

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)
)
 Petitioner,)
)
 v.) No. 11-0785 RE
)
 SUZY D. SAMSEL,)
)
 Respondent.)

ORDER OF THE MISSOURI REAL ESTATE COMMISSION
DISCIPLINING THE REAL ESTATE LICENSES OF
SUZY D. SAMSEL

On or about November 3, 2011, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Suzy D. Samsel, No. 11-0785 RE*. In that Decision, the Administrative Hearing Commission found that Respondent Suzy D. Samsel's real estate licenses (license nos. 1999004145, 2011020577 and 2011020575) are subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2 (1), (3), and (15), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on February 15, 2012, 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 Commission, with the exception of

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

Doris Carlin, were present throughout the meeting. Jan Hunt, Twila Hillme, and Charles Davis participated through conference call. Further, each member of this Commission that was present for the hearing has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Ross Brown. Respondent was not present and was not represented by counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT.

1. The Commission 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 Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Suzy D. Samsel, Case No. 11-0785 RE*, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

4. This Commission licensed Respondent Suzy D. Samsel as a real estate broker, license number 1999004145, as a broker-associate, license number 2011020577, and as a broker-associate, license number 2011020575. Respondent's broker license was current at all times relevant to this proceeding.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Decision issued by the Administrative Hearing Commission dated November 3, 2011, in *Missouri Real Estate Commission v Suzy D. Samsel, Case No. 11-0785 RE*, takes official notice thereof, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated November 3, 2011, Respondent's real estate licenses are subject to disciplinary action by the Commission pursuant to § 339.100.2 (1), (3), and (15), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

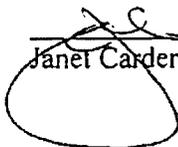
ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate licenses of Suzy D. Samsel (license nos. 1999004145, 2011020577 and 2011020575) are hereby **REVOKED**. All evidence of Respondents' licensure shall be returned to the Commission within 30 days of this Order along with Closing of a Real Estate Brokerage/Sole Proprietorship forms.

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

SO ORDERED, EFFECTIVE THIS 23rd DAY OF February, 2012.

MISSOURI REAL ESTATE COMMISSION



Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE
COMMISSION,

Petitioner,

vs.

SUZY D. SAMSEL D/B/A APPLE REAL
ESTATE,

Respondent.

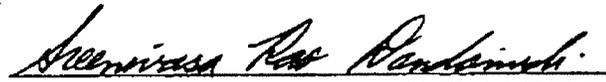
No. 11-0785 RE

DECISION

On October 28, 2011, we issued our order granting part of Petitioner's motion for partial summary decision. We concluded that Respondent's license is subject to discipline on some, but not all, charges in the complaint. On November 2, 2011, Petitioner filed a motion to dismiss without prejudice the charges on which we did not find cause for discipline. Therefore, those charges are dismissed.

We incorporate by reference our October 28, 2011, order into this final decision and will certify our record to Petitioner in thirty days.

SO ORDERED on November 3, 2011.


SREENIVASA RAO DANDAMUDI
Commissioner

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)
)
Petitioner,)
)
vs.)
)
SUZY D. SAMSEL, d/b/a, APPLE REAL)
ESTATE,)
)
Respondent.)

No. 11-0785 RE

ORDER

Suzy D. Samsel, d/b/a, Apple Real Estate is subject to discipline under § 339.100.2(1), (3) and (15)¹ as set forth in Count I of the complaint.² We grant the motion for summary decision filed by the Missouri Real Estate Commission ("the MREC") as to these subdivisions. The MREC shall inform us by November 2, 2011, whether it intends to proceed with the remaining allegations at the hearing set for November 7, 2011.

Procedure

On May 5, 2011, the MREC filed a complaint seeking to discipline Samsel. On May 17, 2011, we served Samsel with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. Samsel did not file an answer. On September 23, 2011, the MREC

¹Statutory references, unless otherwise noted, are to RSMo Supp. 2010.

²Although the complaint includes four counts, the motion asks for summary decision only as to Count I.

filed a motion for summary decision as to Count I of its complaint. Our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the MREC establishes facts that (a) Samsel does not dispute and (b) entitle the MREC to a favorable decision.

The MREC cites the request for admissions that was served on Samsel on August 10, 2011. Samsel did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.³ Such a deemed admission can establish any fact or any application of law to fact.⁴ That rule applies to all parties, including those acting *pro se*.⁵ Section 536.073⁶ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

We gave Samsel until October 7, 2011, to respond to the motion, but she did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. The MREC originally issued Samsel a real estate license on March 21, 1984. Samsel's license was current and active at all relevant times.

Samsel's Businesses

2. Samsel does business under the fictitious name of Apple Real Estate, which was registered and cancelled/expired with the Missouri Secretary of State on multiple occasions.

3. The fictitious name of Apple Real Estate was registered with the MREC. Samsel was the designated broker of Apple Real Estate.

4. On or about May 1, 2007, Samsel created the limited liability company of Red Apple Services, L.L.C., which was registered with the Missouri Secretary of State.

³*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

⁴*Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁵*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁶RSMo 2000.

Count I

5. In July 2005, Samsel and Apple Real Estate entered into a Property Management Agency Agreement (the "Agreement") with Guy Georgianna to manage four rental properties located in Hollister, Missouri ("the Properties").

6. Samsel managed the Properties from July 2005 through October 2007 (the "Management Period").

7. Per the terms of the Agreement, Samsel was required to "maintain accurate records of all monies received and disbursed in connection with its management of the Property, and such records shall be open for inspection by Owner [Georgianna] at all reasonable times."

