

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

MAY 07 2013

Missouri Real Estate Commission )  
)  
Petitioner, )  
)  
v. )  
)  
E. Jane Skouby )  
)  
Respondent )

ADMINISTRATIVE HEARING  
COMMISSION

Case #: 12-0484 RE

**JOINT MOTION FOR CONSENT ORDER,  
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,  
WAIVER OF HEARINGS  
BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
AND THE MISSOURI REAL ESTATE COMMISSION,  
AND DISCIPLINARY ORDER**

Respondent E. Jane Skouby (“Skouby”) and Petitioner Missouri Real Estate Commission (“MREC”) enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Real Estate Commission, and Disciplinary Order* (“Joint Stipulation”) for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (“Commission”) (1 CSR 15-3.440(3)) and pursuant to the terms of

§ 536.060, RSMo<sup>1</sup>, as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREC pursuant to § 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that she is aware of and understands the various rights and privileges afforded her by law, including: 1) the right to a hearing of the charges against her; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against her proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against her; 5) the right to present evidence on her behalf at the hearing; 6) the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against her; 7) the right to a ruling on questions of law by the Commission; 8) the right to a disciplinary hearing before the MREC at which time Respondent could present evidence in mitigation of discipline; 9) the right to a claim for attorneys' fees and expenses, and 10) the right to obtain judicial review of the decisions of the

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<sup>1</sup>All references are to the Revised Statutes of Missouri, Supp. 2012, unless otherwise noted.

Commission and the MREC. Being aware of these rights provided Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Respondent further agrees to abide by the terms of this document as they pertain to Respondent.

Respondent acknowledges that she received a copy of the Complaint in this case, which was filed with the Commission on March 27, 2012.

Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the MREC that Skouby's license as a Real Estate Broker, License No. 1999006676, is subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, and §§ 339.500 through 339.549, RSMo.

## **I. JOINT STIPULATION**

Based upon the foregoing, the MREC and Respondent jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

## JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Real Estate Commission (“MREC”) is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo, for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, Real Estate Agents, Real Estate Brokers, Appraisers and Escrow Agents.
2. Respondent, E. Jane Skouby (Skouby), is an adult individual whose registered address is 1089 Woodcrest Lane, Hazelwood, Missouri 63042, and who holds a Missouri license as Real Estate Broker, License No. 1999006676, which is active, and which expires June 30, 2014.
3. At the times at issue, Skouby did business under the fictitious names Scoby Realtors and Scoby Management.
4. During the period in question, Skouby maintained two real estate escrow accounts into which she deposited funds subject to the requirements of Section 339.105, RSMo, and 20 CSR 2250-8.120:
  - (1) A Property Management escrow account with Commerce Bank, Account No. \*\*\*\*\*2903 (the “Property Management Account”); and
  - (2) A Security Deposits Escrow Account with Commerce Bank, Account No. \*\*\*\*\*4158 (the “Security Deposits Account”).
5. In April 2009, Skouby was selected through a random process for an audit to determine their compliance with the requirements of Chapter 339

and 20 CSR Chapter 2250, regarding the conduct of licensed real estate brokers and associations.

6. Between April 16 and May 7, 2009, Jennifer Johnston, an examiner for the MREC, assisted by other members of the MREC staff, conducted an audit of Skouby's records.

### **Definition of Terms**

7. An "Overage" occurs when funds are present in a property management escrow account, other than funds received and not yet expended on behalf of a client with whom the broker has a property management agreement, related to the property that is the subject of the management agreement.

8. A "Shortage" occurs when funds have been received into a property management escrow account on behalf of a client with whom the broker has a property management agreement, but funds in the account at the time of the shortage are not sufficient to maintain the balance calculated by deducting expenditures made relating to that client's properties from funds received on behalf of that client.

9. "Commingling" occurs when funds belonging to the broker are present in a property management escrow account in which funds received on behalf of other persons are being held. "Commingling" includes a broker's failure to remove funds representing commissions, fees, and other sums

belonging to the broker, if not removed at the time the owner's statement is issued as required by 20 CSR 2250-8.120(4).

10. "Client" shall mean any person with whom Skouby and her firm have a property management agreement authorizing them to receive, maintain, and disburse funds, provided that the term shall not include Skouby or any person associated with her firm who holds a license issued by the MREC.

