

**BEFORE THE  
MISSOURI REAL ESTATE COMMISSION  
STATE OF MISSOURI**

<b>Missouri Real Estate Commission,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 10-11-202</b>
	)	
<b>Claire E. Noland,</b>	)	
	)	
<b>Respondent.</b>	)	

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

Pursuant to notice and §§ 621.110, 339.100.3 and 324.042, RSMo,<sup>1</sup> the Missouri Real Estate Commission (“MREC”) held a hearing on April 18, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondent had violated the probationary terms of a prior MREC disciplinary order and if so, whether additional discipline of Respondent’s license was warranted. All of the members of the MREC were present throughout the meeting except for Jan Hunt and Rosemary Vitale. The MREC was represented by Assistant Attorney General Joseph Goff, Jr. Respondent was properly and timely notified of the hearing. Respondent Noland did not appear individually or 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 Disciplinary Order.

Based on the foregoing, the MREC states:

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

**I.**  
**FINDINGS OF FACT**

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

2. The Respondent, Claire E. Noland, is licensed by the MREC as a real estate broker, license number 2007028347, and said license was current and active at all times relevant to this proceeding.

3. On April 19, 2011, the MREC issued an Order of the Missouri Real Estate Commission Disciplining the Real Estate Licenses of Claire E. Noland and 3-Dee Solutions Inc. ("Disciplinary Order") based on the December 14, 2010 findings of the Administrative Hearing Commission that cause existed to discipline Noland's licenses.

4. On April 19, 2011, pursuant to Part III of the Disciplinary Order issued by the MREC, Noland's license was placed on two (2) years probation and she was required to pay a five-hundred (\$500.00) dollar civil penalty within 60 days of the issuance of the Disciplinary Order.

5. Payment of the civil penalty was due on June 18, 2011.

6. Noland failed to remit payment of the civil penalty by June 18, 2011. As of the April 18, 2012 hearing before the MREC, Noland had failed to remit payment of the civil penalty.

7. Part IV, H. of the Disciplinary Order provides:

The Commission retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Commission. No order shall be entered by the Commission pursuant to this paragraph without any required notice and

opportunity for a hearing before the Commission as provided by Chapter 536, RSMo (as amended).

8. As a result of the foregoing, a Probation Violation Complaint was filed with the MREC alleging that grounds existed for additional disciplinary action against Respondent's Missouri real estate license, pursuant to § 324.042, RSMo.

9. The MREC set this matter for hearing and served notice of this disciplinary hearing upon Respondent in a proper and timely fashion.

10. Respondent was properly and timely notified of the MREC's April 18, 2012 hearing. While Respondent was not present at the hearing and was not represented by counsel, Respondent's April 17, 2012 correspondence regarding her intention to pay the civil penalty was presented to the MREC.

## II.

### CONCLUSIONS OF LAW

11. Pursuant to § 324.042, RSMo, the MREC has authority to impose additional discipline against Respondent Claire E. Noland for violating any disciplinary terms previously imposed pursuant to the Disciplinary Order.

12. Section 324.042, RSMo, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

13. Section 339.100.3, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license or by imposing a civil penalty not to exceed \$2,500 for each offense.

14. Section 339.205, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing through an order imposing a civil penalty not to exceed \$2,500 for each offense.

15. Part IV, H. of the Disciplinary Order provides the MREC with jurisdiction to impose additional discipline following notice, a hearing and a determination of a violation of the Disciplinary Order.

16. Further, with regard to failure to pay a civil penalty, § 339.205.7, RSMo, states in relevant part:

Failure to pay a civil penalty by any person licensed under this chapter shall be grounds for denying, disciplining or refusing to renew or reinstate a license or certificate of authority.

17. Noland violated the terms of the Disciplinary Order and the terms and conditions of her probation with the MREC because she failed to remit payment within the 60 day timeframe, or at all. Therefore, the MREC has sufficient grounds to impose additional discipline pursuant to § 324.042, RSMo and the Disciplinary Order.

18. Noland's failure to pay the civil penalty imposed by the MREC is a violation of § 339.205.7, RSMo, and therefore, constitutes independent grounds for the MREC to impose additional discipline.

19. The MREC finds Respondent has violated the terms and conditions of the April 19, 2011 Disciplinary Order as a result of the conduct identified in the Findings of Fact herein.

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

III.

