

**BEFORE THE  
MISSOURI REAL ESTATE COMMISSION  
STATE OF MISSOURI**

Missouri Real Estate Commission,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 6-11-107
	)	
Vision Realty and Investment Group Inc.)	)	
and	)	
Wayne Arnold Brown,	)	
	)	
Respondents.	)	

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

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Missouri Real Estate Commission ("MREC") held a hearing on December 14, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondents had violated the probationary terms of a prior MREC disciplinary order and if so, whether additional discipline of Respondents' licenses was warranted. All of the members of the MREC were present throughout the meeting. Rosemary Vitale participated through conference call. The MREC was represented by Assistant Attorney General Ross Brown. Respondents were properly and timely notified of the hearing. Respondent Brown was present without legal counsel. Respondent Vision Realty and Investment Group Inc. was not present. After being present and considering all of the evidence presented during the hearing, the MREC issues these following Findings of Facts, Conclusions of Law and Order.

1.  
**FINDINGS OF FACT**

1. The Missouri Real Estate Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo,<sup>1</sup> for the purpose of carrying out and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. Wayne A. Brown holds a broker-officer license from the MREC, license no. 1999098964. At all times relevant herein, Brown's license has been active and current.

3. Vision Realty and Investment Group Inc. holds a real estate corporation license from the MREC, license no. 2001026919. At all times relevant herein, Vision Realty and Investment Group Inc.'s license has been active and current.

4. On December 16, 2009, the Administrative Hearing Commission entered its decision that the MREC had cause to discipline Brown and Vision Realty and Investment Group Inc., for violation of § 339.100.2(3), RSMo, for failing to remit money that belonged to others.

5. On April 21, 2010, the MREC issued a Findings of Fact, Conclusions of Law and Disciplinary Order ("2010 Disciplinary Order") which became effective on May 1, 2010. The 2010 Disciplinary Order placed Brown and Vision Realty and Investment Group Inc. on probation for two years and required that Brown and Vision Realty and Investment Group Inc. submit proof of repayment of funds totaling \$12,215 to a specified bank within a year of the May 1, 2010 effective date.

6. Paragraph 1 of Section III of the Order states:

1) Therefore, having fully considered all the evidence before this Commission, and giving full weight to the Decision, it is the ORDER of the MREC that the real estate licenses of Respondents, Wayne Arnold Brown and Vision Realty and Investment Group Inc. and Investment Group Inc., license numbers 1999098964 and 2001026919, are hereby placed on two years probation. Proof of

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

repayment of duplicate funds (\$12,215) to U.S. Bank must be submitted to Janet Carder, Missouri Real Estate Commission, 3605 Missouri Boulevard, P.O. Box 1339, Jefferson City, Missouri, 65102, within one year of the effective date of this Order.

7. Brown and Vision Realty and Investment Group Inc. failed to submit proof of repayment by May 1, 2011.

8. Brown's and Vision Realty and Investment Group, Inc.'s failure to adhere to the terms of their probation by failing to submit proof of repayment to U.S. Bank in the sum of \$12,215, is a violation of Paragraph 1 of Section III of the Disciplinary Order which provides cause to further discipline Brown's license and Vision Realty and Investment Group Inc.'s licenses under § 324.042, RSMo.

9. As a result of the foregoing, a Probation Violation Complaint was filed with the Missouri Real Estate Commission alleging that grounds existed for additional disciplinary action against Brown's and Vision Realty and Investment Group Inc.'s Missouri real estate licenses, pursuant to § 324.042, RSMo.

10. The MREC set this matter for hearing and served notice of this disciplinary hearing upon Respondents in a proper and timely fashion.

11. On December 14, 2011, pursuant to notice and § 621.110, RSMo, this MREC held a hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondents have violated any terms of the 2010 Disciplinary Order, and if so, whether any additional discipline would be imposed against Respondents' licenses. Respondent Wayne Arnold Brown was present but was not represented by legal counsel. Vision Realty and Investment Group Inc. was not present or represented through legal counsel. Petitioner was represented by Ross Brown, Assistant Attorney General.

