BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION Petitioner, v. MARTIN J. RIBAUDO Respondent.	)	Case No.: 08-1457RE License Nos.: 1999032717 2006029861

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

On or about March 14, 2013, the Administrative Hearing Commission entered its Amended Decision in the case of *Missouri Real Estate Commission v. Martin J. Ribaudo and Donald C. MacPherson,* No. 08-1457 RE. In that Amended Decision, the Administrative Hearing Commission found that Respondent Martin J. Ribaudo's real estate broker officer license (license no. 2006029861) and real estate broker associates license (license no. 1999032717), are subject to disciplinary action by the Commission pursuant to § 339.100.2 (2), (4), (5), (15) and (16) RSMo.[1]

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Amended Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

[1] All Statutory References are to the Revised Statutes of Missouri, 2000, as amended, unless otherwise indicated.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the MREC held a hearing on June 5, 2013, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's licenses. All of the members of the MREC, with the exception of Rosemary Vitale, were present throughout the meeting. Twila Hillme participated through conference call. Further, each member of the MREC that was present for the hearing has read the Amended Decision of the Administrative Hearing Commission. The MREC was represented by Assistant Attorney General Craig Jacobs. Following proper and timely notice Respondent Ribaudo appeared in person with legal counsel, Donald C. MacPherson. 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 Amended Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Martin J. Ribaudo and Donald C. MacPherson,* No. 08-1457 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 Respondent in a proper and timely fashion.

4. The MREC issued Respondent Martin J. Ribaudo's real estate broker officer license 2006029861 and real estate broker associates license 1999032717. Respondent's licenses were current at all times relevant to this proceeding.

5. Respondent MacPherson testified as to the long period of time that this case has been litigated and that once the case was fully submitted to the Administrative Hearing Commission ("AHC"), that the AHC took two (2) years to issue a decision. MacPherson testified that all of the buyers in the case, except for one, spoke very good English. MacPherson testified as to his credentials as a long time real estate licensee and as a licensed attorney.[2]

6. Respondent Ribaudo testified as to his extensive experience in real estate. Ribaudo testified that at the time he reviewed the files at issue in this case he saw no irregularities. Ribaudo testified as to his actions of closing the office and firing employees following the filing of the lawsuit. Ribaudo testified that he did not know about the fraud at the time it was occurring and that if he had, he would have acted to stop it. Ribaudo testified as to the financial repercussions he has suffered due to this situation.

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[2] MacPherson made multiple attempts during the discipline hearing before the MREC to testify regarding the merits of the Amended Decision of the Administrative Hearing Commission ("AHC") and evidence that may or may not have formed the basis of the AHC's finding that there was cause to discipline Respondents' licenses. Section 621.110, RSMo, provides that following the AHC's finding of cause for discipline, the subsequent hearing before the licensing agency is "for hearing upon the issue of appropriate disciplinary action" and that "[t]he agency may receive evidence relevant to said issue." § 621.110, RSMo. The AHC independently determines that cause for discipline exists. *Kerwin v. Missouri Dental Bd.*, 375 S.W.3d 219, 224 (Mo. App. W.D. 2012). The licensing agency then determines the level of discipline, if any, to be imposed. § 621.110, RSMo. Licensing agencies, here the MREC, have only the power expressly provided by statute. *Bodenhausen v. Missouri Bd. of Registration for the Healing* Arts, 900 S.W.2d 621, 622 (Mo banc 1995). Accordingly, the MREC is not authorized to re-litigate the findings of the Administrative Hearing Commission or whether cause for discipline exists.

7. Sandra Hancock, real estate broker from St. Louis, Missouri, testified as to the positive character of Macpherson and Ribaudo.

II.

CONCLUSIONS OF LAW

8. This MREC has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

9. The MREC expressly adopts and incorporates by reference the Amended Decision issued by the Administrative Hearing Commission dated March 14, 2013, in *Missouri Real Estate Commission v. Martin J. Ribaudo and Donald C. MacPherson,* No. 08-1457 RE, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

10. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Amended Decision dated March 14, 2013, Respondent Martin J. Ribaudo's real estate broker officer license (license no. 2006029861) and real estate broker associates license (license no. 1999032717) are subject to disciplinary action by the MREC pursuant to § 339.100.2 (2), (4), (5), (15) and (16) RSMo.

11. 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 Amended Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that Martin J. Ribaudo's real estate broker officer license (license no. 2006029861) and real estate broker associates license (license no. 1999032717) are hereby placed on TWO YEARS

PROBATION. During Respondent's probation, Respondent shall be entitled to practice under his respective licenses provided that Respondent adheres 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. Respondent shall keep the MREC apprised at all times, in writing, of Respondent's current addresses and telephone numbers at each place of residence and business. Respondent shall notify the MREC within ten (10) days of any change in this information.

B. Respondent shall timely renew Respondent's licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain Respondent's licenses 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. Upon the expiration and successful completion of the disciplinary period, Respondent's respective real estate broker officer license and real estate broker associates license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Respondent's real estate broker officer license and real estate broker associates 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 18th DAY OF June, 2013.

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri

MISSOURI REAL ESTATE COMMISSION, Petitioner, vs. MARTIN J. RIBAUDO and, DONALD C. MacPHERSON Respondents.	)	No. 08-1457 RE

AMENDED DECISION

Martin J. Ribaudo ("Ribaudo") and Donald C. MacPherson ("MacPherson") are subject to discipline because they inadequately supervised real estate related activities of associated licensed and unlicensed persons under their brokerage, and are responsible for the wrongful acts of such persons.

Procedure

On August 8, 2008, the Missouri Real Estate Commission ("the MREC") filed an eleven-count complaint seeking to discipline Ribaudo, MacPherson, Anthony Joseph Adewunmi ("A.J. Adewunmi"), Leonard A. Adewunmi ("L.A. Adewunmi"), Cristian Joel Juan ("Juan"), Patricia Denisse Olmos ("Olmos"), and Betty J. Schumacher ("Schumacher"). Ribaudo and MacPherson were each served by certified mail with a copy of the complaint and our notice of complaint/notice of hearing on August 20, 2008. On January 11, 2010, Schumacher was dismissed based on a settlement entered into with the MREC. On January 28, 2010, A.J.

Adewunmi, L.A. Adewunmi, Juan, and Olmos were dismissed from the case based on a settlement. On February 6, 2010, the MREC revoked the real estate licenses of A.J. Adewunmi, Juan, and Olmos.

