

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

Missouri Real Estate Commission,)	
)	
Petitioner,)	
)	
vs.)	Case No. 12-10-220
)	
Robert P. Power,)	
)	
Respondent.)	

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

**I.
FINDINGS OF FACT**

1. The Missouri Real Estate Commission ("MREC") is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, 2000 (as amended), for the purpose of carrying out and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo 2000 (as amended), and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. On or about August 24, 2010, the MREC issued its Findings of Fact, Conclusions of Law and Disciplinary Order ("Disciplinary Order") in the matter of Missouri Real Estate Commission vs. Robert P. Power.

3. The Order suspended Respondent's license for sixty (60) days, followed by five (5) years probation. In addition, Respondent was also required to pay a civil penalty of \$2,500 to the Missouri Real Estate Commission within sixty (60) days of the date of the Order.

4. The Order was effective on September 3, 2010 and remains in effect.

5. As of June 1, 2011, Power had not paid the \$2,500 civil penalty as required.

6. On September 3, 2010, Power submitted a Notification for Closing of a Real Estate Firm form for his company, Real Estate Experts LLC.

7. On or about November 4, 2010, the MREC sent Power a letter ("November 4 Letter") which informed him he had failed to pay the \$2,500 penalty and requested Power to contact the MREC concerning whether he would reinstate his broker license provided the intent to close his company. Further, the letter required Power explain why he had not yet paid the civil monetary penalty and provided him 30 days within which to respond or be in violation of 20 CSR 2250-8.170.

8. Power, as of June 1, 2011, had not responded to the November 4, 2010, letter from the MREC.

9. Paragraph 2 of Page 3 of the Disciplinary Order, states in pertinent part:

2. Respondent must pay a civil penalty of \$2,500 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 60 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 Section 339.205.8, RSMo Cum. Supp. 2009. Respondent's failure to pay the full amount of the \$2,500 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's disciplinary period.

10. Paragraph D of page 5 of the Disciplinary Order states in pertinent part:

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

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

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

13. Pursuant to notice and § 621.110, RSMo, this Commission held a hearing on August 10, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondent has violated any terms of the Disciplinary Order, and if so, whether any additional discipline would be imposed against Respondent's license. Respondent Robert P. Power was not present and was not represented by counsel. Petitioner was represented by Craig Jacobs, Assistant Attorney General.

14. All the members of this Commission were present throughout the disciplinary hearing, with the exception of Doris Carlin. Rosemary Vitale participated through conference call.

II.

CONCLUSIONS OF LAW

15. Regulation 20 CSR 2250-8.170 states in pertinent part:

- (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.

16. The MREC has jurisdiction over this matter pursuant to §324.042, RSMo, and page 5, paragraph 6 of the Order, which provides, in pertinent part:

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, may suspend, revoke, or otherwise lawfully discipline Respondent's broker-associate license.

17. Power's failure to adhere to the terms of his probation, to pay the civil monetary penalty of \$2,500 within 60 days of August 24, 2011, in violation of Paragraph 2 of Page 3, or to respond to the November 4 Letter, in violation of Paragraph D on Page 5, are violations of the

terms of the Disciplinary Order which provide cause to further discipline Power's license under §324.042, RSMo, Cum. Supp. 2010.

18. Pursuant to § 324.042, RSMo, (Cum. Supp. 2010), the MREC has authority to impose additional discipline against Respondent Robert P. Power for violating any disciplinary terms previously imposed or agreed to pursuant to the Order against a licensee.

19. Section 324.042, RSMo, (Cum. Supp. 2010), 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.

20. Section 339.100.3, RSMo 2000, provides the MREC may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license.

21. The MREC finds Respondent Robert P. Power has violated the terms and conditions of the Order issued by the MREC on or about August 24, 2010 as a result of the conduct identified in paragraphs 2- 11 herein.

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

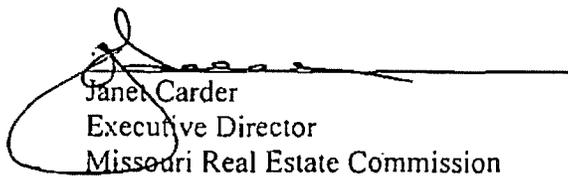
III.

