

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 14-1893 RE
)	
)	
TAMARA J STUDT)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about October 19, 2015, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Tamara J. Studt*, No. 14-1893 RE. In that Decision, the Administrative Hearing Commission found that Respondent Tamara J. Studt’s real estate broker license (license no. 2002001357) is subject to disciplinary action by the Missouri Real Estate Commission (“Commission”) pursuant to § 339.100.2(15), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including 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 10, 2016, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent’s license. All of the members of the Commission were present throughout the meeting. Further, each member of this Commission has read the Decision of the

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Craig Jacobs. Respondent having received proper notice and opportunity to appear did appear in person without legal 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 §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision, and the record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Tamara J. Studt*, Case No. 14-1893 RE, issued October 19, 2015, 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. Respondent appeared in person without legal counsel at the hearing before the Commission.

4. This Commission licensed Respondent Tamara J. Studt as a real estate broker, license number 2002001357. 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 October 19, 2015, in *Missouri Real Estate Commission v. Tamara J. Studt*, Case No. 14-1893 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 October 19, 2015, Respondent's real estate broker license, number 2002001357, is subject to disciplinary action by the Commission pursuant to § 339.100.2(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 broker license of Tamara J. Studt (license no. 2002001357) is hereby placed on ONE (1) YEAR PROBATION. During Respondent's probation, Respondent shall be entitled to practice under her respective license 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 her real estate license(s), timely pay all fees required for license(s) renewal and shall comply with all other requirements necessary to maintain her license(s).

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

D. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

E. During the probationary period, Respondent shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

F. Respondent 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. Any cause to discipline Respondent's license as a salesperson under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

G. Broker Acknowledgement. If at any time during the disciplinary period Respondent wishes to transfer her license affiliation to a new broker/brokerage, he must submit a

Broker Acknowledgment form signed by the new broker. This acknowledgment is in addition to any other required application, fee, and documentation necessary to transfer her license. Respondent must obtain the Broker Acknowledgement form from the Commission.

H. Upon the expiration and successful completion of the disciplinary period, Respondent's respective real estate salesperson 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, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's real salesperson license.

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 18th DAY OF February, 2016.

MISSOURI REAL ESTATE COMMISSION



Joseph Denkler, Executive Director

Before the
Administrative Hearing Commission
State of Missouri

MISSOURI REAL ESTATE COMMISSION,)

Petitioner,)

vs.)

No. 14-1893 RE

TAMARA J. STUDT,)

Respondent.)

DECISION

The real estate broker license of Tamara J. Studt is subject to discipline because Studt failed to respond to written requests from the Missouri Real Estate Commission ("MREC").

Procedure

The MREC filed a complaint on December 3, 2014, seeking this Commission's determination that cause exists to discipline Studt's real estate broker license. Although our file contains no information as to when Studt was served with a copy of the complaint and our notice of complaint/notice of hearing, she filed an answer on January 3, 2015.

This Commission convened a hearing on the complaint on July 7, 2015. Assistant Attorney General Todd C. Lucas represented the MREC. Studt represented herself. The matter became ready for our decision on July 8, 2015, when the transcript was filed.

Findings of Fact

1. At all relevant times, Studt held a Missouri license as a real estate broker.
2. At all relevant times, Studt's last registered address with the MREC was 4523

Hartford Street, St. Louis, Missouri 63116 ("registered address").

3. Studt has acted as a broker for only one transaction, in 2005.
4. In 2012, the MREC randomly selected Studt for an audit.
5. On October 25, 2012, David Thomas, a real estate examiner employed by the MREC, sent Studt a letter informing her she had been selected for audit. Studt received the letter.
6. Thomas attempted to contact Studt by telephone on November 1 and November 26, 2012. Studt did not answer the telephone either time. Thomas left a voicemail on both occasions.
7. On November 30, 2012 and December 4, 2012, Thomas again attempted to contact Studt by telephone, but Studt did not answer the telephone.
8. On December 7, 2012, Thomas sent a second letter to Studt, asking that she call him within 30 days. Studt received the letter, but she did not call him.
9. On February 19, 2013, Thomas sent a third letter to Studt, informing her that he would stop by her place of business on April 10, 2013, at 10:00 a.m. Studt did not respond to the letter.
10. On April 10, 2013, Thomas went to Studt's place of business. He knocked and rang the doorbell numerous times, but received no answer.