We held a hearing on the complaint on December 13-14, 2010. Assistant Attorney General Craig H. Jacobs represented the MREC. Ribaudo was represented at the hearing by Ronald D. Kwentus of Vatterott, Harris, Devine and Kwentus, P.C.; MacPherson, a Missouri licensed attorney, represented himself. The matter became ready for our decision on April 8, 2011, when the last brief was filed.

Findings of Fact

1. St. Louis Group One Real Estate, Inc. ("St. Louis Group"), a Missouri corporation, was licensed by the MREC as a real estate association. St. Louis Group did business under the names "RE/MAX Associates," "RE/MAX Associates Commercial," and "RE/MAX Associates, Realtor" (referred to hereafter as "RE/MAX Associates"). St. Louis Group operated through June 27, 2005, and closed on June 12, 2006.

2. MacPherson holds a broker-officer and a broker license from the MREC. At all relevant times, MacPherson's licenses were current and active.

3. MacPherson was the designated broker for RE/MAX Associates.

4. Remap5, LLC, a Missouri limited liability company, is licensed by the MREC as a real estate association. Remap 5, LLC does business under several fictitious names, including "RE/MAX Associates Plus," "RE/MAX Associates Plus Commercial," and "RE/MAX Associates Plus Realtors" (referred to hereafter as "RE/MAX Associates Plus").

5. Ribaudo holds a broker-associate and broker-officer license from the MREC. At all relevant times, Ribaudo's licenses were current and active.

6. Ribaudo was the designated broker for RE/MAX Associates Plus. He was not affiliated with RE/MAX Associates as a real estate licensee.

7. MacPherson served as an attorney for RE/MAX Associates Plus, but was not affiliated with that entity as a real estate licensee.

8. At all relevant times, A. J. Adewunmi, L.A. Adewunmi, Olmos, and Juan held real estate salesperson licenses from the MREC, and worked together as the "Adewunmi Team" under RE/MAX Associates, and then with RE/MAX Associates Plus. No broker was part of the Adewunmi Team. A.J. and L.A. Adewunmi directed the Adewunmi Team and were responsible for hiring and firing the salespersons on the team, for negotiating and paying their compensation, and for their supervision.

9. The Adewunmi Team and each of its members were affiliated with RE/MAX Associates through June 27, 2008, and thereafter with RE/MAX Associates Plus.

10. At all relevant times, A.J. Adewunmi and L.A. Adewunmi were also the owners of Cots Realty Investments, Inc. ("Cots Realty"), a Missouri corporation. Cots Realty bought and sold real estate for profit.

11. Both RE/MAX Associates and, subsequently, RE/MAX Associates Plus required all licensed salespersons affiliated with the company to enter into an Independent Contractor Agreement with the company. RE/MAX Associates and RE/MAX Associates Plus treated their affiliated licensees as independent contractors, not employees.

12. Because of MacPherson's involvement, first as designated broker for RE/MAX Associates, and then as attorney for RE/MAX Associates Plus, the two companies had identical policy manuals (the "Policy and Procedures Manual").

13. Brokers and salespersons for RE/MAX Associates and RE/MAX Associates Plus were required to sign the Policy & Procedures Manual Receipt, certifying that the licensee

received a copy of and understood his or her responsibility to comply with the company's policies and agreed to abide by the license laws, rules, and regulations set by the MREC and the Code of Ethics of the National Association of Realtors.

14. The companies' Policy & Procedures Manual required a complete closing package before any payment of commission would be released to the agents in a real estate transaction.

15. Neither RE/MAX Associates nor RE/MAX Associates Plus had a written policy requiring a broker to review the closing statement for a transaction prior to the closing.

16. The practice with both RE/MAX Associates and RE/MAX Associates Plus was for MacPherson, either in his capacity as designated broker for RE/MAX Associates, or subsequently as attorney for RE/MAX Associates Plus, to review the closing statements for completeness after a sale had closed. He did not review them for accuracy.

17. Neither MacPherson nor Ribaudo was otherwise involved in reviewing transactions prepared by the Adewunmi Team prior to closing.

18. Under the guise of facilitating the flow of information in certain real estate transactions where a language barrier existed between the buyers and lenders, the Adewunmi Team falsified loan applications in order to qualify the buyers for loans and to close the sales.

19. The companies' Policies & Procedures Manual contained a general requirement that agents comply with all laws.

20. The Policies & Procedures Manual encouraged "Sales Associates" to have "a 'partner' to handle [their] business while on vacation or just taking time off," but did not specifically address the supervision of teams that do not include a broker as part of the team.

21. The Policies & Procedures Manual contained no policy requiring the retention of correspondence between the companies' real estate agents and other parties involved in a transaction (e.g., buyers, sellers, lenders, title companies, etc.).

22. Under the Policy & Procedures Manual, real estate agents were not prohibited from communicating loan information to lenders on behalf of borrowers or from completing loan applications on behalf of buyers.

23. Neither Ribaudo nor Macpherson reviewed or supervised communications between salespersons in the Adewunmi Team and third parties.

24. A representative of U.S. Bank contacted MacPherson's office to inform him that certain loan packages submitted by the Adewunmi Team were being rejected and referred to the bank's fraud unit for further review. Upon learning this, MacPherson did not investigate into the suspect loan packages or make any inquiry of the Adewunmi Team, but directed that the loan packages be forwarded to a different lender for financing.

4234 Osceola – Gerardo Ochoa Rodriguez

25. In 2005, Gerard Ochoa Rodriguez ("Ochoa") and Diana Gonzalez ("Gonzalez") consulted with Olmos of the Adewunmi Team and RE/MAX Associates about purchasing a home. At the time, Ochoa was employed, but Gonzalez was unemployed and had poor credit. Ochoa had an eighth grade education.

26. Ochoa and Gonzalez told Olmos they were looking for a two- to three-bedroom home not over $90,000 or $650 per month. Olmos said this would not be a problem and told Ochoa he could qualify for a $150,000 house.

27. Olmos showed Ochoa and Gonzalez three properties, including real property located at 4234 Osceola, St. Louis, Missouri (the "Osceola property").

28. On March 5, 2005, Ochoa entered into a contract to purchase the Osceola property from Cots Realty for $125,000. A copy of the contract was provided to Ochoa and stated Olmos was representing Ochoa as a buyer's agent.

29. Olmos never informed Ochoa or Gonzalez that Cots Realty owned the property or that A.J. Adewunmi was an owner of Cots Realty.