## ORDER

Therefore, having fully considered all the evidence before the MREC, it is the ORDER of the MREC that:

21. The real estate license of Respondent, Claire E. Noland, license number 2007028347, is hereby placed on PROBATION until October 19, 2013. Respondent must also pay a civil penalty of \$500 by certified check made payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within sixty days of the date of this Order. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and § 339.205.8, RSMo. Respondent's failure to pay the full amount of the \$500 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's probation. This \$500 civil penalty takes the place of the \$500 civil penalty ordered in the MREC's April 19, 2011 Disciplinary Order.

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

- A. Respondent shall keep the MREC apprised at all times, in writing, of her current address and telephone number at each place of residence and business. Respondent shall notify the Commission within ten (10) days of any change in this information.
- B. Respondent shall timely renew her license and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain her license in a current and active state.
- C. Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the MREC.
- D. Respondent shall appear in person for interviews with the MREC or its designee upon request.

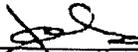
23. Upon the expiration and successful completion of the disciplinary terms, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Commission determines that Respondent has violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Respondent's real estate broker license.

24. The MREC retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the MREC. No order shall be entered by the MREC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREC as provided by chapter 536, RSMo.

25. Any failure of Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.

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

So Ordered this 30th day of April, 2012.

  
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Janet Carder  
Executive Director  
Missouri Real Estate Commission



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 Craig Jacobs. Respondent Claire Noland was present and represented herself. Respondent 3-Dee Solutions Inc. was not present and was not represented by counsel. After 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 AND CONCLUSIONS OF LAW**

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. Claire E. Noland and 3-Dee Solutions Inc., Case No. 09-0449 RE* in its entirety.
3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion.
4. This Commission licensed Respondents Claire E. Noland and 3-Dee Solutions Inc. as a real estate broker and association, license numbers 2007028347, 1999099307 and 2007028346 respectively. Respondents' licenses numbered 2007028347 and 2007028346 were

current at all times relevant to this proceeding. Respondent Noland's license numbered 1999099307 expired on June 30, 2008.

## 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 December 14, 2010, in *Missouri Real Estate Commission v. Claire E. Noland and 3-Dee Solutions Inc., Case No. 09-0449 RE*, 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 14, 2010, Respondents' real estate licenses are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15), RSMo 2000.

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 Claire E. Noland and 3-Dee Solutions Inc. (license nos. 2007028347, 1999099307 and 2007028346) are hereby placed on **PROBATION** for two (2) years. 3-Dee Solutions Inc.'s probation will become effective upon reinstatement/activation of the license. Respondent Noland must also pay a civil penalty of \$500 by certified check made

payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within sixty days of the date of this Order. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo Cum. Supp. 2009. Respondent Noland's failure to pay the full amount of the \$500 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's probation.

#### IV.

#### TERMS AND CONDITIONS

During the aforementioned probation, Claire E. Noland and 3-Dee Solutions Inc. shall be entitled to perform as real estate licensees subject to the following terms and conditions:

- A. During the probationary period, Respondents shall maintain full compliance with all provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo, and all rules and regulations promulgated by the Commission.
- B. During the probationary period, Respondents shall keep the Commission informed of their current work and home addresses and telephone numbers. Respondents shall notify the Commission in writing within ten days (10) of any change in this information.
- C. During the probationary period, Respondents shall timely renew their licenses granted hereby and shall timely pay all fees required for licensure and comply with all other Commission requirements necessary to maintain said licenses in a current and active state.
- D. During the probationary period, Respondents shall accept and comply with unannounced visits from the Commission's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the probationary period, Respondents shall appear in person for interviews with the Commission or its designee upon request.
- F. If, at any time during the probationary period, Respondents change their address from the state of Missouri, or cease to maintain their real estate license current or active under the provisions of Chapter 339, RSMo (as amended), or fail to keep the Commission advised of all current places of residence, the time of such absence, unlicensed or inactive status,

or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.

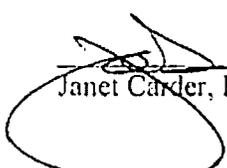
- G. Upon expiration of the probationary period, Respondents' licenses shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Commission determines that Respondents have violated any term or condition of this Order, the Commission may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.
- H. The Commission retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Commission. No order shall be entered by the Commission pursuant to this paragraph without any required notice and opportunity for a hearing before the Commission as provided by Chapter 536, RSMo (as amended).
- I. Unless otherwise specified by the Commission, all reports, documentation, notices, or other materials required to be submitted to the Commission shall be forwarded to: Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, Missouri 65102.
- J. Any failure by Claire E. Noland or 3-Dee Solutions Inc. to comply with any condition of discipline set forth herein constitutes a violation of this Order.

This Order does not bind the Commission or restrict the remedies available to it concerning any violation by Respondents of the terms and conditions of this Order, Sections 339.010-339.205 and 339.710-339.855, RSMo (as amended), or the regulations promulgated thereunder.

