

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

Missouri Real Estate Commission,)	
)	
Petitioner,)	
)	
vs.)	Case No. 10-11-203
)	
Daniel J. Buescher,)	
)	
Respondent.)	

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

Pursuant to notice and §§ 621.110, 339.100.3 and 324.042, RSMo,¹ the Missouri Real Estate Commission (“MREC”) held a hearing on August 8, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondent had violated the probationary terms of a prior Order of the Missouri Real Estate Commission Disciplining the Real Estate Licenses of Daniel J. Buescher and Investment Real Estate Inc., issued February 16, 2011 (“2011 Disciplinary Order”), by the MREC and if so, whether additional discipline of Respondent’s licenses was warranted. All of the members of the MREC, except Jan Hunt and Doris Carlin, were present throughout the meeting. Twila Hillme participated through conference call. The MREC was represented by Rule 13 certified law student Lacy Cansler, supervised by Craig Jacobs, Assistant Attorney General. Respondent was properly and timely notified of the hearing. Respondent was not present and not represented by legal counsel. After being present and considering all of the evidence presented during the hearing, the MREC issues these Findings of Facts, Conclusions of Law and Disciplinary Order.

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

Based on the foregoing, the MREC states:

I.
FINDINGS OF FACT

1. The MREC was established pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180, RSMo, and §§ 339.710 to 339.860, RSMo, relating to real estate salespersons, brokers and corporations.

2. Respondent, Daniel J. Buescher ("Buescher") is licensed by the MREC as a real estate broker, license nos. 1999021187 and 1999021188. License Nos. 1999021187 and 1999021188 were current and active until suspended pursuant to HB600 on October 30, 2010 and expired on June 30, 2012.

3. On February 16, 2011, the MREC issued the 2011 Disciplinary Order based on the November 30, 2010 findings of the Administrative Hearing Commission that cause existed to discipline Buescher's licenses.

4. The MREC has jurisdiction and/or authority to conduct a hearing pursuant to the 2011 Disciplinary Order, Part IV, Paragraph H:

The Commission retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred, and if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Commission. No order shall be entered by the Commission pursuant to this paragraph without any required notice and opportunity for a hearing before the Commission as provided by Chapter 536, RSMo (as amended).

5. The MREC also has jurisdiction pursuant to § 324.042, RSMo, which 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.

6. Pursuant to § 339.205(1), RSMo, the Commission may impose a civil penalty not to exceed two-thousand five hundred dollars (\$2,500.00) for each offense.

7. On February 16, 2011, pursuant to Part III of the 2011 Disciplinary Order issued by the Missouri Real Estate Commission, Buescher's license was placed on two (2) years probation and he was required to pay a five-hundred (\$500.00) dollar civil penalty.

8. Pursuant to Part III of the Disciplinary Order, Buescher was to pay the civil penalty within 60 days of the issuance of the Disciplinary Order.

9. Payment of the civil penalty was due on April 17, 2011.

10. Buescher failed to remit payment of the civil penalty by April 17, 2011, or at any time.

11. Buescher violated the terms of the Disciplinary Order and the terms and conditions of his probation with the MREC because he failed to remit payment within the 60 day timeframe. Therefore, the MREC has sufficient grounds to impose additional discipline pursuant to § 324.042, RSMo.

12. Further, with regard to failure to pay a civil penalty, § 339.205.7, RSMo, states in relevant part:

Failure to pay a civil penalty by any person licensed under this chapter shall be grounds for denying, disciplining or refusing to renew or reinstate a license or certificate of authority.

13. Buescher's failure to pay the civil penalty imposed by the MREC is a violation of § 339.205.7, RSMo, and therefore, constitutes independent grounds for the MREC to impose additional discipline.

II.

CONCLUSIONS OF LAW

14. 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.

15. Pursuant to § 324.042, RSMo, and Part IV, paragraph H of the 2011 Disciplinary Order, the MREC has jurisdiction to hold additional hearings and impose further discipline if it finds that a licensee has violated any disciplinary terms previously imposed by the MREC, following notice, a hearing and a determination of a violation of the 2011 Disciplinary Order.