30. Olmos and the Adewunmi Team prepared a loan application for Rodriguez that included the following false information:

a. Rodriguez had worked for a roofing company for three years, instead of three months;

b. Rodriguez had completed twelfth grade, when he had only completed eighth grade;

c. Rodriguez lived at his previous residence for 2.3 years, when it had only been one year;

d. Rodriguez's rent was $350, when it was $300;

e. Rodriguez earned $3124.23 per month, when it was $1600.

31. Ochoa had provided Olmos with accurate personal information for the loan application and was not aware of the false statements contained in the loan application when he signed it.

32. The Osceola property was undergoing repairs at the time Olmos showed it to Ochoa and Gonzalez. Olmos expressed and/or implied that repairs and renovations would be made by the seller prior to closing, including replacement of windows and doors; replacement of carpet in the dining room with wood floors; and installation of cabinets with doors in the kitchen.

33. Cots Realty did not complete the promised repairs prior to closing.

34. When Rodriguez complained to A.J. Adewunmi, A.J. Adewunmi said he would advise the owner of the problems, without disclosing that he was, in fact, owner of the Osceola property.

35. At the closing on the Osceola property, Ochoa and Gonzalez learned the monthly mortgage payments would be $1032. They objected to completing the sale because of the unexpected increase in the monthly payment, but finalized the sale because Olmos told them the seller could sue them for $125,000 for failing to close.

36. Ochoa and Gonzalez were rushed through the closing of the transaction so that, without their knowledge, the sale closed for $128,000.

37. The Adewunmi Team changed the sale price for the Osceola property without Ochoa's or Gonzalez's knowledge or permission, to the benefit of Cots Realty.

38. After struggling for two years to keep up on the payments on their house, Ochoa and Gonzalez lost the Osceola property through foreclosure.

39. Ochoa and Gonzalez called RE/MAX Associates to complain, but the secretary always directed their calls to voicemail for A.J. Adewunmi and Olmos, not to the designated broker, MacPherson.

40. MacPherson, the designated broker for RE/MAX Associates and supervising broker for the Adewunmi Team, took no steps to mitigate any damages Ochoa and Gonzalez sustained as a result of the transaction, or to contact them.

4346 Fairview – Lichtenberg/Herrera

41. At the time of the events recited here, Angelique Lichtenberg was 21 years old. She and Hector Herrera were referred by a friend to A.J. Adewunmi to purchase a home.

42. In 2004, Adewunmi showed Lichtenberg and Herrera many homes owned by Cots Realty, but Lichtenberg decided on a property at 4346 Fairview, St. Louis, Missouri (the "Fairview property") by searching the RE/MAX listings online.

43. Herrera and Lichtenberg retained A.J. Adewunmi as buyer's agent under a Buyer's Exclusive Limited Agency Employment Contract.

44. On June 24, 2004, Herrera and Lichtenberg entered into a sales contract to purchase the Fairview property from Kevin A. Keller and Sharon Keller.

45. In the original sales contract, A.J. Adewunmi was correctly designated as the buyer's agent, but either he or another member of the Adewunmi Team subsequently altered the Sale Contract Counteroffer #1 without the knowledge of Lichtenberg or Herrera to state that Adewunmi was a dual agent.

46. A.J. Adewunmi or another member of the Adewunmi Team falsified Lichtenberg's signature on an amendment to the sale contract, increasing the sale price of the Fairview property from $102,500 to $106,000, and providing for down payment assistance to the buyers from the Partners in Charity program ("PIC"). Neither Lichtenberg nor Herrera authorized this Amendment.

47. The sale of the Fairview property closed on July 29, 2004. Until after the closing, Lichtenberg and Herrera believed the purchase price to be $102,500.

48. The sellers of the Fairview property had represented they would leave the washer, dryer, and refrigerator if Lichtenberg and Herrera wanted to buy them. Lichtenberg advised A.J. Adewunmi to include the purchase of these appliances in the sale contract.

49. A.J. Adewunmi failed to include the appliances in the sale contract, and Lichtenberg and Herrera did not receive the appliances after the closing on the Fairview property. Lichtenberg did not learn about losing the appliances until a walk-through after the closing.

50. Prior to closing, an inspection of the Fairview property was performed by Home Team Inspection Service. Lichtenberg and Herrera signed and submitted Part A of an Inspection Notice, designating the repairs that needed to be completed before closing.

51. Without the knowledge of Herrera or Lichtenberg, A.J. Adewunmi or another member of the Adewunmi Team falsified the buyers' signatures under Part C of the Inspection

Notice, representing the repair issues had been resolved, when in fact the repairs had not all been completed.

52. A.J. Adewunmi directed the buyers to his brother, Julius Adewunmi, for financing their purchase of the Fairview property. Lichtenberg and Herrera completed a loan application, but it was later altered without their knowledge by the Adewunmi Team to include multiple misrepresentations, including the following:

a. Lichtenberg had worked for his employer for three years, instead of three months;

b. Herrera had worked for her employer for two years, instead of two months;

c. The buyers did not sign the application, but signatures had been cut and pasted to the bottom of the application.

53. Lichtenberg and Herrera had provided correct information to the Adewunmi Team on a handwritten loan application they prepared, but the information was misstated when the loan application was subsequently rewritten without their knowledge by A.J. Adewunmi, his brother, or another member of the Adewunmi Team.

54. MacPherson, the designated broker for RE/MAX Associates and supervising broker for the Adewunmi Team, took no steps to mitigate any damages sustained by Lichtenberg or Herrera as a result of the transaction, or to contact them after he learned of their problems in purchasing the Fairview property.

4718 Dahlia – Del Rio

55. Alfonso Cuadra Del Rio ("Del Rio") speaks Spanish as his native language and knows little English, if any. In 2005, he was employed as a dishwasher at the Ladue Racket Club.

56. Del Rio worked with Juan of RE/MAX Associates Plus in locating a home, and told Juan he needed a home with a monthly payment equal to what he was paying for rent, $450. Juan told Del Rio he would find him the cheapest house he could get.

57. Juan persuaded and induced Del Rio to purchase real property at 4718 Dahlia Avenue (the "Dahlia property"), St. Louis, Missouri, from Cots Realty for $135,900, with a monthly mortgage payment of $800.

58. Juan or another member of the Adewunmi Team prepared a loan application for Del Rio that included the following false information:

a. that Del Rio was employed by Spectrum Group as a factory laborer, when Del Rio had never worked there;

b. that Del Rio's monthly income was $3342.72, when in fact his income was approximately $1400 per month.