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 19<sup>th</sup> DAY OF April, 2011.

MISSOURI REAL ESTATE COMMISSION

  
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Janet Carder, Executive Director

Before the  
Administrative Hearing Commission  
State of Missouri



RECEIVED  
DEC 13 2010  
MO. ATTORNEY GENERAL

MISSOURI REAL ESTATE COMMISSION, )  
)  
Petitioner, )  
)  
vs. )  
)  
CLAIRE E. NOLAND and )  
3-DEE SOLUTIONS, INC., )  
)  
Respondents. )

No. 09-0449 RE

RECEIVED  
DEC 23 2010  
MREC

DECISION

Claire Noland and 3-DEE Solutions, Inc., are subject to discipline for not responding to the Missouri Real Estate Commission's ("the MREC") requests for information, and for failure to notify the MREC of 3-DEE's dissolution. They are not subject to discipline for failing to notify the MREC of a change of address. Noland is not subject to discipline for a lack of good moral character, for lacking a reputation for honesty, integrity, and fair dealing, for incompetence, or for other conduct that constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence.

Procedure

On March 31, 2009, the MREC filed a complaint seeking to discipline Noland and 3-DEE. On May 14, 2009 the MREC filed an amended complaint. As set out in Paragraphs 26-28 of our findings of fact, we sent a copy of the original complaint to Noland by certified mail,

return receipt requested, on April 10, 2009, but she never picked up the letter, and it was returned to us. Another copy of that letter was sent to 3-DEE at its registered office, care of its registered agent, Donald Bucher. On May 18, 2009, an answer was filed. On July 13, 2009, an answer to the amended complaint was filed. On September 2, 2009, the MREC filed a motion for leave to file a second amended complaint. Respondents objected and filed a motion to dismiss the first amended complaint. We granted the motion to file a second amended complaint on October 6, 2009, and denied Respondents' motion to dismiss the first amended complaint as moot. On October 19, 2009, an answer to the second amended complaint was filed.

On November 18, 2009, the MREC filed a motion for summary decision.<sup>1</sup> We denied that motion on January 27, 2010. On February 11, 2010, we held a hearing. The MREC was represented by Assistant Attorney General Yamini Laks. Noland and 3-DEE were represented by Janice Noland and Claire Noland (who, in addition to being a Respondent here, is a licensed attorney). The matter became ready for our decision on August 12, 2010, the date the last brief was filed.

#### Findings of Fact

1. The MREC originally issued Noland a license as a broker officer on September 5, 2007.
2. The MREC originally issued 3-DEE a license as a real estate corporation on September 5, 2007.
3. Noland has been the designated broker for 3-DEE for the entirety of 3-DEE's existence.
4. 3-DEE's registered office in Missouri is 1441 E. 104<sup>th</sup> Street, Suite 100, Kansas City, Missouri, 64131, and its registered agent for service of process at that address is Donald Bucher.

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<sup>1</sup>Regulation 1 CSR 15-3.446(5).

5. Noland received mail at 5421 NE Northgate Crossing, Lee's Summit, Missouri, 64064 ("the Northgate Crossing address") from around July 30, 2008, and continued to receive mail there throughout the times in question in this case.
6. On April 17, 2008, the Missouri Secretary of State administratively dissolved 3-DEE for its failure to file a correct and current annual report for 2008.
7. At all relevant times, the address of record registered with the MREC for both 3-DEE and Noland was the Northgate Crossing address.
8. Noland's and 3-DEE's licenses expired on or about June 30, 2008, because renewal applications for their licenses were not timely filed.
9. On August 6, 2008, Noland filed an application to renew her own license for the period July 1, 2008, to June 30, 2010. The application states that Noland's address was the Northgate Crossing address.
10. 3-DEE filed its application to renew its license for the period July 1, 2008 to June 30, 2010, on August 6, 2008. The application states that 3-DEE's address was the Northgate Crossing address. The application is signed by Noland as 3-DEE's designated broker.
11. In answer to the question on the application "Is this corporation currently in good standing with the Missouri Secretary of State's Office?" the answer is "No." The following is written beneath the question: "My check to Sec of State for annual report never came through my account. Therefore, their [illegible] it was lost. We are in the process of reinstatement. I will provide to you upon receipt. Thank you!"
12. The MREC renewed the licenses of both Noland and 3-DEE, and those licenses remained active through June 30, 2010.

13. On October 29, 2008, the MREC sent Noland and 3-DEE a letter by regular mail requesting that they provide evidence from the Missouri Secretary of State's office that 3-DEE was in good standing. The letter was mailed to the Northgate Crossing address.