16. Buescher violated the terms of the 2011 Disciplinary Order and the terms and conditions of his probation with the MREC because he failed to remit payment within the 60 day timeframe, or at all. Therefore, the MREC has sufficient grounds to impose additional discipline pursuant to § 324.042, RSMo and the 2011 Disciplinary Order.

17. Buescher's failure to pay the civil penalty imposed by the MREC is a violation of § 339.205.7, RSMo, and therefore, constitutes independent grounds for the MREC to impose additional discipline.

18. The MREC finds Respondent has violated the terms and conditions of the 2011 Disciplinary Order as a result of the conduct identified in the Findings of Fact herein.

19. 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 or by imposing a civil penalty not to exceed \$2,500 for each offense.

20. Section 339.205, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing through an order imposing a civil penalty not to exceed \$2,500 for each offense.

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

III.

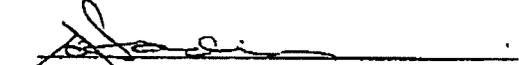
ORDER

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

22. The real estate licenses of Respondent, Daniel J. Buescher, license numbers 1999021187, 1999021188 and ~~000007586~~ ^{JC/DB}, are hereby REVOKED.

23. 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 20th day of August, 2012.



Janet Carder
Executive Director
Missouri Real Estate Commission

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)
)
) Petitioner,)
)
 v.) No. 09-1335 RE
)
)
 DANIEL J. BUESCHER and)
)
 INVESTMENT REAL ESTATE INC.,)
)
) Respondents.)

ORDER OF THE MISSOURI REAL ESTATE COMMISSION
DISCIPLINING THE REAL ESTATE LICENSES OF
DANIEL J. BUESCHER AND INVESTMENT REAL ESTATE INC.

On or about November 30, 2010, the Administrative Hearing Commission entered its Consent Order in the case of *Missouri Real Estate Commission v. Daniel J. Buescher and Investment Real Estate Inc., Case No. 09-1335 RE*. In that Consent Order, the Administrative Hearing Commission found that Respondents Daniel J. Buescher's and Investment Real Estate Inc.'s real estate licenses (license nos. 1999021187, 1999021188 and 000007586) are subject to disciplinary action by the Commission pursuant to § 339.100.2(15), (16), and (23), RSMo 2000.

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Consent Order, Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before 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 Cum. Supp. 2009, the Commission held a hearing on February 9, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the

appropriate disciplinary action against Respondents' licenses. All of the members of the Commission with the exception of Doris Carlin were present throughout the meeting. Members Twila Hillme, Jan Hunt, and Charles Davis participated through conference call. Further, each member of this Commission that was present for the hearing has read the Consent Order, Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Craig Jacobs. Respondents were not present and were not represented by 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.

I.

Based upon the foregoing the Commission hereby states:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo Cum. Supp. 2009, 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 Sections 339.010-339.205 and 339.710-339.855, RSMo (as amended).

2. The Commission hereby adopts and incorporates by reference the Consent Order, Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Daniel J. Buescher and Investment Real Estate Inc., Case No. 09-1335 RE* in its entirety.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion.

4. This Commission licensed Respondents Daniel J. Buescher and Investment Real Estate Inc. as a real estate broker-salesperson, broker-associate and corporation, license numbers 1999021187, 1999021188 and 000007586 respectively. Respondents' licenses were 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 Consent Order issued by the Administrative Hearing Commission dated November 30, 2010, in *Missouri Real Estate Commission v. Daniel J. Buescher and Investment Real Estate Inc., Case No. 09-1335 RE*, 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 Consent Order dated November 30, 2010, Respondents' real estate licenses are subject to disciplinary action by the Commission pursuant to § 339.100.2(15), (16) and (23), RSMo 2000.

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 licenses of Daniel J. Buescher and Investment Real Estate Inc. (license nos. 1999021187, 1999021188 and 000007586) are hereby placed on **PROBATION** for two (2) years, effective upon reinstatement/activation of the licenses. Respondent Buescher must also pay a civil penalty of \$500 by certified check made payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within sixty days of the date of this Order. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution Section 339.205.8, RSMo Cum. Supp. 2009. Respondent Buescher's failure to pay the full amount of the \$500 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's probation.

IV.