**Property Management Escrow Account, No. \*\*\*\*\*2903**

11. During the audit period in question, Skouby maintained a property management escrow account, No. \*\*\*\*\*2903 at Commerce Bank. This account was used to hold funds of others and was subject to the requirements of Chapter 339, RSMo, and 20 CSR 2250-8.220.

12. On a number of occasions Skouby failed to remove management fees from the property management account on a monthly basis, causing those funds to remain in the account as overages.

13. Skouby also deposited into and expended from the Property Management account funds relating to approximately 70 properties owned by Skouby and her husband, as well as properties owned by Devin Skouby, a licensed salesperson also employed at the agency.

14. On a number of occasions Skouby made payments to vendors which were made partly in cash and which were not accurately recorded in the account ledger or accurately described in the owners' statements provided to owners, resulting in overages to the account.

15. Skouby linked the property management escrow account to overdraft protection by a personal credit card. On two occasions, the escrow account was funded by cash advances on the credit card.

a. On October 30, 2008, a cash advance of \$900 was made on the Visa card for overdraft protection.

b. On November 3, 2008, a cash advance of \$700 was made on the Visa card for overdraft protection.

c. Each of these transactions represented an overage.

16. Shortages occurred in the property management escrow account on the following occasions:

a. Skouby's ledgers contained negative balances for property owners on the following occasions:

a. The ledger for Walter Hoard (937 Chula) had a negative balance of \$43.86 on March 19, 2009;

b. The ledger for Dena Skouby had a negative balance of \$3,190.61 between March 16, 2009 and April 1, 2009;

c. The ledger for Devin Skouby had a negative balance of \$63.98 on March 19, 2009.

b. Check No. 9254, written October 31, 2008, was entered in the check register in the amount of \$424.74, but was written and cleared the bank on November 10, 2008, in the amount of \$724.74, causing a shortfall of \$300.

17. The revised audit report, as of April 3, 2009, identified overages of \$12,278.70 and identified shortages of \$36,110.40, of which \$30,609.38 was commingled funds, for a net shortage of \$23,831.70. The broker replaced the funds after the audit.

18. On numerous occasions, Skouby deposited funds received and made disbursements in relation to properties she owned personally either individually or jointly with her husband on numerous occasions, for which the agency did not have signed and valid property management agreements. Each deposit of personal funds created an overage and each disbursement created a shortage, and the presence of funds related to personally owned properties represented commingling.

19. Skouby failed to keep records necessary to determine whether the property management account was kept in accordance with the requirements of Chapter 339, as on some occasions Skouby's owner statements did not correspond to her deposit summaries and deposits recorded on bank

statements, and property expenses were paid in cash and not booked to the owner on the owner statements, in violation of Section 339.105.3.

**Security Deposit Escrow Account, No. \*\*\*\*\*4158**

20. During the times in question, Skouby maintained a security deposit escrow account, No. \*\*\*\*\*4158 at Commerce Bank. This account was used to hold funds of others and was subject to the requirements of Chapter 339, RSMo, and 20 CSR 2250-8.220.

21. The audit team also reviewed the transactions in the security deposit account.

22. As of March 23, 2009, Skouby's liability for security deposits paid in was \$22,631.00.

(1) As of March 23, 2009, the balance in the security deposits escrow account was \$18,956.10, with two checks outstanding in the total of \$1400.00, for a net balance of \$17,556.10.

(2) Subtracting the total liabilities from the net balance left a shortfall of \$5,074.90. This sum represented security deposits which Skouby was required to hold in escrow on behalf of tenants, but which were not in escrow.

23. On June 30, 2008, Skouby wrote Check No. 195 on the security deposit escrow account in the amount of \$2,898.63 to Commerce Bank for

deposit to a personal account. On April 8, 2009, she transferred funds of \$2,317.96 from the personal account back into the security deposit escrow account.

### **JOINT PROPOSED CONCLUSIONS OF LAW**

24. Each act of commingling in violation of Section 339.105.1, RSMo, is cause for discipline under the terms of Section 339.100.2(15).

25. Each overage represented a violation of Section 339.105.1, RSMo, which is cause for discipline under Section 339.100.2(15), RSMo.

26. Each shortage represented a violation of Section 339.105.1, RSMo, which is cause for discipline under Section 339.100.2(15), RSMo.