59. Del Rio provided accurate information to Juan for use in the loan application.

60. Del Rio worked with Juan of RE/MAX Associates Plus in purchasing the Dahlia property, and Juan served as the seller's agent and the selling agent.

61. Juan and A.J. Adewunmi induced Del Rio to purchase a home far more expensive than he intended, for more than he could afford.

62. Juan and A.J. Adewunmi were employed at the time by RE/MAX Associates Plus, under Martin Ribaudo.

63. Del Rio closed on the purchase of the Dahlia property on August 4, 2005. Olmos handled the closing.

64. The closing statement showed Del Rio was to pay $4527.35 at closing as a down payment, but Del Rio made no down payment.

65. Ribaudo, the designated broker for RE/MAX Associates Plus and supervising broker for the Adewunmi Team, did not review the closing statement for Del Rio's purchase of the Dahlia property.

66. After the closure of the sale, Del Rio had problems and concerns regarding the Dahlia property and attempted to contact Juan at RE/MAX Associates Plus. Neither Juan nor anyone from RE/MAX Associates Plus ever returned his calls.

67. Del Rio eventually left the Dahlia property because he could not afford the mortgage payments. He attempted to sell the real estate, but was unable to find a buyer.

3215 Taft – Elizabeth Amezcua

68. Elizabeth Amezcua ("Amezcua") was born in Mexico, and her native language is Spanish. When she arrived in the United States in 1998, she could not speak English, but eventually acquired limited English skills. Amezcua was inexperienced in real estate matters.

69. Amezcua met Juan of the Adewunmi Team at an International Fair at St. Francis de Assisi Church. Juan was operating a booth advertising his services as a real estate agent. Juan pressed Amezcua to allow him to help her buy a home.

70. Juan showed Amezcua several homes, including one at 3215 Taft, in St. Louis, Missouri (the "Taft property") owned by Cots Realty. The houses Juan showed Amezcua were in need of repair.

71. Amezcua told Juan she wanted a home she could afford.

72. Based on Juan's representation to her that the Taft property could be purchased for $70,000, and that certain problems with the house would be fixed, Amezcua agreed to purchase the Taft property.

73. On June 18, 2004, a residential sale contract was finalized for Amezcua to purchase the Taft property. Amezcua did not sign the residential sale contract, but provided only a verbal

consent to the purchase upon pressure from Juan while she was in the hospital due to a car accident and risky pregnancy.

74. According to the residential sale contract, Juan served as seller's agent for Cots Realty in the transaction. Amezcua was unaware that the owner of the property was part of the Adewunmi Team, and she trusted Juan to assist her in purchasing the Taft property.

75. In order to obtain financing for purchase of the Taft property, Amezcua provided her personal financial information to Juan. The Adewunmi Team prepared a Uniform Loan Application that falsely stated Amezcua worked for Wausau Janitorial Service, and misrepresented her monthly income as $3009.07 when it was $1200.

76. Amezcua did not provide the false information to Juan.

77. Juan provided the Uniform Loan Application containing the false information to a loan officer at U.S. Bank, Elizabeth Soriano. Soriano communicated with Juan or A.J. Adewunmi regarding the application, but never met with or communicated with Amezcua.

78. The sale of the Taft property closed on July 30, 2004. Amezcua felt rushed through the closing. A stack of papers was placed in front of her, and she was told where to sign, but the papers were in English and no one translated or explained them to her.

79. Amezcua believed she was purchasing the Taft property for $70,000. After all the papers had been signed at the closing, Juan informed Amezcua the sale price had been increased to $103,000.

80. Juan and his company were paid $46,781.56 on the sale of the Taft property to Amezcua.

81. Juan misrepresented in the Settlement Statement that Amezcua had provided $300 in earnest money and had made a down payment of $1000, when she had done neither. At Juan's insistence, Amezcua provided Juan with a signed blank check, which Juan said he would not

cash. Amezcua believed the blank check was needed only to prove she had a bank account. Juan completed the check for $300 without Amezcua's knowledge and cashed it, causing Amezcua's bank account to be overdrawn.

82. Amezcua received $1200 at the closing from Juan, purportedly to assist her with the first couple of mortgage payments due to the significant increase in the sale price from $70,000 to $103,000. This payment to Amezcua was not disclosed in the Settlement Statement.

83. Juan promised to make repairs to the Taft property, including a new roof, tuck pointing, and mold abatement, but none of these repairs were completed. When the first storm hit after Amezcua's purchase of the Taft property, water leaked into the house from the roof.

84. Juan evaded Amezcua's questions about the identity of the sellers of the Taft property.

85. MacPherson, the designated broker for RE/MAX Associates and supervising broker for the Adewunmi Team, did not contact Amezcua regarding the Taft property transaction and did nothing to mitigate any damages she sustained as a result of the transaction.

305 Fillmore – Rosa Bautista

86. Rosa Bautista ("Bautista") came to the United States from Mexico in 1994. She speaks very little English.

87. Bautista worked with A.J. Adewunmi to locate a home. Olmos, unlicensed at the time, served as an interpreter.

88. On August 11, 2003, Bautista entered into a Residential Sale Contract with Cots Realty to purchase real property at 305 Fillmore, St. Louis, Missouri (the "Fillmore property").

89. According to the sale contract, A.J. Adewunmi served as both the seller's agent for Cots Realty and as the buyer's agent for Bautista.

90. A.J. Adewunmi did not inform Bautista, and Bautista did not know, that Adewunmi had an ownership interest in the Fillmore property.

91. At the time she entered into the Residential Sale Contract, Bautista was not employed, but her husband was.

92. The Adewunmi Team completed a "mini-application" for Bautista that falsely stated she was employed as a caregiver at "Love to Learn Child Development" and earned $2874 per month.

93. Bautista did not provide this false information for the "mini-application."

94. The Adewunmi Team completed a Uniform Residential Loan Application in October 2003 for Bautista. Bautista did not provide any information for the application.

95. The loan application prepared by the Adewunmi Team falsely stated Bautista worked as a caregiver at "Love to Learn Child Development" for 2.77 years.

