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MREC

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
FRANK J. ROSS III

Frank J. Ross III (Ross) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Ross's license as a real estate salesperson, no. 2003022426, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2011. The MREC and Ross jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Ross acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Ross may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Ross knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Ross acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Ross stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Ross's license as a real estate salesperson, license no. 2003022426, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Ross in Part II herein is based only on the agreement set out in Part I herein. Ross understands that the MREC may take further disciplinary action against him based on

facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Ross herein jointly stipulate to the following:

1. Frank J. Ross III is licensed by the MREC as a real estate salesperson, license no. 2003022426. Ross's license was current and active at all times herein.
2. On January 10, 2012, Ross pled guilty to one felony, class C, count of Assault in the Second Degree, DWI with Injury, as defined by § 565.060, RSMo, in the Circuit Court of Jackson County, Missouri.
3. On December 5, 2010, Ross operated a motor vehicle while under the influence of alcohol and acted with criminal negligence when he failed to stop for a stop sign and caused physical injury to Serge Grinik by colliding with the vehicle in which Serge Grinik was an occupant.
4. Section 565.060, RSMo Supp. 2011, regarding the offense of Assault in the Second Degree, states:
 1. A person commits the crime of assault in the second degree if he:

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself; . . .

. . .

3. Assault in the second degree is a class C felony.

5. Ross's conduct, as stated above, provides cause to discipline his real estate salesperson license pursuant to § 339.100.2(18), RSMo Supp. 2011, which states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

. . .

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

II. **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2011.

6. **Ross's license is on probation.** Ross's license as a real estate salesperson is hereby placed on PROBATION from the effective date of this Settlement Agreement until January 10, 2015. However, upon the termination of the term of probation imposed in *State v. Frank J. Ross, III*, Case No. 1016-CR05757-01 (Jackson County) (hereinafter "criminal case"), Ross may request in writing that the MREC likewise terminate the probation imposed under this Settlement Agreement. With that written request, Ross shall submit certified court records as proof that he has been discharged from the probation imposed in the criminal case. Upon the MREC's review, the MREC may either accept or reject the request. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Ross shall be entitled to practice as a real estate salesperson under §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended, provided Ross adheres to all the terms of this agreement.

7. **Terms and conditions of the disciplinary period.** Terms and conditions of the probation are as follows:

A. Ross shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Ross shall notify the MREC in writing within ten (10) days of any change in this information.

B. Ross shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Ross shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Ross may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Ross applies for a real estate license after surrender, Ross shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Ross shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Ross shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Ross shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Ross shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

G. Quarterly reports. Ross shall obey and comply with all terms and conditions of probation for his criminal supervision. Ross shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance with the terms and conditions of this Settlement Agreement. Ross is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Ross shall submit the first such report so that the MREC receives it on or before ~~January~~ ^{April} 10, 2013. *B*

8. Upon the expiration of the disciplinary period, the license of Ross shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Ross has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing,

vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Ross's license.

9. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

10. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Ross of §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

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

12. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Ross agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

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

15. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

16. Ross, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph

is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

17. Ross understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Ross's license. If Ross desires the Administrative Hearing Commission to review this Settlement Agreement, Ross may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

18. If Ross requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Ross's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Ross as allowed by law. If Ross does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

Frank J. Ross III 12/31/12
Date

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director 1/18/13
Date

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