

**ORDER OF THE MISSOURI REAL ESTATE COMMISSION
REGARDING ISSUANCE OF A PROBATED REAL ESTATE
SALESPERSON LICENSE TO STACY E. WHELCHER**

Comes now the Missouri Real Estate Commission ("MREC") and hereby issues its ORDER granting a PROBATED real estate salesperson license to Stacy E. Whelchel ("Whelchel") pursuant to the provisions of § 620.149, RSMo 2000. As set forth in § 620.149, RSMo 2000, either the MREC or Whelchel may submit written requests for a hearing to the Administrative Hearing Commission seeking review of the MREC's decision to issue a probated real estate salesperson license. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date of delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P O Box 1557, Jefferson City, Missouri 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the MREC's decision shall be considered waived.

I

Based upon the foregoing, the MREC hereby states:

A. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo 2000 (as amended), for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo 2000 (as amended), and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

B Pursuant to the provisions of § 620 149, RSMo 2000, the MREC hereby issues a probated real estate salesperson license to Whelchel Such license is issued subject to the terms and conditions set forth below

C On or about September 21, 2004, the MREC received Whelchel's application for a real estate salesperson license ("Application")

D On her Application, question 6-13, Whelchel was asked if she had "been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol related offenses, i.e. DWI and BAC.**" Whelchel responded, "YES" to question 6-13

E Whelchel was charged in the Circuit Court of St Charles County, Missouri, *State of Missouri v Stacy Elaine Whelchel*, Case No 01CR129545-01, with assault in the second degree, which charge stated that Whelchel "operated a motor vehicle while under the influence of alcohol, and acted with criminal negligence in that defendant was speeding, striking the rear of Theresa L Doty's car, causing it to flip over and injuring Theresa L Doty "

F On or about January 14, 2002, in Case No 01CR129545-01, Whelchel pleaded guilty in the Circuit Court of St Charles County, Missouri, to the charge of assault second degree, a class C felony

G On or about January 14, 2002, in Case No. 01CR129545-01, the court suspended imposition of sentence and placed Whelchel on supervised probation for a period of five years

H The crime of assault second degree is an offense involving moral turpitude and the commission of that crime demonstrates a lack of regard for the health, safety, and welfare of the public

I The crime of assault second degree is an offense reasonably related to the qualifications, functions, and duties of a real estate salesperson

J Cause exists for the MREC to deny Whelchel's application for a real estate salesperson license pursuant to § 339 080 1, RSMo 2000, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339 100, . . ."

K Cause exists for the MREC to deny Whelchel's application for a real estate salesperson license pursuant to the provisions of § 339.100 2(15), (17), and (18), RSMo 2000, which state

2 The commission may cause a complaint to be filed with the administrative hearing commission as provided by law when the commission believes there is a probability that a licensee has performed or attempted to perform any of the following acts:

(15) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339 040,

(17) 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,

(18) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, or demonstrates bad faith or gross incompetence,

L Cause exists for the MREC to deny Whelchel's application for a real estate salesperson license pursuant to the provisions of § 339 100 2(16), (18), and (19), RSMo Cum Supp 2004, which state

2 The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, 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

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339 040,

(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,

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

M Section 339 040.1, RSMo 2000, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate salesperson in a manner so as to safeguard the public's interest

N Whelchel has engaged in conduct and has pleaded guilty to a crime that adversely affects her moral character, her reputation, and her fitness and qualifications to practice as a real estate salesperson

O The MREC issues this Order in lieu of denial of Whelchel's application for a real estate salesperson license. The MREC has determined that this Order is necessary to ensure the protection of the public

Based on the foregoing, the Missouri real estate salesperson license issued to Welchel is subject to the following terms and conditions

A **Welchel's license is on probation for two years.** Welchel's real estate salesperson license is hereby placed on PROBATION for a period of TWO YEARS. During the period of probation on her real estate salesperson license, Welchel shall be entitled to practice as a real estate salesperson provided she adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

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

(2) Welchel shall timely renew her Missouri real estate salesperson license, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain her license in a current and active state.