12. All the members of the MREC were present throughout the disciplinary hearing. Rosemary Vitale participated through conference call.

13. Brown admitted that he has not paid back the money as required. Brown testified that he still fully intends to make the repayment. Brown testified regarding personal matters that have impeded his intended repayment. Brown testified as to the events that led to the need to repay the money. Brown also testified that to the best of his knowledge, Vision Realty and Investment Group Inc. was not represented by counsel.

## II.

### CONCLUSIONS OF LAW

14. Brown's and Vision Realty and Investment Group Inc.'s failure to adhere to the terms of their probation, to submit proof of repayment of duplicate funds (\$12,215) to the specified bank within one year of the effective date of the Order, in violation of Section III, paragraph 1 on Page 3, are violations of the terms of the 2010 Disciplinary Order which provide cause to further discipline Brown's and Vision Realty and Investment Group Inc.'s licenses under §324.042, RSMo.

15. Pursuant to § 324.042, RSMo, the MREC has authority to impose additional discipline against Respondents Wayne Arnold Brown and Vision Realty and Investment Group Inc. for violating any disciplinary terms previously imposed or agreed to pursuant to the Order against a licensee.

16. Section 324.042, RSMo, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

17. Pursuant to Section 324.042, RSMo, the MREC has jurisdiction to hold additional hearings and impose discipline if it finds that a licensee has violated any disciplinary terms previously imposed by the Commission.

18. Section 339.100.3, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license.

19. The MREC finds Respondents Wayne Arnold Brown and Vision Realty and Investment Group Inc. have violated the terms and conditions of the 2010 Disciplinary Order issued by the MREC on April 21, 2010 and effective May 1, 2010 as a result of the conduct identified in the findings of fact set forth above.

20. The MREC has determined that this Order is necessary to ensure the protection of the public.

### III.

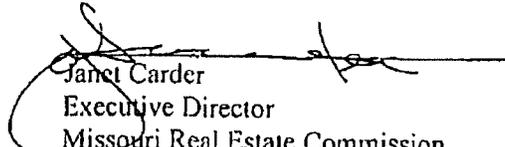
#### ORDER

Therefore, having fully considered all the evidence before the MREC, it is the ORDER of this MREC that:

21. The real estate license of Respondents Wayne Arnold Brown and Vision Realty and Investment Group Inc., license numbers 2001026919 and 1999098964, are hereby placed on an additional year of probation, extending the probation set out in the 2010 Disciplinary Order thru May 1, 2013. Proof of repayment of duplicate funds (\$12,215) to U.S. Bank must be submitted to Janet Carder, Missouri Real Estate Commission, 3605 Missouri Boulevard, P.O. Box 1339, Jefferson City, Missouri 65102, within one year of the effective date of this Order.

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

So Ordered this 16th day of December, 2011.

  
Janet Carder  
Executive Director  
Missouri Real Estate Commission



3) The MREC set this matter for hearing and served notice of the April 14, 2010 disciplinary hearing upon Respondents in a proper and timely fashion.

4) Pursuant to notice and 621.110, RSMo, the MREC held a hearing on April 14, 2010 at the Doubletree Hotel and Conference Center, 16625 Swingley Ridge Road, Chesterfield, Missouri, for the purpose of determining the appropriate disciplinary action against Respondents' licenses. Respondent was present but was not represented by counsel. Petitioner was represented by Craig Jacobs, Assistant Attorney General.

5) All the members of the MREC, with the exception of Doris Carlin, were present throughout the disciplinary hearing. Further, each member of the MREC that was present for the hearing has read the Administrative Hearing Commission's Decision.

6) The Respondents, Wayne Arnold Brown and Vision Realty and Investment Group Inc., are licensed by the MREC as a real estate broker-officer, license number 1999098964, and real estate corporation, license number 2001026919, which were current at all times relevant to this proceeding.

7) The Decision by the Administrative Hearing Commission in Case No. 09-0426RE is incorporated herein by reference as if fully set forth in this document.

