, INC. Respondents.	)	No. 12-1492 RE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCIPLINARY ORDER

On or about November 29, 2012, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. Mark D. Fulks and Mustang Valley Properties, Inc.,* No. 12-1492 RE. In that Default Decision, the Administrative Hearing Commission found that Respondents' Mark D. Fulks' real estate broker officer license (license no. 2000148051) and Mustang Valley Properties, Inc.'s real estate corporation license (license no. 2000148065), are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15) and (19) RSMo[1].

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Default 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 Default Decision of the Administrative Hearing Commission. The MREC was represented by Assistant Attorney General Edwin Frownfelter. Following proper and timely notice Respondent Fulks appeared in person without legal counsel. Following proper and timely notice, Respondent Mustang Valley Properties, Inc. was not present 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 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 Default Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Mark D. Fulks and Mustang Valley Properties, Inc.*, No. 12-1492 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 Mustang Valley Properties, Inc. as a real estate corporation, license number 2000148065, and Mark D. Fulks as a broker officer, license number 2000148051. 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 Default Decision issued by the Administrative Hearing Commission dated November 29, 2012, in *Missouri Real Estate Commission v. Mark D. Fulks and Mustang Valley Properties, Inc.*, No. 12-1492 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 Default Decision dated November 29, 2012, Respondents Mark D. Fulks' real estate broker officer license (license no. 2000148051) and Mustang Valley Properties, Inc.'s real estate corporation license (license no. 2000148065) are subject to disciplinary action by the MREC pursuant to § 339.100.2 (15) and (19).

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 Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that Mark D. Fulks' real estate broker officer license (license no. 2000148051) and Mustang

Valley Properties, Inc.'s real estate corporation license (license no. 2000148065) are hereby placed on TWO YEARS PROBATION. During Respondents probation Respondents shall be entitled to practice under their respective licenses provided that Respondents adhere to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

The terms and conditions of the disciplinary period are as follows:

A. Respondents shall keep the Commission apprised at all times, in writing, of Respondents current addresses and telephone numbers at each place of residence and business. Respondents shall notify the Commission within ten (10) days of any change in this information.

B. Respondents shall timely renew Respondents licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain Respondents licenses in a current and active state.

C. If, at any time within the disciplinary period, Respondents change residence from the State of Missouri, cease to be currently licensed under the provisions of Chapter 339, or fail to keep the Real Estate Commission advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the disciplinary period.

D. Respondents shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the Missouri Real Estate Commission.

E. Upon the expiration and successful completion of the disciplinary period, Respondents' respective real estate broker officer license and real estate corporation license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Commission determines that Respondents have violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, suspend, revoke,

or otherwise lawfully discipline Respondents' real estate broker officer license and real estate corporation license.

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

MISSOURI REAL ESTATE COMMISSION, Petitioner, vs. MARK D. FULKS and MUSTANG VALLEY PROPERTIES, INC., Respondents.	)	No. 12-1492 RE

DEFAULT DECISION

On August 9, 2012, Petitioner filed a properly pled complaint seeking to discipline Respondents. Respondents were served with a copy of the complaint and our notice of complaint/notice of hearing by personal service on October 5, 2012.

More than thirty days have elapsed since Respondents were served. Respondents have not filed an answer or otherwise responded to the complaint. On November 21, 2012, Petitioner filed a motion to enter a default decision.

In accordance with § 621.100.2,[1] we enter a default decision against Respondents establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on November 29, 2012.

KAREN A. WINN
Commissioner

[1] RSMo Supp. 2011.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

Missouri Real Estate Commission 3650 Missouri Boulevard P.O. Box 339 Jefferson City, MO 65102-1339, Petitioner, v. Mark D. Fulks and Mustang Valley Properties, Inc. 111 SW 12th Street, Suite C Oak Grove, MO 64075 Respondents.	)	Case #: 12-1492 RB Received at Administrative Hearing Commission AUG 13 2012 Filed by Certified / Registered Mail 8/9/12

Serve Mustang Valley Properties by Mark D. Fulks, 111 SW 12th St., Suite C, Oak Grove, MO 64075

COMPLAINT

Petitioner, Missouri Real Estate Commission, by and through the Attorney General of the State of Missouri, and for its cause of action against Respondents, Mark D. Fulks and Mustang Valley Properties, Inc., states the following:

1. The Missouri Real Estate Commission ("MREC") is an agency of the State of Missouri, created and established pursuant to Section 339.120,

RSMo,[1] for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, Real Estate Agents, Brokers, Appraisers and Escrow Agents.