14. Neither Noland nor 3-DEE responded to the October 29, 2008, letter.

15. On November 13, 2008, the MREC sent Noland a letter by regular mail, stating that its records indicated that Noland's license had expired for at least one month prior to receipt of her late renewal application. This letter asked for an attestation that Noland had not engaged in any real estate activity in Missouri during the period when her license was expired, or for a statement of what real estate activity had been conducted during that time. The letter requested Noland's response by December 13, 2008. This letter was mailed to the Northgate Crossing address. A separate letter, with essentially the same content (i.e., inquiring into whether 3-DEE had conducted any real estate activity during the period when its license was expired), was mailed on November 13, 2008, to 3-DEE at the Northgate Crossing address.

16. Neither Noland nor 3-DEE responded to the November 13, 2008, letters.

17. On December 5, 2008, the MREC sent Noland and 3-DEE a letter by regular mail, placing Noland on formal notice that she had 30 days to reply to the MREC's October 29, 2008, letter. This letter was mailed to the Northgate Crossing address.

18. Neither Noland nor 3-DEE responded to the December 5, 2008, letter.

19. On January 5, 2009, the MREC sent Noland a letter by regular mail, placing Noland on formal notice that she had 30 days to reply to the MREC's November 13 letter. This letter was mailed to Noland at the Northgate Crossing address. A separate letter, with the same content, was mailed on January 5, 2009, to 3-DEE at the Northgate Crossing address.

20. Neither Noland nor 3-DEE responded to the January 5, 2009, letters.

21. On January 14, 2009, the MREC sent Noland and 3-DEE a letter, certified mail, return receipt requested, informing them that due to their failure to respond to the October 29 and December 5 letters, they were scheduled to appear before the MREC on February 11, 2009. This letter also states that if the MREC received a response before January 30, 2009, the scheduled appearance would be canceled. This letter was mailed to the Northgate Crossing address.

22. Neither Noland nor 3-DEE responded to the January 14, 2009, letter.

23. The post office in Lee's Summit, Missouri, sent two notices to Noland's address to pick up the January 14 letter.

24. The January 14 letter was not picked up, but was returned to the MREC marked "unclaimed" and "unable to forward."

25. Neither Noland nor 3-DEE appeared before the MREC on February 11, 2009.

26. A copy of the original complaint in this case, along with our standard "Notice of Complaint/Notice of Hearing," was mailed by us, certified mail, return receipt requested, restricted delivery, to Noland on April 10, 2009.<sup>2</sup>

27. The post office in Lee's Summit, Missouri sent two notices to Noland's address to pick up our April 10 letter.

28. Our April 10, 2009 letter was not picked up, but was marked "unclaimed" and returned to us.

#### Conclusions of Law

We have jurisdiction to hear the complaint.<sup>3</sup> The MREC has the burden of proving that Noland has committed an act for which the law allows discipline.<sup>4</sup>

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<sup>2</sup>We take official notice of our case file and transcript because it is relevant to this case. Section 536.070(6) allows us to "take official notice of all matters of which the courts take judicial notice." Statutory references, unless otherwise noted, are to RSMo Supp. 2009. Courts may take judicial notice of their own records. *Bray v. Bray*, 629 S.W.2d 658, 660 (Mo. App., E.D. 1982).

<sup>3</sup>Section 621.045.

<sup>4</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

The MREC argues that there is cause for discipline under § 339.100.2:

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:

\* \* \*

(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 commission 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[.]

Failure to Respond--20 CSR 2250-8.170(1)

The MREC argues that, by failing to respond to its requests for information, Noland and 3-DEE violated § 339.100.2(15) due to its violation of Regulation 20 CSR 2250-8.170(1), which provides:

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.

The MREC sent five letters to Noland, or Noland and 3-DEE, over the period between October 29, 2008, and January 14, 2009. Neither Noland nor 3-DEE responded to any of the letters. Noland claimed that she never received any of the letters because a) the post office was

not properly delivering her mail, and b) the post office forwarded items of mail addressed to corporations or other artificial entities to the prior occupant, an attorney named Elizabeth Marrs.

To prevail on her argument that she did not receive the MREC's letters, Noland must overcome the presumption under Missouri law that a mailed letter was received by the addressee.<sup>5</sup> That presumption may be rebutted by evidence showing that the mailing was not received. Evidence of non-receipt does not nullify the presumption, but leaves the question for the determination of the finder of fact under all the facts and circumstances of the case.<sup>6</sup>

Noland presented the following evidence regarding non-delivery at the hearing: a) her narrative testimony regarding the mail problems at the Northgate Crossing address; b) a May 29, 2009, letter to Noland from Marrs; c) a June 6, 2009, "to whom it may concern" letter from Rhonda Schmidt, a post office supervisor at the Lee's Summit post office, dated June 26, 2009; and d) the testimony of Janice Noland, Noland's mother (and her attorney in this proceeding). We discuss each in turn.