96. The Adewunmi Team also created other documents that contain false information, including:

a. a verification of Bautista's employment that lists a director at "Love to Learn Child Development Center" and a contact number;

b. a "Love to Learn Child Development Center" statement of earnings for the pay period August 22, 2003 through September 5, 2003, stating Bautista earned $1326.92 for the pay period, and $22,557.84 year to date;

c. a statement of earnings from the same employer for the pay period August 8 through 22, 2003, showing Bautista earned $1326.92 for the pay period and $21,230.72 year to date;

d. a 2002 W-2 form from "Love to Learn Child Development Center" reflecting Bautista's income of $33,499 in wages, tips, and other compensation;

e. a 2001 W-2 from the same employer, reflecting Bautista's income of $33,091.00 in wages, tips, and other compensation; and

f. a false certification of the condition of the roof of the Fillmore property.

97. Initially, A.J. Adewunmi informed Bautista the purchase price for the Fillmore property would be $70,000, and the monthly mortgage payment would be approximately $600.

98. A. J. Adewunmi and Olmos rushed Bautista through the closing, and did not permit her to review the closing documents or have them translated to Spanish. They told her only to "sign, sign, sign."

99. At the closing, Bautista learned the purchase price would be $85,000.

100. When Bautista received the documents from the closing on the Fillmore property, she discovered the true purchase price was $92,000 and the monthly payments would be $800. Bautista's spouse was not included as a buyer of the Fillmore property.

101. A.J. Adewunmi told Bautista the monthly payment would be reduced to $600 after six months, but the monthly payments increased to $900.

102. Olmos provided $5000 to Bautista towards the down payment for the purchase of the Fillmore property, misrepresenting that it was a gift to his "sister." Bautista knew nothing of this supposed gift, and Olmos was not related to her.

103. Neither MacPherson, the designated broker for RE/MAX Associates and supervising broker for the Adewunmi Team, nor anyone else from RE/MAX Associates attempted to contact Bautista about the transaction or to mitigate any resulting damages she sustained.

4327 Connecticut Street – Cruz Ortiz

104. Cruz Elena Ortiz ("Ortiz") is an immigrant from Columbia. She came to the United States in 2003 and speaks very little English.

105. The Adewunmi Team, working under RE/MAX Associates, assisted Ortiz in her search for a home in 2004. Olmos showed Ortiz four properties that were all in need of repair.

106. In or around April 2004, Ortiz entered into a residential sale contract to purchase real property located at 4327 Connecticut Street (the "Connecticut property") from Cots Realty.

107. The Adewunmi Team prepared a loan application for Ortiz that stated she worked at Dormire Security & Consultants for 25 years as a security officer and earned $3293.33 per month. This information was false and was not provided by Ortiz.

108. Although Olmos had represented to Ortiz he would find her a home priced at around $80,000, the price of the Connecticut property was changed to $105,000 at closing, without Ortiz's prior knowledge. When Ortiz realized the price had increased, she agreed to it at closing because the Adewunmi Team said she did not have credit to qualify for the lower price, and because she was under pressure to vacate her prior residence.

109. Ortiz did not meet A.J. Adewunmi until after the sale closed. She contacted him because she believed he had given her a three-month guarantee, and the property needed repairs. A.J. Adewunmi told Ortiz he would make the repairs, but did not. He never contacted Ortiz again.

4727 Louisiana Road – Kristen Velloff

110. At all relevant times, Kristen Velloff ("Velloff") was a single mother of four who had left high school early in her sophomore year to get married.[1]

[1] Velloff now goes by the name of Kristen Munoz, but for purposes of this decision, we shall refer to her by the name used in the documents related to this case.

111. Velloff worked with Olmos and A.J. Adewunmi to find a house and told them she wanted to pay between $70,000 and $80,000.

112. Olmos showed Velloff a number of houses, including a property owned by Cots Realty located at 4727 Louisiana Road, St. Louis, Missouri (the "Louisiana property").

113. The Louisiana property was in need of repairs, but Olmos showed her other properties that had been rehabilitated and promised her the Louisiana property would be repaired to the same standard.

114. Olmos told Velloff she could purchase the Louisiana property for between $70,000 and $80,000.

115. At Olmos' request, Velloff signed a blank residential sale contract to purchase the Louisiana property from Cots Realty. Olmos told Velloff the sale contract would be filled in later, and the sale price for the Louisiana property would be between $70,000 and $80,000.

116. Neither Olmos nor A.J. Adewunmi disclosed to Velloff that A.J. Adewunmi owned the Louisiana property as an owner of Cots Realty.

117. In order to get financing for the purchase, Velloff provided personal financial information to Olmos. Olmos introduced Velloff to Julius Adewunmi, who acted as the loan officer for the sale.

118. The Adewunmi Tem, in cooperation with Julius Adewunmi, fabricated a uniform residential loan application for Velloff that contained the following false information:

a. Velloff worked at Panda Restaurant for five years, when she had worked there only two years;

b. Velloff had fourteen years of education, when she had a little over nine years of education;

c. Velloff had $107,294 in assets, when she had no significant assets.

119. At the closing on the Louisiana property on March 24, 2004, Velloff discovered the sale price had increased to $107,000. Although she objected to the increase, Velloff closed on the purchase because she felt pressured by A.J. Adewunmi, was a month past due on her rent, and had nowhere to go.

120. Velloff later learned the purchase price for the Louisiana property was actually $109,000.

121. When Velloff moved into the Louisiana property, the repairs Olmos told her would be made had not been completed, and the property had not been cleared by the city for occupancy. A handrail had not been added to the basement stairs, and tuckpointing on the chimney had not been completed.

122. Velloff made numerous repairs at her own expense, including replacing the roof and sealing the basement against water.

123. Velloff attempted to sell the Louisiana property for $5000 less than the amount she paid, but had no success.

124. MacPherson, the designated broker for RE/MAX Associates and supervising broker for the Adewunmi Team, never attempted to contact Velloff regarding her purchase of the Louisiana property or to mitigate any damages Velloff sustained as a result of the transaction.

Conclusions of Law

We have jurisdiction to hear the MREC's complaint.[2] The MREC has the burden of proving that MacPherson and Ribaudo committed an act for which the law allows discipline.[3]

The MREC argues there is cause for discipline under § 339.100.2, which states:

> The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any

[2]Section 621.045. Statutory references are to RSMo Supp. 2012, unless otherwise noted.
[3]***Missouri Real Estate Comm'n v. Berger***, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

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;

* * *

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(5) Failure to timely deliver a duplicate original of any and all instruments to any party or parties executing the same where the instruments have been prepared by the licensee or under his or her supervision or are within his or her control, including, but not limited to, the instruments relating to the employment of the licensee or to any matter pertaining to the consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property, or any type of real estate transaction in which he or she may participate as a licensee;

(6) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts, or accepting a commission or valuable consideration for services from more than one party in a real estate transaction without the knowledge of all parties to the transaction;

* * *

(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;

(17) Failure to timely inform seller of all written offers unless otherwise instructed in writing by the seller;

* * *

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

* * *

(24) Use of any advertisement or solicitation which is knowingly false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed[.]