2. Respondent, Mark D. Fulks (Fulks), is an adult individual whose registered address is 111 SW 12th Street, Suite C, Oak Grove, MO 64075, and who holds a Missouri license as a Real Estate Broker Officer, License No. 2000148051, which was issued May 11, 1989. Fulks's license was current and active at the time of all facts alleged below.

3. Respondent Mustang Valley Properties, Inc. (Mustang Valley), is a Missouri corporation whose registered address is 111 SW 12th Street, Suite C, Oak Grove, MO 64075, and which holds a Missouri license as a Real Estate Corporation, License No. 2000148065, which was issued February 2, 2000. Mustang Valley's license was current and active at the time of all facts alleged below. The Designated Broker for Mustang Valley is Mark D. Fulks.

4. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo, and § 339.120, RSMo.

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[1] All statutory citations are to the Revised Statutes of Missouri, Supp. 2011, unless otherwise noted.

APPLICABLE LAW

5. Section 339.100.2(15) and (19), RSMo, states:

> 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, 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;
>
> . . . . .
>
> (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

6. Section 339.780, RSMo, states:

> 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.

7. The MREC has adopted a valid regulation codified at 20 CSR 2250-8.090(4), which states in pertinent part:

> (4) Seller's/Lessor's Agency (Sale/LeaseListing) Agreement.
> (A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:
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> * * *
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> 6. A statement which permits or prohibits the designated broker from offering subagency;
> 7. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;
> 8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;
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> * * *
>
> 14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

8. The MREC has adopted a valid regulation codified at 20 CSR 2250-8.100(1), which states in pertinent part:

> Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms.

9. The MREC has adopted a valid regulation codified at 20 CSR 2250-8.140(1), which states:

> (1) When acting as a broker in a transaction, a broker may use current standardized forms including, but not limited to, contracts, agency disclosures, property management agreements, listing agreements, warranty deeds, quit claim deeds, trust deeds, notes, security instruments and leases, prepared or approved by the broker's counsel or by the counsel for a trade association of which the broker is a member or associate member, or by a Missouri state or local bar association and may complete them by filling in blank spaces to show the parties, property description and terms necessary to close the transaction the broker has procured.

10. The MREC has adopted a valid regulation codified at 20 CSR 2250-8.170, which states:

> (1) 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.

COUNT I: AUDIT FINDINGS

11. The allegations of Paragraphs 1 through 10 are incorporated herein.

12. On August 7, 2009, Fulks was notified by a letter from Linda J. Smith, Examiner I for the Missouri Real Estate Commission that he had been chosen by random selection to be audited by the MREC staff.

13. An audit of Fulks and Mustang Valley was performed by Ms. Smith on August 27, 2009.

14. The examiner found that Fulks and Mustang Valley had committed the following violations of Chapter 339, RSMo, and MREC regulations:

(1) Listing agreements did not contain a statement which permits or prohibits an offer of subagency, in violation of 339.780.2, RSMo (Supp. 2008), and 20 CSR Section 2250-8.090(4)(A)6.

(2) The licensee acted as an agent of the buyer without obtaining a written agency agreement, in violation of Section 339.780.3, RSMo (Supp. 2008).

(3) A listing agreement did not include a statement which permits or prohibits the licensee from acting as a dual agent, in violation of 20 CSR 2250-8.090(4)(A)7.

(4) Listing agreements did not include a statement which permits or prohibits the licensee from acting as transaction broker, n violation of 20 CSR 2250-8.090(4)(A)8.