## II.

### CONCLUSION OF LAW

1) This Commission has jurisdiction to take disciplinary action against Respondents' licenses pursuant to the provisions of Chapters 339 and 621, RSMo.

2) The MREC accepts and adopts the Conclusions of Law set forth in the Administrative Hearing Commission's Decision in case No. 09-0426RE and incorporates them herein.

3) Cause exists to discipline Respondents' licenses pursuant to 339.100.2 (3), RSMo.

4) Respondents' licenses are subject to revocation, suspension or probation by the MREC pursuant to Section 339.100.3, RSMo.

### III.

#### ORDER

1) Therefore, having fully considered all the evidence before this Commission, and giving full weight to the Decision, it is the ORDER of the MREC that the real estate licenses of Respondents, Wayne Arnold Brown and Vision Realty and Investment Group Inc., license numbers 1999098964 and 2001026919, are hereby placed on two years probation. Proof of repayment of duplicate funds (\$12,215) to U.S. Bank must be submitted to Janet Carder, Missouri Real Estate Commission, 3605 Missouri Boulevard, P.O. Box 1339, Jefferson City, Missouri 65102, within one year of the effective date of this Order.

2) The terms of this Order are contractual, legally

enforceable, and binding and are not mere recitals. Except as otherwise contained herein, neither this Order 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.

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

So Ordered this 21<sup>st</sup> day of April, 2010. This Order is to become effective May 1, 2010.

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Janet Carder  
Executive Director  
Missouri Real Estate Commission

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE  
COMMISSION,

Petitioner,

vs.

WAYNE ARNOLD BROWN and VISION  
REALTY AND INVESTMENT GROUP, INC.,

Respondents.

No. 09-0426 RE

**DECISION**

On December 10, 2009, we issued our order granting part of Petitioner's motion for summary decision. We concluded that Respondents' licenses are subject to discipline on some, but not all, charges in the complaint. On December 14, 2009, Petitioner filed a "statement regarding further hearing," which we treat as a motion to dismiss the charges on which we did not find cause for discipline. Therefore, those charges are dismissed.

We incorporate by reference our December 10, 2009, order into this final decision and will certify our record to Petitioner in thirty days.

SO ORDERED on December 16, 2009.

JOHN J. KOPP  
Commissioner

A handwritten signature in black ink, appearing to read "John J. Kopp", written over a horizontal line.



incompetence, misconduct, or gross negligence”<sup>1</sup> because there was no “other” conduct at issue in this case.

### **Procedure**

On March 26, 2009, the MREC filed a complaint seeking to discipline Respondents. On May 20, 2009, we served Brown with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On September 15, 2009, we ordered the MREC to show that both Respondents had been properly served in this case. On October 8, 2009, the MREC filed a response to our order, showing that Brown was the registered agent for Vision Realty. Therefore, the company was served when Brown was served.

Neither Respondent filed an answer. On August 11, 2009, the MREC filed a motion for summary decision. Our Regulation 1 CSR 15-3.446(5) provides that we may decide this case without a hearing if the MREC establishes facts that (a) Respondents do not dispute and (b) entitle the MREC to a favorable decision.

We gave Respondents until August 21, 2009, to respond to the motion, but they did not respond. Therefore, the following facts are undisputed.

### **Findings of Fact**

1. Vision Realty is licensed by the MREC as a real estate corporation. Vision Realty’s license is, and was at all relevant times, current and active.
2. Brown holds a real estate broker-officer license issued by the MREC. Brown’s license is and has been current and active at all relevant times.
3. By Settlement Agreement effective October 7, 2006, Brown’s license was suspended for one year, with the suspension stayed, followed by a period of probation of three years, which was completed on or about October 6, 2009.

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<sup>1</sup>Section 339.100.2(19). Statutory references, unless otherwise noted, are to RSMo Supp. 2008.