ORDER

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

The real estate license of Respondent, Robert P. Power, license number, 1999095967, is hereby **REVOKED**.

So Ordered this 16th day of August, 2011.



Janet Carder
Executive Director
Missouri Real Estate Commission

proper and timely fashion.

4) Pursuant to notice and 621.110, RSMo, the MREC held a hearing on August 11, 2010 at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. Respondent was present but was not represented by counsel. Petitioner was represented by Craig Jacobs, Assistant Attorney General.

5) All the members of the MREC were present throughout the disciplinary hearing. Further, each member of the MREC that was present for the hearing has read the Administrative Hearing Commission's Decision.

6) The Respondent, Robert P. Power, is licensed by the MREC as a real estate broker-associate, license number 1999095967, which was current at all times relevant to this proceeding.

7) The Decision by the Administrative Hearing Commission in Case No. 09-0835RE is incorporated herein by reference as if fully set forth in this document.

II.

CONCLUSION OF LAW

1) This Commission has jurisdiction to take disciplinary action against Respondent's license pursuant to the provisions of Chapters 339 and 621, RSMo.

2) The MREC accepts and adopts the Conclusions of Law set

forth in the Administrative Hearing Commission's Decision in case No. 09-0835RE and incorporates them herein.

3) Cause exists to discipline Respondent's license pursuant to 339.100.2 (2), RSMo.

4) Respondent's license is subject to revocation, suspension or probation by the MREC pursuant to Section 339.100.3, RSMo.

III.

ORDER

1) Therefore, having fully considered all the evidence before this Commission, and giving full weight to the Decision, it is the ORDER of the MREC that the real estate license of Respondent, Robert P. Power, license number 1999095967, is hereby suspended for sixty days, followed by five years probation. During Respondent's suspension, he shall not be entitled to practice as a real estate licensee. During Respondent's probation, he shall be entitled to practice as a real estate broker-associate provided that he adheres to all of the terms stated herein. The period of suspension and probation shall constitute the "disciplinary period."

2) Respondent must pay a civil penalty of \$2,500 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 60 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 Section 339.205.8, RSMo Cum. Supp. 2009. Respondent's failure to pay the full amount of the \$2,500 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's disciplinary period.

3) Respondent shall ensure the return of his license to the Missouri Real Estate Commission, P.O. 1339, Jefferson City, Missouri 65102, by the effective date of this Order.

4) By the effective date of this Order, Respondent shall complete and return an Affidavit for Closing of a Real Estate Firm or a Change in Designated Broker Form.

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

A. Respondent shall keep the Commission apprised at all times, in writing, of his 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 his license and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in a current and active state.

C. If, at any time within the disciplinary period, Respondent changes residence from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 339, or fails

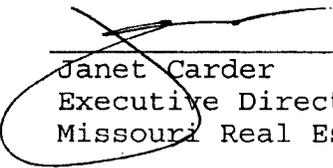
to keep the Real Estate Commission advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the disciplinary period.

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

6) 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 salesperson license.

7) 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 24th day of August, 2010. This Order is to become effective September 3, 2010.



Janet Carder
Executive Director
Missouri Real Estate Commission

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE
COMMISSION,

Petitioner,

vs.

ROBERT P. POWER,

Respondent.

No. 09-0835 RE

DECISION

On May 19, 2010, we issued our order granting Petitioner's motion for summary decision on Count I of the complaint. We concluded that Respondent's license is subject to discipline under § 339.100.2(2). On May 20, 2010, Petitioner filed its dismissal of Count II.

We incorporate by reference our May 19, 2010, order into this final decision and will certify our record to Petitioner in thirty days. We cancel the hearing.

SO ORDERED on May 20, 2010.

NEMROD J. CHAPEL, JR.
Commissioner

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)
)
Petitioner,)
)
vs.) No. 09-0835 RE
)
ROBERT P. POWER,¹)
)
Respondents.)