(3) If at any time within the disciplinary period Welchel changes residence from the State of Missouri, ceases to be currently licensed in Missouri under the relevant provisions of Chapter 339, RSMo, as amended, fails to timely pay all fees required for license renewal, or fails to keep the MREC advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period

(4) Welchel shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations of the MREC, and all local, state, and federal laws "State" as used herein refers to the State of Missouri and all other states and territories of the United States

(5) Welchel shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with Welchel's criminal probation, parole, and/or release Welchel 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 Welchel shall submit the first such report so that the MREC receives it on or before April 10, 2005

C Upon the expiration and successful completion of the disciplinary period, Whelchel's real estate salesperson license shall be fully restored if all other requirements of the law have been satisfied, provided, however, that in the event the MREC determines that Whelchel 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 Whelchel's real estate salesperson license

D No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo

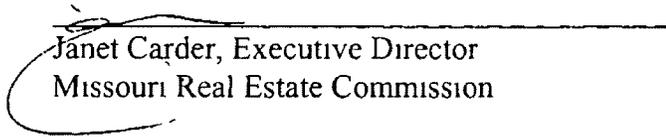
E If the MREC determines that Whelchel has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation

F If any alleged violation of this Order occurs during the disciplinary period, 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 The

MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred

G The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 339, 610, and 620, RSMo 2000 (as amended)

SO ORDERED AND EFFECTIVE THIS 23 DAY OF December 2004.


Janet Carder, Executive Director
Missouri Real Estate Commission

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
STACY ELAINE WHELCHER

Stacy Elaine Whelchel (Whelchel) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Whelchel's license as an inactive real estate salesperson, no. 2004036446, 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 Whelchel jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Whelchel acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; 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 her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

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

administrative hearing commissioner concerning the charges pending against her; 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 Welchel 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 her by law, Welchel 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 her.

Welchel acknowledges that she 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. Welchel stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Welchel's license as an inactive salesperson, license no. 2004036446, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010-339.205 and 339.710-339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Welchel in Part II herein is based only on the agreement set out in Part I herein.

Whelchel understands that the MREC may take further disciplinary action against her 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 Whelchel herein jointly stipulate to the following:

1. Whelchel holds an inactive Missouri real estate salesperson license, No. 2004036446. Whelchel's license has been current at all times since issued except for a lapse from October 1-6, 2010, but became inactive on October 7, 2010.
2. On January 14, 2002, Whelchel pled guilty in Case No. 01CR129545 in the Circuit Court of St. Charles County, Missouri to Assault in the Second Degree - Operating a Vehicle While Intoxicated Resulting in Injury, a class C felony, in violation of § 565.060, RSMo 2000, which states:

I. 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[.]

This guilty plea shall be referred to hereinafter as the 2002 Felony Guilty Plea.

3. The charges underlying the criminal case were as follows, in pertinent part:

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant, Stacy Elaine Whelchel, in violation of § 565.060, RSMo, committed the class C felony of assault in the second degree, . . . in that on or about August 30, 2001, in the County of St. Charles, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol, and...was speeding, striking the rear of Theresa L. Doty's car, causing it to flip over and injuring Theresa L. Doty.

4. On January 14, 2002, the court suspended the imposition of Whelchel's sentence and placed Whelchel on supervised probation for five years.

5. The crime of Assault in the Second Degree - Operating a Vehicle While Intoxicated Resulting in Injury is an offense reasonably related to the qualifications, functions or duties of a real estate salesperson licensed or regulated under Chapter 339, RSMo.

6. The crime of Assault in the Second Degree - Operating a Vehicle While Intoxicated Resulting in Injury is an offense involving moral turpitude.

7. On November 29, 2007, Whelchel pled guilty in Case No. 0711-CR02853 in the Circuit Court of St. Charles County, Missouri to Driving while Intoxicated, a class B misdemeanor, in violation of § 577.010.1, RSMo 2000, which states:

A person commits the crime of "**driving while intoxicated**" if he operates a motor vehicle while in an intoxicated or drugged condition.

This guilty plea shall be referred to hereinafter as the 2007 Misdemeanor Guilty Plea.

8. The charges underlying the criminal case were set forth in a Uniform Citation, No. 061013438, as follows:

On or about March 7, 2010, [Whelchel] operated motor vehicle while in an intoxicated condition...in violation of § 577.010, RSMo.

9. On November 29, 2007, the court suspended the execution of Whelchel's sentence of 90 days in jail and placed Whelchel on supervised probation for two years.

10. The crime of driving while intoxicated is an offense reasonably related to the qualifications, functions or duties of a real estate salesperson licensed or regulated under Chapter 339, RSMo.

11. The crime of driving while intoxicated is an offense involving moral turpitude.

12. On April 22, 2009, Whelchel pled guilty in Case No. 0811-CR04637-01 in the Circuit Court of St. Charles County, Missouri, to Driving While Intoxicated - Aggravated Offender, a class C felony, in violation of § 577.010 and 577.023, RSMo.

This guilty plea shall be referred to hereinafter as the 2009 Felony Guilty Plea.

13. Section 577.023, RSMo, defining aggravated offenders states:

1. For purposes of this section, unless the context clearly indicates otherwise:

.....

(1) An "aggravated offender" is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses[.]