27. Each failure to keep accurate records necessary to determine whether the property management account was in violation of Section 339.105.3, which is cause for discipline under Section 339.100.2(15), RSMo.

28. By removing funds from the security deposit escrow account, Skouby failed to maintain funds in escrow in violation of 20 CSR 2250-8.220(2), which is cause for discipline under Section 339.100.2(15), RSMo.

### **II. JOINT DISCIPLINARY ORDER**

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of

Skouby's license as a Real Estate Broker, subject to the following terms and conditions, and entered by the MREC in this matter under the authority of §§ 536.060 and 621.110, RSMo. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Probation.** Skouby's license as a Real Estate Broker, no. 1999006676, is hereby placed on PROBATION for THREE (3) YEARS. The period of probation is referred to hereinafter as either "the probationary period" or "the disciplinary period." During the period of probation, Skouby shall be entitled to practice as a Real Estate Broker provided she pays all required fees, maintains her license current and active, and adheres to all the terms stated herein.

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

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

**B. Skouby shall deposit, maintain, and disburse all property management funds and security deposits relating to properties owned in whole or in part by Skouby, or by any person**

associated with her firm who holds any license granted by the MREC, in accounts in which no funds relating to properties of clients are deposited, maintained, or disbursed, separate from the registered client property management and security deposit accounts.

C. Skouby shall procure the services of a Certified Public Accountant to reconcile each registered escrow account used for client funds and submit quarterly reports to the MREC. These reports shall begin with the third quarter ending September 2013 and continue for three year(s), ending with the quarter ended September 2016.

D. The reports are due within one month of the quarter end and shall contain a three-way reconciliation from the check register to the bank balance to the owner balances. All documents necessary to prove the reconciliation shall be submitted along with a signed statement from the CPA confirming that his/her firm completed a reconciliation of each escrow account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. If the CPA should find that the three-way reconciliation does not match, the CPA report should include

**detail and documentation to show that all discrepancies were identified and corrected.**

E. Skouby shall timely renew her real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license in a current and active status. During the disciplinary period, Skouby shall not place her real estate license on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Joint Stipulation, Skouby may surrender his real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Skouby applies for a real estate license after surrender, Skouby 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 Joint Stipulation.

F. Skouby 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.

G. Skouby shall immediately submit documents showing compliance with the requirements of this Joint Stipulation to the MREC when requested by the MREC or its designee.

H. During the probationary period, Skouby shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Joint Stipulation.

I. Skouby 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.

3. Upon the expiration of the disciplinary period, the license of Skouby shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Skouby has violated any term or condition of this Joint Stipulation, the MREC may, in its discretion, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate.

4. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this

Joint Stipulation occurred during the disciplinary period, the MREC may choose to conduct a hearing before it to determine whether a violation occurred and may impose further discipline.

5. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Skouby of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

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

7. If any alleged violation of this Joint Stipulation 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. Skouby agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

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

9. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation 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.

10. The parties to this Joint Stipulation understand that the MREC will maintain this Joint Stipulation as an open record as required by Chapters 324, 339, and 610, RSMo, as amended.

11. Respondent, together with her heirs, assigns, agents, partners, 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 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 Joint Stipulation.

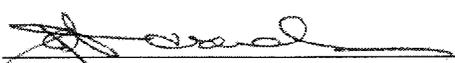
The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

### III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREC in the above-captioned cause.

PETITIONER  
Missouri Real Estate Commission

RESPONDENT  
E. Jane Skouby

  
\_\_\_\_\_  
Janet Carder, Executive Director

\_\_\_\_\_  
E. Jane Skouby

Date: May 6, 2013

Date: \_\_\_\_\_

CHRISTOPHER A. KOSTER

Attorney General

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III. CONCLUSION

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RESPONDENT  
E. Jane Skouby

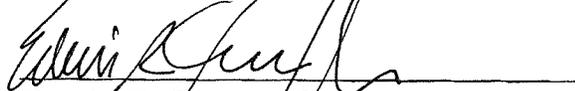
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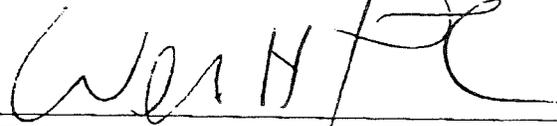
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