TERMS AND CONDITIONS

During the aforementioned probation, Daniel J. Buescher and Investment Real Estate Inc. shall be entitled to perform as real estate licensees subject to the following terms and conditions:

- A. During the probationary period, Respondents shall maintain full compliance with all provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo, and all rules and regulations promulgated by the Commission.
- B. During the probationary period, Respondents shall keep the Commission informed of their current work and home addresses and telephone numbers. Respondents shall notify the Commission in writing within ten days (10) of any change in this information.
- C. During the probationary period, Respondents shall timely renew their licenses granted hereby and shall timely pay all fees required for licensure and comply with all other Commission requirements necessary to maintain said licenses in a current and active state.

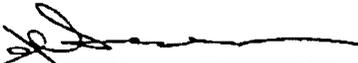
- D. During the probationary period, Respondents shall accept and comply with unannounced visits from the Commission's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the probationary period, Respondents shall appear in person for interviews with the Commission or its designee upon request.
- F. If, at any time during the probationary period, Respondents change their address from the state of Missouri, or cease to maintain their real estate license current or active under the provisions of Chapter 339, RSMo (as amended), or fail to keep the Commission advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- G. Upon expiration of the probationary period, Respondents' licenses shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Commission determines that Respondents have violated any term or condition of this Order, the Commission may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.
- H. The Commission retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Commission. No order shall be entered by the Commission pursuant to this paragraph without any required notice and opportunity for a hearing before the Commission as provided by Chapter 536, RSMo (as amended).
- I. Unless otherwise specified by the Commission, all reports, documentation, notices, or other materials required to be submitted to the Commission shall be forwarded to: Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, Missouri 65102.
- J. Any failure by Daniel J. Buescher and Investment Real Estate Inc. to comply with any condition of discipline set forth herein constitutes a violation of this Order.

This Order does not bind the Commission or restrict the remedies available to it concerning any violation by Respondents of the terms and conditions of this Order, Sections 339.010-339.205 and 339.710-339.855, RSMo (as amended), or the regulations promulgated thereunder.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610, and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 16th DAY OF February, 2011.

MISSOURI REAL ESTATE COMMISSION



Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)

Petitioner,)

vs.)

No. 09-1335 RE

INVESTMENT REAL ESTATE, INC. and)
DANIEL J. BUESCHER,)

Respondents.)

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On November 23, 2010, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 339.100.2(15), (16) and (23), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2009.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2009.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2009. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on November 30, 2010.

A handwritten signature in black ink, appearing to read "Nimrod T. Chapel, Jr.", written over a horizontal line.
NIMROD T. CHAPEL, JR.
Commissioner

b

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

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ADMINISTRATIVE HEARING
COMMISSION

MISSOURI REAL ESTATE)
COMMISSION,)
)
Petitioner,)
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v.)
)
DANIEL J. BUESCHER and)
INVESTMENT REAL ESTATE, INC.,)
)
Respondents.)

Case No. 09-1335 RE

RECEIVED

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MREC

**JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW, AND
WAIVER OF HEARING
BEFORE THE ADMINISTRATIVE HEARING COMMISSION**

Respondents Daniel J. Buescher (“Buescher”) and Investment Real Estate, Inc. (IRE) and Petitioner Missouri Real Estate Commission (“MREC”) enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission* (“Joint Stipulation”) for the purpose of resolving the Complaint filed against Respondents. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (“Commission”)(1 CSR 15-3.446(4)) and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the

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

Commission, and jointly stipulate and agree that a final disposition of the issues before the Commission may be effectuated as described below.

Buescher and IRE acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decision of the Administrative Hearing Commission. Being aware of these rights provided Buescher and IRE by operation of law, Buescher and IRE knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation. Buescher and IRE further agree to abide by the terms of this document as they pertain to them.

Buescher and IRE acknowledge that they received a copy of the Complaint in this case, which was filed with the Commission on September 18, 2009. Buescher and IRE stipulate that the factual allegations contained in this Joint Stipulation are true and stipulate with the MREC that Buescher's license as a real estate broker, license no.

1999021187, and IRE's license as a real estate corporation, license no. 000007586, are subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, and §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo.