Conclusions of Law

We have jurisdiction over the MREC's complaint. Sections 339.100.2¹ and 621.045. The MREC has the burden to prove that Studt's license is subject to discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

The MREC alleges in its complaint that there is cause to discipline Studt's license under § 339.100.2, which provides in relevant part:

¹ Statutory references, unless otherwise noted, are to the RSMo Cum. Supp. 2013. The disciplinary statutes cited herein did not change between the relevant times and the publication of the above-referenced supplement.

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:

* * *

(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;

* * *

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

I. Count I-- Failure to Allow MREC Access to Records

The MREC alleges that Studt violated § 335.105.3 and two regulations. Section 339.105.3 states:

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.

Studt is licensed as a broker. Therefore, she is required to maintain documents necessary to determine the adequacy of any escrow or trust account. However, the MREC did not plead or prove that Studt maintained any escrow or trust account, or that she was required to do so. The MREC did not carry its burden to show that Studt violated § 339.105.3.

Regulation 20 CSR 2250-8.160² requires a broker to maintain certain books and records, and to allow the MREC access to review them:

(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.

Studt acted as a broker for only one transaction in 2005, more than three years before she was selected for the MREC's random audit. Thus, Studt had no business records that fit within the requirements of 20 CSR 2250-8.160(1) to "make available for inspection by the commission." We conclude she did not violate the regulation.

Regulation 20 CSR 2250-8.220 requires that a broker consent to the examination and audit of her property management escrow accounts. It states in pertinent part:

(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 accounts 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.

² 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.

The MREC neither pleaded nor proved that Studt failed to consent to the examination and audit of her property management escrow accounts, or that she failed to execute the form document referenced above. We do not find that Studt violated this regulation.

II. Count II – Failure to Respond in Writing

Regulation 20 CSR 2250-8.170(1) provides:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

Studt admitted that she received two of the three letters sent to her by Thomas and did not respond to them. The third letter was also sent to her registered address. There is a presumption that a letter duly mailed has been received by the addressee. *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App., E.D. 2000), citing *Ins. Placements, Inc. v. Utica Mut. Ins. Co.*, 917 S.W.2d 592, 595 (Mo. App., E.D.1996). Studt did not rebut the presumption here. We find that she received the three letters. Her failure to respond to the MREC's written requests violated 20 CSR 2250-8.170(1).

Subdivision (15) – Violation of Statutes or Regulations

We have found that Studt violated 20 CSR 2250-8.170(1), a rule promulgated by the MREC pursuant to § 330.120.1. There is cause to discipline her license under § 339.100.2(15).

Subdivision (16) – Grounds for Refusal to Issue a License

The MREC contends that Studt's failure to timely respond to the MREC's letters would be grounds for the MREC to refuse to issue a license. Section 339.040.1 provides:

1. Licenses shall be granted only to persons who 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.

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Board of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). Studt's failure to respond to the MREC's inquiries, while inconsistent with proper practice, is not so egregious as to show a lack of good moral character.

“Reputation” means “the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character [.]” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986). Reputation is not a person's actions; it is “the general opinion . . . held of a person by those in the community in which such person resides[.]” *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black's Law Dictionary, Rev. 4th Ed., p. 1467-68). Reputation is “a consensus view of many people.” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). The MREC presented no evidence as to Studt's reputation.

Competence, when referring to occupation, is “the actual ability of a person to perform in that occupation.” Section 1.020(9). In *Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009), the court described incompetency as a “state of being” amounting to an inability or unwillingness to function properly. The *Albanna* court said that the evaluation necessitates a broader-scale analysis, taking into account the licensee's capacities and successes. *Id.* The MREC sent three letters to Studt, two of which asked for a response. Her failure to respond to those requests could be part of a larger pattern, but it is not enough, by itself, to show a general unwillingness on Studt's part to function properly as a real estate professional. The MREC has failed to show that Studt is incompetent to transact the business of a broker in such a manner as to safeguard the interest of the public.

Accordingly, we find no cause for discipline under § 339.100.2(16).

Subdivision (19) – Other Conduct

MREC alleges that Studt is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]” WEBSTER’S at 1598. Therefore, subdivision (19) refers to conduct different from that referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for discipline under § 339.100.2(15), but not under § 339.100.2(16). There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

Appropriate Discipline

At the hearing, Studt stated that she did not transact any real estate business for a long period of time because she was taking care of her father, who was very ill and required around-the-clock care. After he died, she stayed with friends and had several different telephone numbers. She stated at the hearing that she realized she should have put her broker’s license on inactive status, but failed to do so because of other issues in her life. She agrees she should be subject to some kind of discipline, but believes her license should not be revoked.