Noland testified that due to the forwarding instructions for Marr's mail, "anything that did not say Claire Noland on it was to be sent to [Marr's] address in Lone Jack, Missouri."<sup>7</sup> She also testified that she "never received a piece of mail from the [MREC] at all."<sup>8</sup>

Marr's letter states that there were mail delivery problems at the Northgate Crossing address and in the neighborhood generally, and she received mail at the Northgate Crossing address for businesses for which she was the registered agent or contact person.

Schmidt's letter states that: a) Noland resides at the Northgate Crossing address, b) before Noland moved there, a person lived there "that received between 28-31 different business

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<sup>5</sup>*Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo.App., E.D. 2000); *Insurance Placements, Inc. v. Utica Mut. Ins. Co.*, 917 S.W.2d 592, 595 (Mo.App., E.D. 1996).

<sup>6</sup>*Clear*, 23 S.W.3d at 900; *Insurance Placements*, 917 S.W.2d at 595.

<sup>7</sup>Tr. at 11.

<sup>8</sup>*Id.*

mail at that address," c) when this person moved, "all business mail was forwarded, including Claire Noland's," and d) "The confusion has been cleared up."

Noland's mother (and attorney), Janice P. Noland, testified that she had tried to send Noland mail "at least ten times" in the previous two years, but that the mail would never be delivered and also would not be returned to Janice Noland.

The MREC, in response to the assertions of non-delivery, presented a sworn affidavit from the postmaster of the Lee's Summit post office, Albert Esquivel.<sup>9</sup> This affidavit states that: a) Noland had been receiving mail at the Northgate Crossing address from around July 30, 2008; b) all mail delivered with the surname "Noland" was delivered to the Northgate Crossing address; c) the January 14, 2009, letter from the MREC was sent to Noland at the Northgate Crossing address, and the post office sent a second notice to pick up the letter on January 22, 2009; d) that letter was returned to the MREC, marked "unclaimed, unable to forward;" e) the April 10 letter from the MREC was delivered to the Northgate Crossing address, and the post office sent a second notice to pick up the letter on April 29, 2009; and f) that letter was returned to the MREC marked "unclaimed."

The evidence contradicts Noland's testimony that none of the MREC's letters ever reached her because the post office forwarded them to Marrs (who, we infer, failed to bring them to Noland's attention). First, Noland's testimony depends on the assertion that all five letters from the MREC were addressed to 3-DEE and were therefore routed to Marrs. That is not the case. The October 29, 2008, December 5, 2008, and January 14, 2009, letters were single letters that were addressed to both Noland and 3-DEE and, if the postmaster's sworn affidavit is to be taken at face value, mail addressed to Noland was being delivered to the Northgate Crossing

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<sup>9</sup>Ex. 2.

address from July 30, 2008, a date before the date when the first of the five MREC's letters were sent.<sup>10</sup> Furthermore, the presumption of delivery states that a mailed letter is presumed to be received *by the addressee* – and here, Noland was an addressee of all five letters.

Second, we have copies of two envelopes addressed to Noland that, according to the postmaster, were delivered to the Northgate Crossing address, but were neither claimed by Noland nor forwarded to anyone. The first was the certified mail notice dated January 14, 2009, from the MREC, addressed to Noland and 3-DEE, requesting Noland's and 3-DEE's presence before the MREC. The second was our letter to Noland dated April 10, 2009, where we informed her of the complaint filed against her and included a copy of said complaint. According to an affidavit from the postmaster of the Lee's Summit post office, the envelope containing the Board's letter was returned "unclaimed, unable to forward," while the MREC's letter was marked "unclaimed" and returned to us.<sup>11</sup> The notations on the envelopes themselves support the statements in the postmaster's affidavit.