The following laws and regulations define and describe the duties of a real estate broker.

Section 339.010 states:

1. A **"real estate broker"** is any person, partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

(1) Sells, exchanges, purchases, rents, or leases real estate;

(2) Offers to sell, exchange, purchase, rent or lease real estate;

(3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

(4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;

(5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;

(6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

(8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

(9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public;

(10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

Section 339.710 states:

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

(Emphasis added.)

The duties and obligations of real estate agents acting as agent for sellers, buyers, or as dual agents are set out in §§ 339.730, .740, and .750:

> **339.730.**[4] 1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:
>
> (1) To perform the terms of the written agreement made with the client;
>
> (2) To exercise reasonable skill and care for the client;
>
> (3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
>
> (a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
>
> (b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

[4] RSMo 2000.

(c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

339.740.[5] 1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

[5] RSMo 2000.

2. A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

3. A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

4. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

5. A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting on the buyer's or tenant's behalf as a subagent shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

339.750.[6] 1. A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

2. A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 339.730 and 339.740 unless otherwise provided for in this section.

3. Except as provided in subsections 4 and 5 of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information as defined in section 339.710.

4. The following information shall not be disclosed by a dual agent without the consent of the client to whom the information pertains:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

[6] RSMo 2000.

(2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) What the motivating factors are for any client buying, selling, or leasing the property;

(4) That a client will agree to financing terms other than those offered; and

(5) The terms of any prior offers or counter offers made by any party.

5. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. A dual agent does not terminate the dual agency relationship by making any required or permitted disclosure.

6. In a dual agency relationship there shall be no imputation of knowledge or information between the client and the dual agent or among persons within an entity engaged as a dual agent.

20 CSR 2250-8.100[7] states:

(1) 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.
Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.
(2) Every licensee shall promptly tender to the seller or seller's agent every written offer to purchase and shall promptly tender to the buyer or buyer's agent any counteroffer made by the seller, including any back-up contracts properly identified as such, and upon procuring a proper acceptance of an offer to purchase shall promptly deliver copies of the same, signed by both buyer and seller, to each party to the transaction. A buyer or seller must be promptly advised when an offer or counteroffer has been rejected.
(3) Any change to a contract shall be initialed by all buyers and sellers.
Acceptance of each fully executed contract shall include the date at which final agreement was reached either by 1) specific acknowledgement of final acceptance date; or 2) date of the last signature or initial to the contract.

[7] All references to the CSR are to the **Missouri Code of State Regulations** as current with amendments included in the **Missouri Register** through the most recent update.

Liability of Designated Brokers

20 CSR 2250-8.020 states:

> (1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. A broker shall not be held responsible for inadequate supervision if—
> (A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instructions;
> (B) Reasonable procedures have been established to verify that adequate supervision was being performed;
> (C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;
> (D) The broker did not participate in the violation;
> (E) The broker did not ratify the violation;
> and
> (F) The broker did not attempt to avoid learning of the violation.
>
> (2) A broker shall not permit licensed and unlicensed persons affiliated with the broker to—
> (A) Establish and carry on real estate brokerage business for their own benefit, directly or indirectly, where the broker's primary interest is the receipt of a fee or other valuable consideration for the use of the broker's license by others; or
> (B) Where the broker has no control or only nominal control of the business affairs conducted under the broker's license or is only nominally associated with the business[.]

As designated brokers, MacPherson and Ribaudo bear responsibility for their own conduct, as well as for the conduct of RE/MAX Associates and RE/MAX Associates Plus, respectively, pursuant to § 339.710(12) and 20 CSR 2250-8.020(1). A corporation acts only through its agents, and the agent's acts are the corporation's acts. ***Fowler v. Park Corp.***, 673 S.W.2d 749 (Mo. banc 1984). The MREC argues that MacPherson and Ribaudo, in their capacity as designated brokers for RE/MAX Associates and RE/MAX Associates Plus, respectively, failed in their duty to adequately supervise the real estate-related activities of the Adewunmi Team while under their respective brokerages, and, therefore, are responsible for the acts of the

Adewunmi Team. MacPherson and Ribaudo admit the Adewunmi Team committed numerous violations of the licensing statutes and regulations, but argue they have no liability as designated brokers because they come within the "safe harbor" provisions of 20 CSR 2250-8.020(1)(A) through (F).

To avoid liability for the actions of the Adewunmi Team, MacPherson and Ribaudo must establish they met each provision of the safe harbor regulation, which we examine in detail below.

(A) – Violation of Specific Written Policies or Instructions

When, against the specific written policies or instruction of the designated or supervising broker, a licensed or unlicensed agent violates Chapter 339 or the rules implementing it, the broker may avoid liability for inadequate supervision. MacPherson and Ribaudo argue this first requirement of the "safe harbor" provision of 20 CSR 2250-8.020(1)(A) was satisfied because their Policies and Procedures Manual generally required agents to comply with all laws, rules, and regulations set by the MREC and the Code of Ethics of the National Association of Realtors. The MREC maintains this provision requires specific written policies, while Respondents' Policies and Procedures Manual contains only a generalized direction to follow applicable laws.

We conclude this first requirement of the "safe harbor" provision was met. The language of 20 CSR 2250-8.020(1)(A) does not require a broker to have specific written policies, but provides that where such written policies exist and agents under that broker's supervision contradict same, the broker may avoid liability for the agent's acts. The Adewunmi Team violated the Policies and Procedures Manual's specific written instruction to comply with all laws, rules, and regulations of the MREC.

(B) – Reasonable Procedures to Verify Adequate Supervision

To avoid liability for the activities of its agents under subsection (B), a designated or supervising broker must establish it maintained reasonable procedures to verify adequate supervision of its real estate personnel. MacPherson and Ribaudo contend that because the agents of RE/MAX Associates and RE/MAX Associates Plus were not employees but independent agents of their respective brokerages, they had no obligation to supervise their activities, and were, in fact, limited in their ability to do so under federal law. We find nothing in the description of the role of a designated broker in § 339.170(12) that limits or abrogates a broker's responsibilities when its agents are independent contractors.

