

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
GREGORY D OVERFELT
AND
SIMPLY PUT PROPERTIES, LLC

RECEIVED
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MREC

Gregory D Overfelt (Overfelt) Simply Put Properties LLC (Simply Put) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Overfelt's real estate broker associate license no 2006024579 and Simply Put's real estate association license no 2006024572 will be subject to discipline Pursuant to § 536.060 RSMo 2000¹ 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 Overfelt and Simply Put jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045 RSMo Supp. 2011

Overfelt and Simply Put acknowledge that they understand the various rights and privileges afforded them by law including the right to a hearing of the charges against them 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 them at the hearing the right to present evidence on their

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

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 them the 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 Overfelt and Simply Put 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 them by law Overfelt and Simply Put knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them

Overfelt and Simply Put acknowledge that they have 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 Overfelt and Simply Put stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that Overfelt s license as a real estate broker associate license no 2006024579 and Simply Put s license as a real estate association license no 2006024572 are 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 Overfelt and Simply Put in Part II herein is based only on the agreement set out in Part I herein. Overfelt and Simply Put understand that the MREC may take further disciplinary action against them 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 Overfelt and Simply Put herein jointly stipulate to the following:

1. Overfelt is licensed by the MREC as a real estate broker associate, license no. 2006024579.

2. Simply Put is licensed by the MREC as a real estate association, license no. 2006024572. At all times relevant herein, Overfelt was the designated broker for Simply Put.

3. On April 8, 2011, Overfelt closed Simply Put and placed his own real estate license on inactive status.

4. Between April 8, 2011 and October 7, 2011, when each license was reactivated, Overfelt and Simply Put engaged in the practice of real estate without the required licensure by providing property management services in violation of §§ 339.020 and 339.180-1 RSMo Supp. 2011. Section 339.020 RSMo Supp. 2011 states:

It shall be unlawful for any person partnership limited partnership limited liability company association professional corporation or corporation foreign or domestic to act as a real estate broker real estate broker salesperson or real estate salesperson or to advertise or assume to act as such without a license first procured from the commission

5 Section 339 180 1 states in pertinent part

1 It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required

6 Overfelt and Simply Put deposited the collected rents into their personal and/or business accounts in violation of § 339 105 1 RSMo Supp 2011 and 20 CSR 2250 8 120(4) and 20 CSR 2250 8 220(3) Section 339 105 1 RSMo Supp 2011 states

Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account This requirement includes funds in which he or she may have some future interest or claim Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds which sum shall be specifically identified and deposited to cover service charges related to the account

7 Rule 20 CSR 2250 8 120(4) states in pertinent part

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker s possession as set out in section 339 100 2(1) RSMo including funds in which the broker may have some future interest or claim and including but not limited to earnest money deposits prepaid rents security deposits loan proceeds and funds paid by or for the parties upon closing of

the transaction No broker shall commingle personal funds or other funds in the broker s escrow account except to the extent provided by section 339 105 1 RSMo

8 Rule 20 CSR 2250 8 220(3) states in pertinent part

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker

9 Overfelt and Simply Put refused to allow the MREC access to the bank

statements and records related to the account into which rents and other rental funds were

being deposited in violation of § 339 105 3 RSMo Supp 2011 and 20 CSR 2250

8 220(7) Section 339 105 3 RSMo Supp 2011 states

3 In conjunction with each escrow or trust account a broker shall maintain books records contracts and other necessary documents so that the adequacy of said account may be determined at any time The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker s usual place of business

10 Rule 20 CSR 2250 8 220(7) states

(7) In addition to the notification required by section 339 105 2 RSMo each broker upon the request of the commission or its agent shall consent to the examination and audit of the broker s property management escrow account(s) by the commission or its agent As part of the consent each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account

11 Overfelt and Simply Put provided and entered into six property management agreements that failed to specify the minimum services the broker would provide in violation of § 339 780 7 RSMo Supp 2011 which states

All exclusive brokerage agreements shall specify that the broker through the broker or through one or more affiliated licensees shall provide at a minimum the following services