14. In addition to Whelchel's prior guilty pleas to driving while intoxicated, the charges underlying the 2009 Felony Guilty Plea were as follows, in pertinent part:

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant, Stacy Elaine Whelchel, in violation of § 577.010, RSMo, committed the class C felony of driving while intoxicated - aggravated offender, . . . in that on or about March 6, 2008, in the County of St. Charles, State of Missouri, the defendant. . . operated a motor vehicle while under the influence of alcohol[.]

15. On June 24, 2009, the court sentenced Whelchel to four years in prison. Whelchel's sentence was suspended after she served 120 days in the Missouri Department of Corrections. Upon her release she was placed on five years supervised probation.

16. The crime of Driving While Intoxicated - Aggravated Offender is an offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter.

17. The crime of Driving While Intoxicated – Aggravated Offender is an offense involving moral turpitude.

19. On September 26, 2008, Whelchel completed and signed an Application to Renew her Salesperson License for the October 1, 2008 to September 30, 2010 period ("Renewal Application").

20. On the Renewal Application, was the following question ("criminal history question"):

Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution

under the laws of this or any other state or of the United States whether or not sentence was imposed including suspended imposition of sentence, suspended execution of sentence and misdemeanor charges that you have not previously disclosed to this Commission? If yes, provide the date, offense, court location and case number on reverse side.

21. In an answer to the criminal history question, Whelchel marked “No,” and thereby Whelchel failed to disclose her 2007 Misdemeanor Guilty Plea.

23. Whelchel had not previously disclosed to the MREC her 2007 Misdemeanor Guilty Plea.

24. On September 30, 2010, Whelchel completed and signed an Application to Renew her Salesperson License for the October 1, 2010 to September 30, 2012 period (“Renewal Application”).

25. On the Renewal Application, was the following question (“criminal history question”):

Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this or any other state or of the United States whether or not sentence was imposed, including suspended imposition of sentence, suspended execution of sentence and misdemeanor charges that you have not previously disclosed to this Commission? If yes, complete information below. Attach additional sheet if needed.

26. In an answer to the criminal history question, Welchel marked "yes" and attached an explanation of her guilty plea in Case No. 0811-CR04637-1 in the Circuit Court of St. Charles County, Missouri (i.e. the 2009 Felony Guilty Plea).

27. Welchel again failed to disclose her 2007 Misdemeanor Guilty Plea which had not previously been disclosed to the MREC.

29. The MREC issued a renewed license to Welchel based on the information Welchel provided in the Renewal Application, including her answer to the criminal history question.

30. Section 339.100.2, RSMo Supp. 2011, setting forth possible causes for disciplining a real estate license, states in part:

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:

.....

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

.....

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

.....

(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;

.....

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "material" means important information about which the commission should be informed and which may influence a licensing decision[.]

31. Section 339.040.1, RSMo and RSMo Supp. 2011, relating to license requirements, provide:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business 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.

32. Based on the conduct set forth herein and Whelchel's 2002 Felony Guilty

Plea, 2007 Misdemeanor Guilty Plea, and 2009 Felony Guilty Plea, Whelchel has failed to demonstrate that she is a person of good moral character, that she bears a good reputation for honesty, integrity, and fair dealing, and that she is competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo.

33. Based on Whelchel's 2002 Felony Guilty Plea, 2007 Misdemeanor Guilty Plea, and 2009 Felony Guilty Plea, and her failure to disclose the 2007 Misdemeanor Guilty Plea on her 2008 and 2010 renewal applications, cause exists to discipline her real estate salesperson license under § 339.100.2(10), (16), (18), and (25), RSMo.

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.

1. **Whelchel's license is surrendered and all indicia of licensure shall be surrendered immediately.** Whelchel's license as an inactive real estate salesperson is hereby VOLUNTARILY SURRENDERED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective. By the terms of this Settlement Agreement and her voluntary

surrender of her certification, Whelchel surrenders all rights and privileges provided to her through her inactive real estate salesperson license under Chapter 339, RSMo.

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

3. 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.

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

5. 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.

6. 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.

7. Whelchel, together with her 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.

8. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

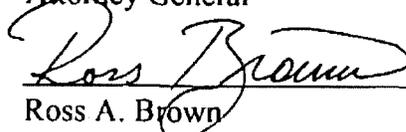
LICENSEE

MISSOURI REAL ESTATE
COMMISSION

Stacy E. Whelchel 5-22-12
Stacy Elaine Whelchel Date

Janet Carder
Janet Carder, Executive Director
Date: May 30, 2012

CHRIS KOSTER
Attorney General

A handwritten signature in cursive script, appearing to read "Ross Brown", is written over a horizontal line.

Ross A. Brown
Assistant Attorney General
Missouri Bar No. 62771

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-4087
Telefax: 573-751-5660

Attorneys for the MREC