Consequently, subsection (B) of the "safe harbor" provision makes no distinction between brokers whose agents are independent contractors or employees. In either instance, a broker does not avoid liability for the acts of its agents when there are no reasonable procedures in place to verify adequate supervision of those agents.

MacPherson and Ribaudo made no effort to oversee or even involve themselves in the real estate activities of the Adewunmi Team, and they employed no measures to verify adequate supervision. Rather than asserting any supervision over RE/MAX agents, MacPherson seemed satisfied with holding the lender and title company responsible for reviewing documents prior to closing; if they failed to find inaccuracies or other problems in the documents, their funds were at risk, not the broker's. The transactions were certainly never examined by the broker prior to closing. When advised that U.S. Bank expressed concerns about fraud in loan packages submitted by the Adewunmi Team, MacPherson did nothing to examine the files for himself or question the agents involved in their preparation. His response was to forward the suspect loan packages, unaltered and without further review, to other lenders.

MacPherson and Ribaudo had no policies or procedures providing for supervision of the Adewunmi Team. They did not require salespeople to retain correspondence for review by the supervising broker. Their Policies and Procedures Manual might have been identical to those common in the industry (as MacPherson testified), but we found no mechanism for ensuring or monitoring compliance. We find Respondents failed to satisfy subsection (B) of the "safe harbor" provision.

Because the failure to meet any one of the subsections of 20 CSR 2250-8.020(1) precludes a broker from avoiding liability for the acts of its agents, we need not proceed any further in our analysis. MacPherson and Ribaudo are responsible as designated brokers for the acts of the Adewunmi Team.[8]

Violations of MacPherson and Ribaudo – § 20 CSR 2250-8.150(2)

20 CSR 2250-8.150(1) and (2) state:

> (1) Every broker shall deliver or cause to have delivered to the buyer and the seller in every real estate transaction where s/he acts as a broker, at the time the transaction is consummated, a complete, accurate and detailed statement showing all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all money received by the broker in the transaction, the amount, and payee(s) of all disbursements made by the broker. If the buyer and seller are represented by different brokers, it shall be the responsibility of the listing broker to deliver, or cause to have delivered, the closing statements. If a broker personally handles a closing, on the day of closing the broker shall sign and date the closing statement.
>
> (2) A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain each broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in

[8] We find no evidence MacPherson or Ribaudo directly participated in the transactions of the Adewunmi Team.

> the transaction, the amount, and payee(s) of all disbursements made by the broker, closing agency or company and the signatures of the buyer and seller.

The MREC asserts Respondents violated this regulation by failing to review closing statements to verify their accuracy and to ensure all material financial aspects of the transaction were contained. MacPherson readily admitted his practice was to review closing statements after the closing for completeness, not for accuracy. There is no evidence Ribaudo participated in reviewing closing statements, so what review was done under his brokerage was performed by MacPherson in his capacity as legal counsel.

Respondents argue that lenders and title companies were better positioned than brokers to perform the role of reviewing the accuracy of closing documents, and that closing statements prepared by the title company were routinely provided only to the parties to the transaction, and not to the broker.[9] Whatever the realities of industry practice might be, the requirements of the law place the responsibility of review on the designated broker.

MacPherson and Ribaudo violated § 20 CSR 2250-8.150(2) by failing to review closing statements for accuracy. Accordingly, we find cause for discipline under § 339.100(15).

Violations of the Adewunmi Team - §§ 339.740 and .750

The duties of a buyer's agent include performing the terms of any written agreement made with a client; exercising reasonable skill and care for the client; promoting the client's interest with the utmost good faith, loyalty, and fidelity; and complying with all state, local, and federal real estate laws, regulations, and ordinances. Section 339.740. These same duties are made applicable to dual agents pursuant to § 339.750.2. The MREC asserts MacPherson and Ribaudo, through the acts of the Adewunmi Team, failed to meet their responsibilities as seller's

[9] Respondents offered no explanation why brokers could not request a closing statement from the title company or from their own client in order to review it for accuracy.

agent, buyer's agent, and dual agent in several transactions, and are subject to discipline. We agree.

A buyer's agent or dual agent is required to communicate clearly and in a timely manner when contract terms are rejected, and must have any changes in a contract approved and initialed by the parties. 20 CSR 2250-8.100. The Adewunmi Team, under the brokerage of MacPherson's RE/MAX Associates, repeatedly failed in its duties as a buyer's agent by

- altering a sale contract to increase the sale price, without prior notice to Ochoa, and without having her initial the change;
- failing to include Lichtenberg's request to include appliances in the sale contract, and falsifying signatures on the contract;
- increasing the sale price in the Bautista and Ortiz transactions, without prior notice to the buyers; and inducing Velloff to sign a blank sale contract, then completing it for a price higher than they were told Velloff was willing to pay.

While under the brokerage of Ribaudo's RE/MAX Associates Plus, the Adewunmi Team ignored Del Rio's request for a sale contract under which the mortgage payments would be no more than $450 per month. Their actions in these transactions not only violated their duties as buyer's or dual agents under 20 CSR 2250-8.100, but also their obligations under § 339.740 and .750 to exercise reasonable skill and care for their clients and to promote their clients' interests with the utmost good faith, loyalty, and fidelity.

Cause exists to discipline MacPherson and Ribaudo as their designated or supervising brokers under § 339.100.2(15) for these violations.

Failure to Disclose Cot's Realty Ownership – 20 CSR 2250-8.110(1) and (2)

20 CSR 2250-8.110(1) and (2) provide:

> (1) A licensee shall not acquire an interest in, sell, buy, exchange, rent or lease any real estate, directly or indirectly, without first making the licensee's status as a licensee known in writing to the other parties in the transaction.
> (2) Before buying, exchanging, selling or leasing real estate for another party, the licensee shall disclose in writing any ownership which a licensee has or will have and the licensee's status as a licensee to all parties to the transaction.

A.J. and Leonard Adewunmi, while working under the brokerage of MacPherson's RE/MAX Associates, violated these regulations when they failed to make written disclosure of their ownership interest in Cots Realty to Amezcua, Bautista, Ochoa, and Velloff. We reject MacPherson's argument that this disclosure was effectively accomplished by checking the box in the sale contract indicating the dual agency of the sale person, given that in each instance, the Adewunmis knew the buyers lacked proficiency in English. We found no evidence either A.J. Adewunmi or Leonard Adewunmi disclosed in writing their status as licensees to the parties to these transactions. Their actions violated 20 CSR 2250-8.110(1) and (2), and are therefore cause to discipline MacPherson under 339.100.2(15).