4. Brown serves, and at all relevant times served, as the broker for Vision Realty.
5. On or about May 12, 2005, Respondents were the selling brokers in the sale of 4117 Sheridan Meadows Drive, Florissant, Missouri, 63034, at the closing of this transaction at Bankers and Lenders Title, LLC ("Bankers").
6. Based upon the commission agreed to by the parties to the sale, Vision Realty was entitled to receive \$11,130 in commission from the sale proceeds.
7. Upon closing, Bankers issued its check, dated May 12, 2005, in the amount of \$11,130 to Vision Realty, and mailed it to Vision Realty that same day.
8. On or about May 12, 2005, someone contacted Bankers by telephone, after the check had been placed in the mail, claiming an immediate need for the commission funds and requesting that Bankers wire the funds directly to Vision Realty's account.
9. Bankers told the person who called that the funds had already been mailed. Bankers was assured that if the funds were wired, the already-sent check for \$11,130 would be returned upon its arrival.
10. On May 13, 2005, Bankers wired \$11,130 to the account of Vision Realty at U.S. Bank, N.A., in Jackson, Missouri.
11. The check was endorsed and deposited into Vision Realty's bank account, resulting in duplicative payment to Vision Realty – \$11,130 more than Vision Realty was entitled to receive.
12. As a result of Respondents' refusal to satisfy repeated demands from Bankers for the return of the duplicate funds, Bankers filed suit against Respondents in the City of St. Louis Circuit Court.
13. On October 4, 2006, Bankers obtained Judgment in Default against Respondents, the total amount set at \$12,215.

14. To date, this judgment remains unsatisfied, without any payment having been paid.

### Conclusions of Law

We have jurisdiction to hear the complaint.<sup>2</sup> The MREC has the burden of proving that Respondents have committed an act for which the law allows discipline.<sup>3</sup> Because a corporation acts only through its agents, its agent's acts are the corporation's acts.<sup>4</sup> Brown's conduct is also Vision Realty's conduct. We may infer the requisite mental state from the conduct of the licensee "in light of all surrounding circumstances."<sup>5</sup>

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

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

\* \* \*

(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;

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

\* \* \*

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

\* \* \*

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<sup>2</sup>Section 621.045.

<sup>3</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>4</sup>*Fowler v. Park Corp.*, 673 S.W.2d 749 (Mo. banc 1984).

<sup>5</sup>*Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

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

I. Misrepresentation – Subdivision (2)

A misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.<sup>6</sup> The MREC argues that Brown promised that the check for \$11,130 would be returned to Bankers upon receipt after the commission funds were wired to Vision's account, but that Brown endorsed and deposited the check funds into Vision's account. In Brown's response to the MREC's request for admissions, he denied this. He stated that his employee endorsed the check with his name and deposited it. He stated that he was not in town at the time and that the signature on the check does not match his signature. The MREC failed to prove undisputed facts that authorize discipline under §339.100.2(2) for making misrepresentations or false promises.

II. Failing to Remit Money – Subdivision (3)

Regardless of whether Brown made the representations about the money, Respondents failed within a reasonable time to remit a substantial sum of money that came into their possession that in fact rightfully belongs to Bankers. Brown states that he has offered to return the money in small increments, but he has not done so. There is cause to discipline Respondents under § 339.100.2(3).

III. Cause to Refuse Licensure – Subdivision (16)

Section 339.040.1 states:

Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

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<sup>6</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11<sup>th</sup> ed. 2004).

(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.

#### A. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>7</sup> Failure to remit the money alone does not show a lack of good moral character. The MREC failed to prove undisputed facts that authorize discipline under §339.100.2(16) for lack of good moral character.

#### B. Reputation

Reputation is the “consensus view of many people[.]”<sup>8</sup> 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[.]”<sup>9</sup> The MREC offered no evidence on either Brown’s or Vision Realty’s reputation. The MREC failed to prove undisputed facts that authorize discipline under §339.100.2(16) for failure to have a good reputation.

#### C. Competent to Transact Business

Competent is defined as “having requisite or adequate ability or qualities[.]”<sup>10</sup> One instance of failing to remit money in these circumstances does not prove that Respondents lack competence. The MREC failed to prove undisputed facts that authorize discipline under §339.100.2(16) for lack of competence.

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<sup>7</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

<sup>8</sup>*Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992).