(1) Accepting delivery of and presenting to the client or customer offers and counteroffers to buy sell or lease the client's or customer's property or the property the client or customer seeks to purchase or lease

(2) Assisting the client or customer in developing communicating negotiating and presenting offers counteroffers and notices that relate to the offers and the counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived and

(3) Answering the client's or customer's questions relating to the offers counteroffers notices and contingencies

12 Overfelt and Simply Put entered into management agreements with the following deficiencies in violation of 20 CSR 2250 8 090(9)(A) (H) (I) (J) and (K)

a The Central Trust & Investment Company management agreement had an incomplete address in that the municipality was not identified

b Six written management agreements failed to specify whether the property owner permitted or prohibited dual agency

- c Six written management agreements failed to specify whether the property owner permitted or prohibited the broker from acting as a transaction broker
- d Six written management agreements failed to specify whether the broker was authorized to cooperate with and compensate other brokers and
- e Six written management agreements failed to confirm the property owner had received a Broker Disclosure form

13 Rule 20 CSR 2250 8 090(9)(A) (H) (I) (J) and (K) regarding management agreements states in pertinent part

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall

(A) Identify the property to be managed

(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted the duties and responsibilities of a dual agent

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted the duties and responsibilities of a transaction broker

(J) Include specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as

defined by sections 339 710 to 339 860 RSMo including but not limited to tenant s agents and/or transaction brokers [and]

(K) Contain a statement which confirms that the landlord received the Broker Disclosure Form prescribed by the commission

1 On or before the signing of the brokerage relationship agreement or

2 Upon the licensee obtaining any personal or financial information whichever occurs first[]

14 The management agreements and leases used by Overfelt and Simply Put were written by Overfelt and Simply Put and were not approved by an attorney in violation of 20 CSR 2250 8 140(1) which states

(1) When acting as a broker in a transaction a broker may use current standardized forms including but not limited to, contracts agency disclosures property management agreements listing agreements warranty deeds quit claim deeds trust deeds notes security instruments and leases prepared or approved by the broker s counsel or by the counsel for a trade association of which the broker is a member or associate member or by a Missouri state or local bar association and may complete them by filling in blank spaces to show the parties property description and terms necessary to close the transaction the broker has procured

15 Based on the facts stipulated to herein cause exists to discipline Overfelt s real estate broker associate license and Simply Put s real estate association license under § 339 100 2(1) (2) and (15) RSMo Supp 2011 which states

(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

(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

(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*[]

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

16 Overfelt and Simply Put's licenses are voluntarily surrendered Overfelt s license as a state licensed real estate broker associate license no 2006024579 is hereby VOLUNTARILY SURRENDERED Simply Put s license as a state licensed real estate association license no 2006024572 is hereby VOLUNTARILY SURRENDERED Overfelt and Simply Put shall immediately return all indicia of licensure to the MREC

17 This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Overfelt and/or Simply Put 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

18 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

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

20 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

21 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 339 610 and 324 RSMo as amended

22 Overfelt and Simply Put together with their partners members managers heirs assigns agents employees representatives and attorneys do 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

23 Overfelt and Simply Put understand that they 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 Overfelt s and Simply Put s licenses If Overfelt and/or Simply Put desire the Administrative Hearing Commission to review this Settlement Agreement Overfelt and/or Simply Put may submit their requests to Administrative Hearing Commission Truman State Office Building Room 640 301 W High Street P O Box 1557 Jefferson City Missouri 65102

24 If Overfelt and/or Simply Put request 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 Overfelt and/or Simply Put 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 Overfelt and/or Simply Put as allowed by law If Overfelt and/or Simply Put do not request review by the Administrative Hearing Commission this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC

LICENSEES

MISSOURI REAL ESTATE
COMMISSION

Gregory D Overfelt 11-12-2012
Gregory D Overfelt Date

Janet Carder 29 Nov 2012
Janet Carder Executive Director
Date

SIMPLY PUT PROPERTIES LLC

CHRIS KOSTER
Attorney General

By Gregory D. Overfelt 11-12-2012
Gregory D. Overfelt Date
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