(5) On two occasions, all terms and conditions under which the property could be sold were not contained in the listing agreement, in violation of 20 CSR 2250-8.090(4)(A)14.

(6) A change to a listing agreement was not initialed by the owner and the licensee, in violation of 220 CSR 250-8.090(4)(C).

(7) All terms and conditions were not specified in the offer to purchase, in violation of 20 CSR 2250-8.100(1).

(8) The broker used an expired form, in violation of 20 CSR 2250-8.140(1).

15. Each of these violations is cause for discipline under the terms of Section 339.100.2(15), RSMo.

COUNT II: FAILURE TO RESPOND

16. The allegations of Paragraphs 1 through 15 are incorporated herein

17. By letter dated December 16, 2009 sent to the business address for Fulks and Mustang Valley, MREC requested that Fulks "confirm that

Fulks and Mustang Valley have taken the necessary steps to reduce... violations [reported in the audit], in order to insure future compliance with the statutes and regulations."

18. Fulks did not respond to the MREC's December 16, 2009 letter.

19. By letter dated January 29, 2010, the MREC allowed Fulks and Mustang Valley another ten days to respond to the MREC's December 16, 2009 letter.

20. Fulks and Mustang Valley did not respond to the MREC's January 29, 2010 letter.

21. By letter dated March 3, 2010, the MREC requested that Fulks and Mustang Valley appear before the Commission at its April 14, 2010 meeting.

22. Fulks and Mustang Valley did not respond in writing to the MREC's March 3, 2010 letter or appear at its April 14, 2010 meeting.

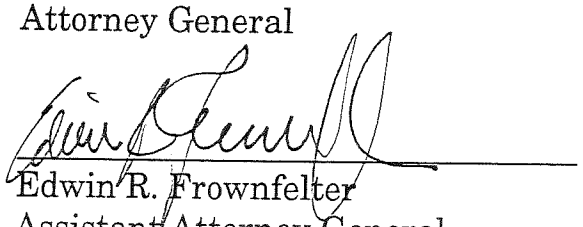
23. The failure of Fulks and Mustang Valley to respond to the MREC's letters of December 16, 2009, and January 29, 2010, and their failure to appear as requested before the MREC at its meeting of April 14, 2010, constitute violations of 20 CSR 2250-8.170, which is cause for discipline under the terms of Section 339.100.2(15), RSMo (Supp. 2008).

24. The failure of Fulks and Mustang to provide proof they had remedied violations found in the MREC's audit, or to respond to letters requesting their position on the matter and their appearance before the MREC, constituted conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence, which is cause for discipline under Section 339.100.2(19), RSMo (Supp.2008).

WHEREFORE, Petitioner prays this Administrative Hearing Commission to conduct a hearing in this case pursuant to sections 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of law that the Petitioner may discipline Respondent Mark D. Fulks' Real Estate Broker Officer license and Mustang Valley Properties, Inc.'s Real Estate Corporation license under the relevant provisions of Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

CHRISTOPHER A. KOSTER
Attorney General



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August 9, 2012

Received at
Administrative Hearing Commission

AUG 13 2012

Filed by Certified / Registered Mail

Jamila Adams, Hearings Secretary
Administrative Hearing Commission
PO Box 1557
Jefferson City, MO 65102

Re: Missouri Real Estate Commission v. Mark Fulks and Mustang Valley Properties, Inc.

Dear Ms. Adams:

Enclosed for filing is an original of a Complaint by the Missouri Real Estate Commission against Mark Fulks and Mustang Valley Properties, Inc.

I anticipate that four months should be sufficient for discovery and prehearing motions in this matter. I estimate that one half day would be required for hearing.

Also enclosed are three copies of the complaint. Two are for service upon Mr. Fulks individually and on behalf of Mustang Valley. Would you please return the other copy time-stamped to me in the enclosed self-addressed envelope? Thank you.

Sincerely,

CHRIS KOSTER, Attorney General

Edwin R. Frownfelter
Assistant Attorney General

cc: Janet Carder, Executive Director, Missouri Real Estate Commission

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