ORDER GRANTING SUMMARY DECISION ON COUNT I

We grant the motion for summary decision on Count I filed by the Missouri Real Estate Commission (“the MREC”). Robert P. Power is subject to discipline under Count I because he fraudulently entered false and fictitious “Sold” information into the real estate Multi-Listing Service (“MLS”) about a property. We grant Power’s motion to admit an exhibit.

Procedure

On June 15, 2009, the MREC filed a complaint seeking to discipline Power. On June 30, 2009, we served Power with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On September 17, 2009, Power filed an answer, admitting many of the allegations in the complaint. On March 24, 2010, the MREC filed a motion for summary

¹The MREC dismissed its complaint against Jeffrey J. Elking, Sr., on May 17, 2010.

decision on Count I. Our Regulation 1 CSR 15-3.446(5) provides that we may decide this case without a hearing if the MREC establishes facts that (a) Power does not dispute and (b) entitle the MREC to a favorable decision. On April 13, 2010, Power responded to the motion. The following facts are undisputed.

Findings of Fact

1. Power holds a real estate broker-associate license issued on April 5, 2007. Previously he held a real estate salesperson license issued on April 3, 1986. Power's license is current and active and was active at all relevant times.
2. Jeffrey J. Elking Sr., holds a real estate broker-associate license.
3. Karen J. Prinster, also known as Karen Wolters ("Prinster") holds a real estate broker-salesperson license.
4. Donald T. Arling holds a real estate professional corporation broker salesperson license.
5. Jamie Mehrhoff holds a real estate professional corporation broker-salesperson license.
6. A&M Partners LLC is a real estate association doing business as Keller Williams Realty ("Keller Williams Realty") and Keller Williams Realty Southwest.
7. Prinster, as a broker-associate, served as the designated broker for Keller Williams Realty from April 22, 2003, through September 21, 2004.
8. Elking and Power were affiliated with Keller Williams Realty from March 6, 2002, through June 16, 2004. Power was again affiliated with Keller Williams Realty from May 25, 2005, through January 4, 2007. Elking was again affiliated with Keller Williams Realty from May 26, 2005, through May 25, 2007.

9. At all relevant times, Arling and Mehrhoff were the owners/principals of Keller Williams Realty.

10. On April 12, 2003, Power and Elking entered into a buyer's exclusive limited agency employment contract with John Baldwin.

11. On April 13, 2003, Baldwin entered into a special sale contract with Franz Schoeberlein for Baldwin to purchase real property located at 3439 Illinois, St. Louis, Missouri ("the Illinois Street property") for \$97,000 ("the Baldwin/Schoeberlein transaction").

12. On April 13, 2003, the Illinois Street property was a 4,000 square foot gutted home that required a substantial amount of work.

13. As of April 13, 2003, Schoeberlein was represented by real estate agent Wendy Clark.

14. On April 13, 2003, Baldwin and Schoeberlein added an appraisal rider to the special sale contract making the sale contingent upon the property "appraising for not less than the purchase price."

15. On April 13, 2003, Baldwin paid \$1,500 as earnest money towards the Baldwin/Schoeberlein transaction.

16. The closure of the Baldwin/Schoeberlein transaction was delayed multiple times due to problems in obtaining the financing.

17. MARIS MLS data is a marketing and advertising resource. MARIS MLS is a critical financial database that influences the buying and selling of real estate.

18. On August 1, 2003, Power, using the MARIS ID of Elking, fraudulently entered false and fictitious "Sold" information into the MARIS MLS as Listing Number 336860 ("the Ohio Street listing") for real property located at 3611 Ohio, St. Louis, Missouri ("the Ohio Street property").

19. On August 5, 2003, Schoeberlein terminated his listing agreement with his real estate agent.

20. On August 7, 2003, Power entered into a listing contract with Schoeberlein for the sale of the Illinois Street property.

21. In the Ohio Street listing, the Ohio Street property was falsely listed as a 4,100 square foot gutted home in need of repairs that sold on July 24, 2003, for \$115,000.

22. Power entered the false and fictitious information into the MARIS MLS with the intent that it would be used by an appraiser as a comparable sale to support the value of the Illinois Street property for the Baldwin/Schoeberlein transaction.