While we admitted the letters from Marrs and Schmidt into evidence, we did so subject to the MREC's hearsay objection and considered the objection as going to the weight of the evidence. As such, they are not sufficiently persuasive to overcome the presumption of delivery – nor, for that matter, was the testimony of Noland and her mother regarding mail delivery to the Northgate Crossing address. Therefore, we are not persuaded that none of the five items sent by the MREC to Noland was delivered to that address, in part because we know, from extrinsic evidence, what happened to the last of the MREC's letters, as well as our mailing of the original

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<sup>10</sup>Noland presented, as Exhibit C to Respondent's Answer to Petitioner's Motion for Summary Determination, another written statement from the postmaster, this one in the form of an unsworn "to whom it may concern" letter. There, the postmaster states that "[a]t the end of 2008, multiple change of addresses were submitted for the address of 5421 Northgate Crossing. . . . At that time, the carrier was informed that only the Noland family resided at the above address. All mail pieces that did not have the Noland name on it were forwarded or returned to sender." This statement is consistent with Esquivel's sworn statement, as both affirm that mail addressed to Noland was being delivered to the Northgate Crossing address.

<sup>11</sup>Ex.2.

complaint and notice of complaint/notice of hearing to Noland – the post office tried to deliver them and returned them to their senders after those attempts failed.

Noland cites *Arbogast v. City of St. Louis*, 285 S.W.3d 790 (Mo. App., E.D. 2009), in support of her argument, raising the court's statement there that "when the notice was returned, the City had good reason to suspect that Petitioner had not been in receipt."<sup>12</sup> We read *Arbogast* differently. First, the facts are easily distinguishable. There, the City knew, or had reason to know, that the recipient lived at a different address from the one to which it was sending mail because the mailing address used by the City was the address of the burnt-out structure that the City wanted to destroy. Further, the City knew, or had reason to know, of the new address, because that new address had been affixed to the letters when they were returned to the City. Here, however, Noland never moved; her address was the Northgate Crossing address at all relevant times.

Also, Noland overlooks the true rule of *Arbogast*, which is:

Under most circumstances, notice sent by mail is deemed reasonably calculated to apprise interested parties that their property rights are in jeopardy. *But in some special circumstances*, mailed notice may be inadequate and due process may require the government to do something more than sending a letter to the address on file.<sup>13</sup>

(Emphasis added.) *Arbogast* gives three examples of "special circumstances": the government knows that an interested party does not reside at the address and could have no access to that address, the recipient is known to be a person who could not understand the mailed notice, or the government learns that the mailed notice is returned by the post office before the taking occurs.<sup>14</sup>

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<sup>12</sup>Resp. brief at 9.

<sup>13</sup>*Arbogast*, 285 S.W.3d at 799.

<sup>14</sup>*Id.*

While the three examples are non-exclusive, they share a commonality – the government knows something about the circumstances of the addressee. That was not the case here. Not only did the government (here, the MREC) *not* know that Noland did not live at Northgate Crossing, but Noland did in fact live there during the events of this case, as she asserts in, among other places, her “Answer to Petitioner’s Motion for Summary Determination,” where she pleaded, “Respondent did not notify MREC of any change of address for herself or 3-DEE *because the addresses never changed....*” (emphasis added). The MREC sent a total of five letters addressed to Noland and 3-DEE to that address, and we also sent a certified letter to Noland to that address. In the only instances where it could be ascertained what actually happened to the letters, Noland did not claim them, despite being notified by the Lee’s Summit post office (twice for each letter) that the postal service was trying to deliver them. This contradicts Noland’s testimony that the mail in question was not delivered because it was being forwarded to Marrs. The first certified letter was addressed to both Noland and 3-DEE, while our letter was addressed only to Noland. Neither was forwarded anywhere, except back to the senders.

Ultimately, Noland’s argument that she received none of the MREC’s letters fails because a) she failed to overcome the presumption that the mail addressed to her was delivered to her, and b) the evidence does not support her testimony that all the letters were forwarded to Marrs. As a result, we decide that she violated 20 CSR 2250-§.170(1) by not responding to the MREC’s letters.

Change of Address--20 CSR 2250-4.020(4)

The MREC argues that, by failing to notify the MREC of a change in address, Noland and 3-DEE violated Regulation 20 CSR 2250-4.020(4), which provides:

Within ten (10) days following a change in name or home address, each licensee shall notify the commission in writing.

The only evidence before us, however, is that neither Noland nor 3-DEE changed their address during the period in question. As set out above, Noland stated in her "Answer to Petitioner's Motion for Summary Determination," that "the addresses [for Noland and 3-DEE] never changed." The MREC presented no evidence of any change of address. We therefore decide that Noland and 3-DEE did not violate 20 CSR 2250-4.020(4) because they did not change their address.

Notification of Dissolution--20 CSR 2250-4.070(3)(F)

The MREC argues that by failing to notify the MREC that 3-DEE had been dissolved, 3-DEE and Noland violated Regulation 20 CSR 2250-4.070(3)(F), which states in part:

The commission *must* be notified in writing within ten (10) days of every change in a partnership, association, or corporation which changes any information furnished or causes the information to be incomplete. The designated broker for the firm shall be responsible for the notification.