8. During the Management Period and thereafter, Samsel was unable to provide an accounting of her management of the Properties, including rents and security deposits collected, deductions for authorized expenses and management fees, copies of checks received, receipts, and/or deposits made into Georgianna's account. Upon Georgianna's request for such records, Samsel responded that her computer had crashed. Samsel failed to provide records during the entire Management Period and afterward.

9. Per the terms of the Agreement, Samsel was not required to provide monthly income statements to Georgianna, but the parties orally agreed in August 2005 that Samsel would provide such statements on a monthly basis.

10. During the Management Period, Georgianna contacted Samsel 27 times (according to his log book) requesting an income statement to be furnished, but Samsel failed to provide an income statement at any point.

11. Per the terms of the Agreement, Samsel was authorized to rent the units for \$425 or higher per month. Samsel was authorized to keep 15% of the gross monthly rent obtained to compensate her for management.

12. During the Management Period, Samsel made sporadic deposits into Georgianna's account on a non-monthly basis and she was unable to explain her basis for the amounts. The amounts deposited often bore no reasonable relation to the amounts Samsel collected and deposited into Georgianna's account.

13. During the Management Period, Samsel made representations to Georgianna as to the amount of units that were occupied or vacant. These representations bore no reasonable relation to the amounts Samsel collected for rents and deposited into Georgianna's account.

14. Per the terms of the Agreement, Samsel was required to collect a security deposit amount "as much as legal and practical per Mo. Law" in connection with the renting of units. Samsel informed Georgianna that she had failed to collect security deposits on numerous instances and was unable to provide documentation as to the status of these deposits.

15. Georgianna interviewed tenants that had, according to Samsel, not paid a security deposit. The tenants told Georgianna they had paid a security deposit in the amount of \$425. This money was never recorded or accounted for by Samsel.

16. Per the terms of the Agreement, Samsel was authorized to make repairs of \$100 or less without Georgianna's prior written or verbal authorization. Georgianna was readily available to approve repairs that cost more than the authorized amount. Samsel represented that *damage in one unit was minor and that she performed the repairs herself or with the assistance of individuals at her direction.* In reality, Samsel spent approximately \$10,000 on the unit without seeking approval from Georgianna, and the unit was totally destroyed.

17. Samsel represented that she collected timely rents from tenants, but failed to do so. Samsel falsely represented to Georgianna on numerous instances that she had commenced legal proceedings against delinquent tenants.

18. Samsel permitted some tenants to make repairs to the units, and then she reduced the monthly rents owed by the tenants to offset any costs incurred. Samsel had no written authorization from Georgianna to do this.

19. Per the terms of the Agreement, Samsel was required to pay for operating expenses, including lawn care and utilities. Samsel directed tenants to maintain their lawn at their own expense, but then she billed Georgianna for lawn care expenses. She also failed to pay the electric bill on exterior lighting.

20. Per the terms of the Agreement, Samsel was authorized to have utilities turned on and billed to Georgianna when Samsel deemed it advisable for protecting vacant units. However, Samsel allowed tenants to open accounts with the electrical utilities under Georgianna's name, despite the fact that the units were no longer vacant. The bills were then sent to Samsel's mailing address. Samsel never informed Georgianna of this practice, and she did not pay the outstanding balance on the account.

Conclusions of Law

We have jurisdiction to hear this complaint.⁷ The MREC has the burden of proving that Samsel has committed an act for which the law allows discipline.⁸

Samsel admitted facts and that those facts authorize discipline. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.⁹ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

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

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions

⁷Section 621.045.

⁸*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁹*Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

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:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

* * *

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

* * *

(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*.[.]

Separate Accounts – Subdivision (1)

The MREC argues that Samsel is subject to discipline under this subdivision. Samsel failed to maintain and deposit in a special account the money that was owed to Georgianna when she accepted security deposits and failed to credit those to his account.

We find cause for discipline under § 339.100.2(1) as to Count I.

Remit Money – Subdivision (3)

The MREC argues that Samsel failed to account for and to remit money to Georgianna that belonged to him. Samsel admitted that she did so, as we have found in our Findings of Fact.

We find cause for discipline under § 339.100.2(3).

Violate Statutes/Rules – Subdivision (15)

The MREC argues that Samsel violated the following statutes and regulation. Section 339.730¹⁰ states:

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:

* * *

(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[.]

Samsel's actions violated the written agreement that she had with Georgianna. She also failed to account for money she received on his behalf. Samsel made serious misrepresentations to Georgianna, such as the fact that she had not collected security deposits when she had done so. Rather than promoting the interests of her client with the utmost good faith, loyalty, and fidelity, she lied to and stole from her client. Samsel violated § 339.730, and this is cause for discipline under § 339.100.2(15).

¹⁰RSMo 2000.

Regulation 20 CSR 2250-8.160 provides:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

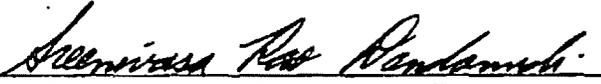
(2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

Samsel failed to retain necessary business records, including rents and security deposits collected, deductions for authorized expenses and management fees, copies of receipts for checks received, and deposits made into Georgianna's account. Samsel violated the regulation, and this is cause for discipline under § 339.100.2(15).

Summary

We find cause for discipline on Count I under § 339.100.2(1), (3) and (15). The MREC shall inform us by November 2, 2011, whether it intends to proceed with the remaining allegations at the hearing set for November 7, 2011.

SO ORDERED on October 28, 2011.


SREENIVASA RAO DANDAMUDI
Commissioner