<sup>9</sup>*State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4<sup>th</sup> ed. 1467-68)).

<sup>10</sup>MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 253 (11<sup>th</sup> ed. 2004).

IV. Other Conduct – Subdivision (19)

The MREC argues that Respondents are 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[.]”<sup>11</sup> Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute.

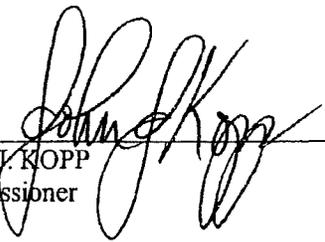
We have found that the conduct at issue is cause for discipline under § 339.100.2(3). There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

**Summary**

There is cause for discipline under § 339.100.2(3). We grant the motion for summary decision to the MREC as to this subdivision. We deny the motion for summary decision as to § 339.100.2(2) and (16). There is no cause for discipline under § 339.100.2(19), and we grant summary decision to Respondents as to this subdivision.

The MREC shall inform us by December 18, 2009, whether it will proceed on the remaining allegations. If necessary, we will reset the hearing by separate notice.

SO ORDERED on December 10, 2009.

  
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JOHN J. KOPP  
Commissioner

<sup>11</sup>WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE  
COMMISSION AND WAYNE ARNOLD BROWN

Wayne Arnold Brown ("Brown") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Brown's real estate broker-officer license will be subject to discipline. Pursuant to § 536.060, RSMo,<sup>1</sup> 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. Brown and the MREC jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum Supp. 2005.

Brown acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; 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 him at the hearing, the right to present evidence on his 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 him; 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 Brown may present evidence in mitigation of discipline, the right

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<sup>1</sup>All statutory citations are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

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 him by law, Brown 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 Brown

Brown acknowledges that he has received a copy of the investigative report and other documents relied upon by the MREC in determining there was cause for discipline, along with citations to statutes and regulations the MREC believes were violated. For the purpose of settling this dispute, Brown stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Brown's real estate broker-officer license, License No 1999098964, is subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo Cum Supp 2005 and Chapter 339, RSMo, as amended

Brown acknowledges that the MREC and its attorney followed the procedures enumerated in § 621 045, RSMo Cum. Supp 2005, including, but not limited to: (1) providing Brown with a written description of the specific conduct for which discipline is sought and citations to the law and rules violated, together with copies of any documents which are the basis thereof; (2) waiting to offer a settlement proposal to Brown until more than 30 days after providing the above-mentioned description, citation, and documents, (3) allowing Brown at least 60 days from the date of mailing to consider the MREC's

initial settlement offer and discuss the terms of such settlement offer with the MREC, (4) advising Brown that he may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining Brown's license; and (5) advising Brown that he has the right to consult an attorney at his own expense in any contact pursuant to § 621.045 3, RSMo Cum. Supp 2005, by the MREC or its counsel

Brown stipulates that the factual stipulations contained in this Settlement Agreement are true and stipulates with the MREC that Brown's real estate broker-officer license, License No 1999098964, is subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo as amended, and Chapter 339, RSMo, and RSMo Cum Supp 2004

The parties stipulate and agree that the disciplinary order agreed to by Brown and the MREC in Part II herein is based only on the agreement set out in Part I herein. Brown understands that the MREC may take further disciplinary action against Brown based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

Based upon the foregoing, Brown and the MREC herein jointly stipulate to the following

I.

Joint Stipulation of Facts

1. The MREC is an agency of the state of Missouri, created and established pursuant to § 339 120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339 010 to 339 180 and §§ 339 710 to 339 860, RSMo, as amended, relating to real estate agents and real estate brokers

2. Brown holds a broker-officer license, license no 1999098964, which license was at all relevant times herein current and active.