Flagrant and Continued Misrepresentations - § 339.100.2(2)

A licensee is subject to discipline for making substantial misrepresentations, false promises, or suppression or concealment of material facts in the conduct of business, and for pursuing a flagrant and continuing course of misrepresentations. Section 339.100.2(2). In each transaction examined here, the Adewunmi Team used misrepresentations, false promises, and concealment of facts to deceive and exploit buyers and lenders.

Agents of the Adewunmi Team told clients they would find them an affordable home, but what they showed them instead were properties that, despite their state of disrepair, were beyond the client's modest means. When a property initially appeared to be within a client's desired price range, the sale price was mysteriously increased at closing without notice or explanation. Repairs were promised, but never made. The Adewunmi Team used intimidation and pressure to secure their clients' signatures on closing documents, and even forged signatures.

The Adewunmi Team prepared fraudulent financial statements without the knowledge or consent of their clients, then provided that false information to lenders. In so doing, they built a house of cards that predictably collapsed into loan defaults, foreclosures, and ruined credit for

the buyers. Without question, their flagrant and continued course of misrepresentations are grounds for discipline of Ribaudo and MacPherson under § 339.100.2(2).

Misrepresentations in Documents - § 339.100.2(4)

A licensee is subject to discipline for misrepresenting the sale price or the agreed upon terms of a transaction in a document. Section 339.200.2(4). In the Bautista transaction, the Adewunmi Team increased the purchase price of the property without the consent of the buyer, and falsely reflected a $5000 gift of a down payment from Olmos to his "sister." This same tactic of misrepresenting a down payment was also done by the Adewunmi Team in the Amezcua and Del Rio transactions. They increased the sale price in transactions with Ochoa, Lichtenberg, Ortiz, and Velloff. Grounds exist for discipline of Respondents under § 339.100.2(4).

Failure to timely deliver copy of
document to executing party - § 339.100.2(5)

The Adewunmi Team prepared and signed clients' names to loan applications with falsified information, and to sale contracts containing terms they never approved. Their duplicity went undetected because they never provided a copy of the document to the client who purportedly signed it. Their conduct is grounds for discipline of Respondents under § 339.100.2(5).

Failing to disclose acting for more than
one party in transaction - § 339.100.2(6)

A licensee who acts for more than one party in a transaction is obligated to disclose that fact to all the parties for whom he or she acts. Section 339.100.2(6). As discussed above, Leonard and A.J. Adewunmi never disclosed to Amezcua, Bautista, Ochoa, Ortiz, or Velloff their ownership interest in Cots Realty, or that they were acting as dual agents in those transactions. We find grounds to discipline MacPherson under § 339.100.2(6).

Commission of acts which are grounds for refusal of license - § 339.100.2(16)

Section 339.100.2(16) includes as grounds for discipline any acts that are grounds for refusal of a license under § 339.040, which provides:

> 339.040. 1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business 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[.]

The self-dealing, deception, and blatant fraud by the Adewunmi Team are antithetical to the good moral character required for licensees. That they repeatedly exploited the trust placed in them by clients whose lack of education or proficiency in English made them particularly vulnerable demonstrates the Adewunmi Team's inability or unwillingness to function properly in their profession. *See* ***Tendai v. Missouri State Bd. of Reg'n for the Healing Arts***, 161 S.W.3d 358, 369 (Mo. banc 2005).

The Adewunmi Team conspired with other bad actors, including Julius Adewunmi, who, as a loan officer, advanced the fraudulent Velloff loan package; and Cots Realty, which peddled its substandard properties on false promises of rehabbing them, then dodged phone calls to escape any responsibility. The "Partners in Charity" program, which provided down payment assistance to worthy borrowers, became just another tool the Adewunmi Team employed in its schemes. When their clients attempted to contact members of the Adewunmi Team to complain, ask questions, or get help, they ignored them. Their course of conduct indicates

incompetence. *See* ***Albanna v. State Bd. of Reg'n for the Healing Arts,*** 293 S.W.3d 423, 435 (Mo. banc 2009.)

MacPherson and Ribaudo, who were apparently unaware of the misconduct going on right under their noses, did not exert even a modicum of supervision over those working under their brokerage. Perhaps the most telling example of this gross lack of supervision occurred when a lender alerted MacPherson that fraud was suspected in some of the loan packages submitted by the Adewunmi Team. Rather than conduct any inquiry of the licensees who submitted the loan packages, or to examine the documentation himself to better understand the problem, MacPherson took no action—except to refer the suspect loan packages to a different lender for approval. This deliberate indifference to possible fraud reflects a lack of appreciation of the responsibilities imposed by Chapter 339 on real estate licensees and, in particular, on brokers, to safeguard the interests of the public.

Similarly, Ribaudo's failure to assert any monitoring or supervision over the Adewunmi Team created an environment in which their misconduct could flourish without detection. The unsupervised activities of the Adewunmi Team involved a number of different transactions involving several clients and properties, and occurred over several years. Ribaudo and MacPherson's ongoing unwillingness or inability to competently perform this critical responsibility of a broker reflects the "state of being" required for us to find them incompetent.

We find grounds to discipline MacPherson and Ribaudo under § 339.100.2(16) for their own conduct, as well as for the conduct of the Adewunmi Team.

Other conduct - § 339.100.2(19)

The MREC also cites as grounds for discipline § 339.100.2(19), which allows discipline for "[a]ny 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[.]" WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986). Accordingly, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute.

We have found the conduct at issue here is cause for discipline under other subsections of § 339.100.2, but there is no "other" conduct. Therefore, we find no cause for discipline under this subsection.

Misleading or deceptive advertising or solicitation - § 339.100.2(24)

The MREC alleges cause for discipline under § 339.100.2(24), but provided no argument in its briefs to direct us to any evidence in our record to support such a finding. While we found the Adewunmi Team consistently promised far more than they ever delivered, we found no evidence that its solicitation of clients, when made, was misleading or deceptive. We find no cause for discipline under § 339.100.2(24).

Summary

MacPherson and Ribaudo are responsible for their inadequate supervision of the Adewunmi Team under RE/MAX Associates and RE/MAX Associates Plus, respectively, and are therefore responsible for their conduct while acting under their brokerage. MacPherson is subject to discipline under § 339.100.2(2), (4), (5), (6), (15), and (16). Ribaudo is subject to discipline under § 339.100.2(2), (4), (5), (15), and (16).

SO ORDERED on March 14, 2013.

MARY E. NELSON
Commissioner