23. On October 8, 2003, Old Republic handled the closing of the Schoeberlein/Baldwin transaction. A commission of \$4,850 was paid to Keller Williams Realty from the sale proceeds at closing.

24. Power took no action before or after the closing on October 8, 2003, to correct or remove the Ohio Street listing.

25. On May 21, 2004, Power drafted a letter to Rhodes apologizing for the false and fictitious listing information and gave this letter to Prinster.

26. On June 14, 2004, Power was terminated from his employment with Keller Williams Realty.

Conclusions of Law

We have jurisdiction to hear this complaint.² The MREC has the burden of proving that Power has committed an act for which the law allows discipline.³

²Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2009.

³*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

I. Motion to Admit Exhibit

On April 13, 2010, Power filed a motion to admit an attached exhibit. We gave the MREC until April 22, 2010, to respond to the motion, but it did not respond. We grant the motion and admit the exhibit.

II. Cause for Discipline

The MREC argues that there is cause for discipline under § 339.100:

2. The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, 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:

* * *

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

* * *

(16) Committing any act which would otherwise be grounds for the [MREC] 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[.]

A. Substantial Misrepresentations – Subdivision (2)

Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.⁴

Power admitted that on August 1, 2003, he fraudulently entered false and fictitious “Sold”

⁴MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 794 (11th ed. 2004).

information into the MARIS MLS as Listing Number 336860 for real property in order to influence an appraisal in a pending sale. We agree that this constitutes a substantial misrepresentation of a material fact in the conduct of his business. There is cause for discipline under § 339.100.2(2).

B. Grounds to Refuse Licensure – Subdivision (16)

Section 339.040 states:

1. Licenses shall be granted only to persons who present, and corporations, associations or partnerships whose officers, associates, or partners present, satisfactory proof to the [MREC] that they:

(1) Are persons of good moral character;

* * *

(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.⁵

Competent is defined as “having requisite or adequate ability or qualities[.]”⁶ We look to our analysis when the statute allows discipline for incompetence. Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.⁷ We follow the analysis of incompetency in a recent disciplinary case from the Supreme Court, *Albanna v. State Bd. of Regis’n for the Healing Arts*,⁸ Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.

⁵*Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

⁶MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 253 (11th ed. 2004).

⁷*Tendai v. Missouri Bd. of Reg’n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

⁸293 S.W.3d 423, 435-36 (Mo. banc 2009).

Power admitted that he fraudulently entered false and fictitious "Sold" information into the real estate MLS about a property. While very serious, we do not believe that this one act is sufficient to show lack of good moral character or that he lacks competence. There is no cause for discipline under § 339.100.2(16).

C. Other Conduct – Subdivision (19)

The adjective "other" means "not the same : DIFFERENT, any [other] man would have done better[.]"⁹ Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for discipline under § 339.100.2(2). There is no "other" conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

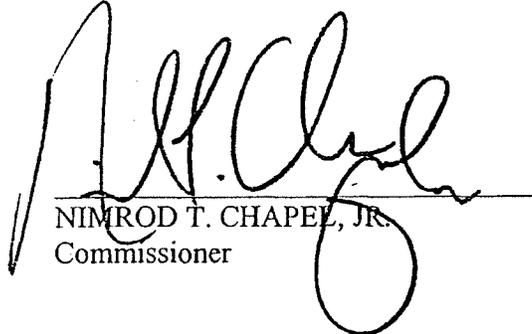
III. Duress

Power argues that he was threatened by another individual and acted under duress. This Commission decides only whether the facts as proven constitute cause for discipline under the law. The MREC will conduct a hearing to determine the level of discipline at which time Power may present any mitigating evidence.

Summary

We grant the motion for summary decision as to Count I. There is cause for discipline under § 339.100.2(2). There is no cause for discipline under § 339.100.2(16) or (19). The hearing will proceed on May 21, 2010, as scheduled.

SO ORDERED on May 19, 2010.


NIMROD T. CHAPEL, JR.
Commissioner

⁹WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).