3. Vision Realty and Investment Group, Inc (“Vision Realty”) is a Missouri corporation and holds a real estate corporation license, license no 2001026919

4. At all relevant times herein, Vision Realty employed Brown as its designated broker

5. At all times relevant herein, Vision Realty acted by and through Brown

6. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 339 100 and 621.045, RSMo Cum Supp. 2005

7. On May 16, 2005 and May 17, 2005, the MREC conducted an audit and examination of Vision Realty’s business records and escrow accounts (“2005 audit”)

8. The 2005 audit covered a period of May 2004 to May 2005 (“audit period”)

9 From December 14, 2004 to February 11, 2005, Vision Realty maintained a property management escrow account at US Bank, account No. 152302856975 (hereinafter "escrow account No 152302856975")

10. The 2005 audit revealed that on or about February 11, 2005, Vision Realty closed escrow account No. 152302856975 because of numerous overdrafts

11. During the audit period, Vision Realty had a property management escrow account at US Bank, account No.152304610263 (hereinafter "escrow account No 152304610263")

12. The escrow account is to hold funds generated by and for properties managed by Vision Realty, including, but not limited to, rent monies

13 Escrow account No 152304610263 was not registered with the MREC

14. At the time of the 2005 audit, escrow account No 152304610263 had a net shortage of \$113.45 The net shortage resulted from an identified overage of \$37.50, an identified shortage of \$15.95, and an identified shortage of \$135.00.

15 The identified overage of \$37.50 occurred in March 2005, due to Vision Realty's failure to remove commission monthly.

16 The identified shortage of \$15.95 occurred on April 19, 2005, due to a check charge when no broker funds were present in the account

17. The identified shortage of \$135 00 occurred when Vision Realty wrote check number 532 for locks on 3173 Minnesota, which was a property for which Vision Realty had no current written management agreement

18 At the time of the 2005 audit, escrow account No 152304610263 had a zero unidentified balance

19 Vision Realty and Brown allowed the shortages in escrow account No 152304610263 to occur and remain

20 Vision Realty and Brown failed to maintain the following documents necessary to determine the adequacy of escrow account No 152302856975

- (a) check register,
- (b) checks,
- (c) deposit log, and
- (d) the February 2005 owner's statement

21. Vision Realty and Brown failed to maintain the following documents necessary to determine the adequacy of escrow account No. 152304610263

- (a) check register,
- (b) deposit log;
- (c) owner statements dated March 2005 and April 2005; and
- (d) cash receipt from McCollum, a tenant, for March 2005

22 Vision Realty and Brown did not retain a receipt for check number 97 for escrow account No 152302856975

23 Vision Realty and Brown did not retain deposit tickets dated December 14, 2004, January 18, 2005, January 24, 2005, January 28, 2005, and February 10, 2005 for escrow account No 152302856975

24. Vision Realty and Brown did not retain a receipt for check number 301 for escrow account No. 152304610263

25 Vision Realty and Brown did not retain a deposit ticket dated April 12, 2005, for escrow account No 152304610263

26 Vision Realty and Brown did not retain an invoice for the expense paid with check number 532 on escrow account No 152304610263

#### Joint Conclusions of Law

27 Section 339 100, RSMo, identifies, in part, when the MREC may discipline a license. That section states, in pertinent part

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:

. . .

(14) 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, or of any lawful rule adopted pursuant to sections 339.010 to 339.180;

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

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

28 Section 339 100, RSMo, Cum. Supp 2004, identifies, in part, when the MREC may discipline a license. That section states, in pertinent part.

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:

(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,

29 Section 339 040, RSMo 2000, and RSMo Cum Supp 2004, establishes qualifications for holding a real estate license and states, in relevant part

1 Licenses shall be granted only to persons who present, and corporations, associations or partnerships whose officers, associates, or partners 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.

30. Section 339 105, RSMo, requires brokers to maintain escrow accounts, stating, in relevant part:

1 Each broker shall maintain a separate bank checking account in a financial institution, either a bank, savings and loan association or a credit union in this state, or in an adjoining state with written permission of the commission, which shall be designated an escrow or trust account in which all money not his own coming into his possession, including funds in which he may have some future interest or claim, shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing .

3 In conjunction with each escrow or trust account a broker shall maintain at his usual place of business, 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 open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

31. Section 339.105, RSMo Cum. Supp. 2004 states in relevant part:

1. 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.