This Commission decides only whether there is cause to discipline Studt’s license. Pursuant to § 621.110, Studt will have the opportunity to present evidence at a separate hearing before the MREC as to what discipline is appropriate. That hearing is the appropriate forum for evidence about any mitigating factors she believes the MREC should consider before deciding the appropriate level of discipline.

Summary

Studt's real estate broker license is subject to discipline under § 339.100.2(15).

SO ORDERED on October 19, 2015.


KAREN A. WINN
Commissioner

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

**MISSOURI REAL ESTATE)
COMMISSION)
3605 Missouri Boulevard)
P.O. Box 1339)
Jefferson City, MO 65102,)**

Petitioner,)

v.)

**TAMARA J. STUDT)
4253 Hartford St.)
St. Louis, MO 63116)**

Respondent.)

FILED

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ADMINISTRATIVE HEARING
COMMISSION

Case #: _____

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the Attorney General of the State of Missouri, and for its cause of action against Respondent, Tamara J. Studt ("Studt"), states the following:

ALLEGATIONS COMMON TO ALL COUNTS

1. The MREC is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo Supp. 2013, for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, relating to real estate brokers.

2. Studt is licensed by the MREC as a real estate broker, license no. 2002001357. Studt's license was current and active at all times relevant herein.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100.2, RSMo Supp. 2013.

4. Section § 339.100.2(15), (16), and (19), RSMo Supp. 2013, 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:

.....

(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;

.....

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

5. On or about October 25, 2012, the MREC Examiner David Thomas (the "MREC Examiner") sent a letter to Studt's last registered address of 4253 Hartford St., Saint Louis, MO 63116 informing Studt that she had been selected for a random audit.

6. On or about November 1, 2012, the MREC Examiner attempted to contact Studt via telephone; the MREC Examiner left a voicemail as Studt failed to answer.

7. On or about November 26, 2012, the MREC Examiner attempted to contact Studt via telephone, and again left a voicemail after Studt failed to answer.

8. On or about November 30, 2012, the MREC Examiner attempted to contact Studt via telephone, but Studt did not answer.

9. On or about December 4, 2012, the MREC Examiner attempted to contact Studt via telephone, but Studt did not answer.

10. On or about December 7, 2012, the MREC sent a second letter to Studt requesting that Studt call the MREC Examiner within the next 30 days.

11. On or about February 19, 2013, the MREC Examiner sent a third letter to Studt informing Studt that the MREC Examiner would be stopping by Studt's place of business on April 10, 2013 at 10:00 AM.

12. Studt failed to respond to any of the MREC's attempts to contact her.

13. On or about April 10, 2013, the MREC Examiner arrived at Studt's place of business.

14. On or about April 10, 2013 Studt failed to answer her door after the MREC Examiner knocked and rang the doorbell numerous times.

COUNT I: FAILURE TO ALLOW MREC ACCESS TO RECORDS

15. The MREC realleges and incorporates herein paragraphs 1 through 14.

16. Section 339.105.3, RSMo Supp. 2013, 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.

17. Rule 20 CSR 2250-8.160, requiring that a broker retain records and allow the MREC access to review them, states in pertinent part:

(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.

18. Rule 20 CSR 2250-8.220, allowing the MREC to review escrow accounts, states in pertinent part:

(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.

19. Studt's failure to make her records available for inspection by the MREC is a violation of §339.105.3, RSMo Supp. 2013, 20 CSR 2250-8.160(1), and 20 CSR 2250-8.220(7).

20. Based on the above mentioned violations, cause exists to discipline Studt's license pursuant to §399.100.2(15), (16), and (19), RSMo Supp. 2013.

COUNT II: FAILURE TO RESPOND IN WRITING

21. The MREC realleges and incorporates herein paragraphs 1 through 20.

22. Rule 20 CSR 2250-8.170, requiring real estate salespersons to respond to MREC written inquiries, states:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

23. Studt's failure to respond in writing to the MREC's letters is a violation of 20 CSR 2250-8.170.

24. Based on the above mentioned failure to respond, cause exists to discipline Studt's license pursuant to §399.100.2(15), (16), and (19), RSMo Supp. 2013.

WHEREFORE, Petitioner prays this Administrative Hearing Commission conduct a hearing pursuant to Chapter 621, RSMo, and thereafter issue its findings of fact and conclusions of law that the Petitioner

may discipline Respondent Tamara J. Studt's real estate broker license under Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

CHRIS KOSTER
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