(Emphasis added.) This alleged violation, if proved, creates grounds for discipline of Noland's and 3-DEE's licenses under § 339.100.2(15), as they would be a "violation of . . . [a] lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860."

Noland does not argue that 3-DEE was not administratively dissolved, that the dissolution was not a "change in the corporation" under 20 CSR 2250-4.070(3)(F), or that she was not the designated broker for 3-DEE. She does, however, disclaim responsibility for notifying the MREC about 3-DEE's dissolution. We accept as true her assertion that she lacked actual knowledge of the administrative dissolution – unlike the MREC, the Secretary of State addressed mail that it sent to 3-DEE to 3-DEE's registered office in Kansas City. We also accept as true the suggestion that she was dependent on others, such as 3-DEE's registered agent, Bucher, to inform her about the problems with filing 3-DEE's annual report and that she was not timely informed of those problems.

Regulation 20 CSR 2250-4.070(3)(F) makes Noland “responsible” for notifying the MREC of 3-DEE’s administrative dissolution. “Responsible” is not defined anywhere in the MREC’s regulations.<sup>15</sup> We give such undefined words their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of lawmakers.<sup>16</sup> “Responsible” is defined in relevant part as “[A]nswerable as the primary cause, motive, or agent, whether evil or good; creditable or chargeable with the result; liable or subject to legal review or in the case of fault, to penalties.”<sup>17</sup>

Further, Noland’s responsibility to 3-DEE goes beyond 20 CSR 2250-4.070(3)(F). Section 339.710(12) provides in relevant part:

“Designated broker” [is defined as] . . . any individual licensed as a broker who is appointed by a . . . corporation engaged in the real estate brokerage business to be responsible for the acts of the...corporation.

(Emphasis added.) The question, then, is whether Noland avoids liability for violation of 20 CSR 2250-4.070(3)(F) by virtue of her ignorance of what was happening with regard to 3-DEE’s corporate status. We decide that she can avoid such liability. We will not expand the definition of “responsible” to include reporting information for which Noland had no duty of inquiry because the MREC has provided us with no authority creating such a duty, and we cannot find one. Also, the MREC did not provide us with authority (and we could find none) to support any sort of “reverse respondeat superior” theory that could apply in this case.<sup>18</sup>

Also, 3-DEE, as a corporation, “knew” of its administrative dissolution, as the Secretary of State gave notice of the dissolution to the corporation through Bucher, its registered agent, by

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<sup>15</sup>20 CSR Div. 2250.

<sup>16</sup>*Cook Tractor Co. v. Director of Revenue*, 187 S.W.3d 870, 873 (Mo. banc 2006).

<sup>17</sup>WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1935 (unabr. 1986).

<sup>18</sup>*See, e.g., Failla v. City of Passaic*, 146 F.3d 149, 159 (3d Cir. 1998); *Mobley v. City of Atlantic City Police Dept.*, 89 F.Supp.2d 533, 543 (D. N.J. 1999).

a letter dated April 17, 2008. Under well-established rules of agency, the knowledge of agents (such as Bucher) obtained in the course of their employment is imputed to the corporation.<sup>19</sup>

Noland alleges that she did not learn that the corporation was administratively dissolved until July 31, 2008, although the dissolution occurred on April 17, 2008. She does not, however, deny that 3-DEE was dissolved, that 3-DEE's dissolution was a "change in [the] corporation," or that she was the designated broker for the corporation. Instead, she pleaded ignorance of what was happening with 3-DEE and blamed 3-DEE's registered agent for not keeping her informed. As she stated in her narrative testimony:

I was not notified of this dissolution which happened because I had submitted to the Department of Revenue the tax records and was assuming that Mr. Bucher had received any correspondence with regard to that because we had no taxes, no business had been done through the corporation, but there was some complication with the Department of Revenue for them. There was a number problem or something that they were not equipped to get back to show that there were no taxes owed. I'm not exactly sure what the problem was. But during this time of me trying to get that resolved with the Department of Revenue, the Secretary of State dissolved the corporation, and again I was not notified of that because Mr. Bucher actually didn't tell me. This is a mess.