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.

32. 4 CSR 250-8.120 states in relevant part:

(7) The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

33. 4 CSR 250-8 160 (effective March 30, 2004 to present) requires the retention of records by brokers and states, in pertinent part.

(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 lease, 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.

34. By allowing a net shortage of \$113 45 to occur and remain in the escrow account, Brown failed to properly maintain the escrow account and violated § 339 105 1, RSMo, and RSMo Cum Supp. 2004, providing cause to discipline pursuant to § 339 100 2(14), RSMo, and 339 100 2(15), RSMo Cum Supp 2004.

35. In failing to maintain records necessary to determine the adequacy of escrow account number 152302856975 and escrow account number 152304610263, Brown violated § 339.105.3, RSMo, and RSMo Cum Supp 2004, providing cause to discipline pursuant to § 339 100 2(14), RSMo, and § 339 100 2(15), RSMo Cum Supp. 2004.

36. In failing to retain documents for escrow account number 152302856975 and escrow account number 152304610263, Brown violated 4 CSR 250-8.160(2),

providing cause to discipline pursuant to § 339 100 2(14), RSMo, and § 339 100 2(15), RSMo Cum Supp 2004

37 In failing to retain a record of check No 97 for escrow account number 152302856975 and check No 301 for escrow account number 152304610263, Brown failed to retain for a period of at least three years true copies of all business books, accounts, and records in violation of 4 CSR 250-8 160(2), providing cause to discipline pursuant to § 339 100 2(14), RSMo, and § 339 100 2(15), RSMo Cum. Supp. 2004

38. In failing to retain deposit tickets for escrow account No 152302856975 and escrow account No 152304610263, Brown failed to retain for a period of at least three years true copies of all business books, accounts, and records, in violation of 4 CSR 250-8.160(2), providing cause to discipline pursuant to § 339 100 2(14), RSMo, and § 339 100.2(15), RSMo Cum Supp. 2004.

39. In failing to retain deposit tickets for escrow account No 152302856975 and escrow account No 152304610263, Brown failed to retain records necessary to determine the adequacy of the escrow account in violation of § 339 105 3, RSMo, and RSMo Cum Supp. 2004, providing cause to discipline pursuant to § 339 100 2(14), RSMo and § 339.100.2(15), RSMo Cum Supp 2004

40 In failing to retain an invoice for a check written on escrow account No 152304610263, Brown failed to retain for a period of at least three years true copies of all business books, accounts, and records, in violation of 4 CSR 250-8 160(2), providing

cause to discipline pursuant to § 339 100 2(14), RSMo and § 339 100.2(15), RSMo Cum Supp. 2004

41 In failing to retain an invoice for a check written on escrow account No 152304610263, Brown failed to retain records necessary to determine the adequacy of the escrow account in violation of § 339 105 3, RSMo, and RSMo Cum Supp. 2004, providing cause to discipline pursuant to § 339 100.2(14), RSMo, and § 339 100 2(15), RSMo Cum Supp. 2004

42 Based on the deficiencies and violations set forth herein, Brown demonstrated that he is not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which is grounds for the MREC to refuse to issue a license under § 339.040 1(3), RSMo, and RSMo Cum. Supp 2004, providing cause to discipline pursuant to § 339 100.2(15), RSMo, and § 339.100 2(16), RSMo Cum. Supp 2004.

43 Based on the deficiencies and violations set forth herein, Brown engaged in conduct which constitutes untrustworthy and improper business dealings, and demonstrates bad faith, providing cause to discipline pursuant to § 339.100 2(18), RSMo, and § 339 100 2(19), RSMo Cum. Supp 2004

44 Based on the deficiencies and violations set forth herein, Brown engaged in conduct which demonstrates gross incompetence, providing cause to discipline pursuant to § 339.100.2(18), RSMo

45 The deficiencies stipulated herein demonstrate a failure to maintain the escrow account, in violation of § 339 105 1, RSMo and RSMo Cum Supp 2004, providing cause to discipline pursuant to § 339 100 2(14), RSMo and § 339.100 2(15), RSMo Cum Supp. 2004