Noland, however, had a more general responsibility to 3-DEE than that set out in 20 CSR 2250-4.070(3)(F). As 3-DEE's designated broker, she was "responsible for the acts of the . . . corporation."<sup>20</sup> Noland offers no justification for not performing her statutory responsibilities except her assertions of ignorance. Her inability to describe 3-DEE's problems beyond a vague, global claim of "some complication with the Department of Revenue," and her shifting of blame to Bucher for his alleged failure to notify her of the problem, indicates either a willful ignorance, an abdication of her responsibilities, or both. Further, her claim of ignorance and her blame of

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<sup>19</sup>*Wandersee v. BP Products North America, Inc.*, 263 S.W.3d 623, 629 (Mo. banc 2008); *Packard Mfg. Co. v. Indiana Lumbermens Mut. Ins. Co.*, 203 S.W.2d 415, 421 (Mo. banc 1947).

<sup>20</sup>Section 339.710(12).

others is an affirmative defense because she does not contest the MREC's assertion of a failure to report 3-DEE's dissolution on the merits. She has the burden of proving any affirmative defense she raises,<sup>21</sup> which she has not done.

Therefore, we find that 3-DEE and Noland violated 20 CSR 2250-4.070(3)(F) by not reporting 3-DEE's administrative dissolution, and there is cause for discipline under § 339.100.2(15).

## II. Grounds to Refuse Licensure: Section 339.100.2(16)

Section 339.100.2(16) provides that the MREC may discipline a licensee for:

[c]ommitting any act which would otherwise be grounds for the [MREC] to refuse to issue a license under section 339.040[.]

The MREC contends that Noland's failure to timely respond to the MREC's letters would be grounds for the MREC to refuse to issue a license. Section 339.040.1 provides:

Licenses shall be granted only to persons who present, and corporations, associations or partnerships whose officers, associates, or partners present, satisfactory proof to the commission 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.

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>22</sup>

Noland's failure to respond to the MREC's letters, while inconsistent with proper practice, is not so egregious as to show a lack of good moral character.

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<sup>21</sup>*DeLong Plumbing Two, Inc. v. 3050 N. Kenwood LLC*, 304 S.W.3d 784, 789 (Mo. App., S.D. 2010); *Ozark Air Lines, Inc. v. Valley Oil Co.*, 239 S.W.3d 140 (Mo. App., W.D. 2007).

<sup>22</sup>*Hernandez v. State Bd. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

“Reputation” means “the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character [.]”<sup>23</sup> Reputation is not a person's actions; it is “the general opinion . . . held of a person by those in the community in which such person resides[.]”<sup>24</sup> Reputation is “a consensus view of many people.” The MREC presented no evidence as to Noland’s reputation.

Competence, when referring to occupation, is “the actual ability of a person to perform in that occupation.”<sup>25</sup> It also refers to the “disposition to use an otherwise sufficient professional ability.”<sup>26</sup> In a recent disciplinary case from the Supreme Court, *Albanna v. State Bd. of Regis'n for the Healing Arts*,<sup>27</sup> the court described incompetency as a “state of being” amounting to an inability or unwillingness to function properly.<sup>28</sup> The *Albanna* court said that the evaluation necessitates a broader-scale analysis, taking into account the licensee's capacities and successes.<sup>29</sup> The MREC has failed to show that Noland is incompetent to transact the business of a broker or broker associate in such a manner as to safeguard the interest of the public. Accordingly, we find no cause for discipline under § 339.100.2(16).

### III. Other Conduct: Section 339.100.2(19)

The MREC also argues that Noland is subject to discipline under § 339.100.2(19) for “any 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.”<sup>30</sup>

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<sup>23</sup>WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986).

<sup>24</sup>*State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black's Law Dictionary, Rev. 4th Ed., p. 1467-68).

<sup>25</sup>Section 1.020, RSMo 2000.

<sup>26</sup>*Johnson v. Missouri Bd. of Nursing Administrators*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

<sup>27</sup>293 S.W.3d 423 (Mo. banc 2009).

<sup>28</sup>*Id.* at 435.

<sup>29</sup>*Id.*

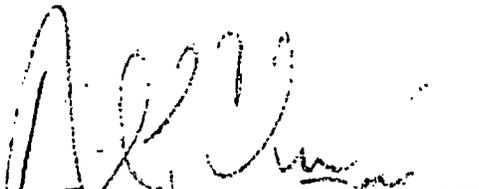
<sup>30</sup>WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

Accordingly, this subdivision refers to conduct different from that referred to in the remaining subdivisions of § 339.100.2. As the conclusions above show, we have already found Noland and 3-DEE subject to discipline under § 339.100.2(15) for failing to respond to the MREC's inquiries. There is no "other conduct." Therefore, we find no cause for discipline under § 339.100.2(19).

#### Summary

Noland and 3-DEE are subject to discipline under § 339.100.2(15). They are not subject to discipline under § 339.100.2(16) or (19).

SO ORDERED on December 14, 2010.



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NIMROD T. CHAPEL, JR.  
Commissioner