46 Cause exists to take disciplinary action against Brown's real estate license pursuant to § 339.100 2(14), (15), and (18), RSMo, and § 339 100 2 (15), (16) and (19), RSMo Cum Supp 2004

## 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, § 621.045 3, RSMo Cum Supp 2005, and § 621 110, RSMo

1 **WAYNE ARNOLD BROWN'S REAL ESTATE BROKER-OFFICER LICENSE SHALL BE SUSPENDED FOLLOWED BY A PERIOD OF PROBATION.** On the effective date of this Settlement Agreement, Brown's real estate broker-officer license, No. 1999098964, shall be SUSPENDED for a period of ONE YEAR, SUSPENSION STAYED, immediately followed by PROBATION FOR THREE YEARS During the period of suspension, Brown shall not be entitled to and shall not

practice as a real estate licensee. During the period of probation on Brown's real estate license, he shall be entitled to practice as a real estate broker-officer, provided he adheres to all the terms stated herein. The period of suspension and the period of probation shall collectively constitute the "disciplinary period."

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

1. Brown must successfully complete a 48-hour broker prelicense course and provide proof of successful completion to the MREC within the first six months of the disciplinary period. The prelicense course must be attended in an in-class setting and may not be taken via the internet.

2. Brown shall, at his own expense, ensure that quarterly audits of his real estate practices are conducted and completed by a certified public accountant approved by the MREC. Within 15 calendar days of the effective date of this Settlement Agreement, Brown shall submit to the MREC in writing a list of at least three certified public accountants, including name, address, and relationship to Brown. The MREC may approve one of the listed certified public accountants or may require Brown to submit additional names for consideration and approval. Brown shall, at his expense, retain an approved certified public accountant to conduct and complete the quarterly audits. Such quarterly audits of Brown's real estate practices shall be conducted and completed on or before the following

dates: January 1, April 1, July 1, and October 1 of each year during the disciplinary period. The first such quarterly audit shall be conducted and completed on or before January 1, 2007. Within seven calendar days of completion of each quarterly audit, Brown shall provide the MREC with written confirmation of the audit's completion. Further, within 30 days of completion of each quarterly audit, the certified public accountant conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a written audit report. Attached hereto as Exhibit A is a copy of the Audit Guidelines to be followed during the course of the required audits.

C. Brown shall keep the MREC apprised at all times in writing of each of his current addresses and telephone numbers for each place of residence and business. Brown shall notify the MREC in writing within ten days of any change in this information. Brown is responsible for ensuring that such notification is received by the MREC.

D. Brown shall timely renew all licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in a current and active state.

E. If, at any time within the disciplinary period, Brown changes residences from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 339, RSMo, as amended, or fails to keep the MREC advised

of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall toll the disciplinary period and shall not be deemed or taken as any part of the disciplinary period

F Brown shall comply with all 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

3. Upon the expiration of the disciplinary period, Brown's license shall be fully restored if all requirements of law have been satisfied, provided, however, that in the event the MREC determines that Brown has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, vacate and set aside this Settlement Agreement 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 Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo, as amended. If any alleged violation of this Settlement Agreement occurs 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 Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Brown of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder

6 If any alleged violation of this Settlement Agreement occurs 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. Brown agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

8. 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.

9. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record as required by Chapters 339, 610, and 620, RSMo, as amended

10. Brown, together with his 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, its litigation, or from the negotiation or execution of this Settlement Agreement. Brown acknowledges 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 Settlement Agreement or any portion thereof void or unenforceable.

11. Brown understands that he 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 Brown's license. If Brown desires the Administrative Hearing Commission to review this Settlement Agreement, Brown may submit his request to. Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P O Box 1557, Jefferson City, Missouri 65101.

If Brown requests 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 Brown's license. If Brown does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC

LICENSEE

MISSOURI REAL ESTATE COMMISSION

Wayne Arnold Brown 8-28-06 Janet Carder 9/22/06  
Wayne Arnold Brown Date Janet Carder, Executive Director Date

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