I. JOINT STIPULATION

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

JOINT PROPOSED FINDINGS OF FACT

1. The MREC was established pursuant to § 339.120, RSMo,² for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, relating to real estate salespersons and brokers.
2. Buescher is a broker officer, license number 1999021187, associated with Investment Real Estate Inc., ("IRE"), and an inactive broker officer license, license number 1999021188.
3. IRE is a Missouri Corporation, charter number, 00412773.
4. IRE's registered agent, Daniel J. Buescher, is located at 518 Fox Pointe, St. Charles, Missouri 63304.

5. IRE is located at 9567 Page, Suite 110, St. Louis, Missouri 63132.
6. IRE holds a Missouri real estate corporation license, license number 000007586. At all relevant times herein, IRE's license was current and active.
7. On or about September 7, 2007, Teresa Estelle Ghafoori, ("Ghafoori"), began working at IRE.
8. Ghafoori is a licensed salesperson, license number 1999067216. At all relevant times herein, Ghafoori's license was current and active.
9. Prior to joining IRE, Ghafoori's salesperson license was associated with JKR & Associates, ("JKR").
10. Ghafoori's license remained active with JKR from July 5, 2007, to April 4, 2008.
11. Buescher and IRE failed to file a salesperson transfer application with MREC on behalf of Ghafoori.
12. Buescher and IRE allowed Ghafoori to practice real estate by and through IRE without transferring her license to IRE from about September 7, 2007 to about February 2008.
13. MREC did not receive an application to change Ghafoori's salesperson license from JKR to IRE.

² All statutory references are to the 2008 Cumulative Supplement to the Revised Statutes of Missouri unless otherwise noted.

14. At all times relevant herein, Ghafoori conducted real estate activities by and through IRE, including, but not limited to, the following:

- a. On or about November 27, 2007, the sale of property at 8218 Swarthmore Court, St. Louis, Missouri;
- b. On or about October 28, 2007, the listing of property at 2600 Minnesota Avenue, St. Louis, Missouri;
- c. On or about November 12, 2007, the listing of property at 2602 Minnesota Avenue, St. Louis, Missouri; and
- d. On or about November 5, 2007, the listing of property at 5236 Washington, St. Louis, Missouri.

15. During the above-mentioned real estate activities, Ghafoori's salesperson license was never transferred or affiliated with IRE.

JOINT PROPOSED CONCLUSIONS OF LAW

16. Under Section 339.710, RSMo, Cum. Supp. 2008, Buescher was the Broker Officer of IRE, a real estate corporation; and, as such, Buescher bears responsibility for his own conduct as well as that of IRE:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker [.]

17. State Regulation 20 CSR 2250-4.050, regarding transfer applications, states in part:

(4) An original licensee or a licensee changing license status/type shall not be deemed to be entitled to engage in any activity for which a license is required until the new license is received by the broker or until written notification is received from the commission that the application is being processed. When a broker-salesperson or salesperson transfers from one broker to another without changing license type, the licensee shall be deemed transferred at the time the properly completed application is mailed by certified, registered or overnight delivery, if all materials required to transfer are mailed under one (1) cover. The new broker is responsible for seeing that the application is complete and that the application for transfer is mailed by certified, registered or overnight delivery to ensure proof of delivery. If the application is deemed incomplete, the transfer will not be effective until the properly completed application is received by the commission.

18. Section 339.040, RSMo, regarding the requirements for licensure, states in

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.

19. Buescher and IRE assisted and enabled Ghafoori to conduct real estate activities by and through IRE without a license, in violation of State Regulation 20 CSR 2250-4.050.

20. Section 339.205, Cum. Supp. 2008, RSMo, states

1. In actions against unlicensed persons or disciplinary actions against licensed persons, the commission may issue an order imposing a civil penalty. Such penalty shall not be imposed until the findings of facts and conclusions of law by the administrative hearing commission have been delivered to the commission in accordance with section 621.110, RSMo. Further, no civil penalty shall be assessed until a formal meeting and vote by the board has been taken to impose such a penalty.

2. Any civil penalty imposed by the commission shall not exceed two thousand five hundred dollars for each offense. Each day of a continued violation constitutes a separate offense, with a maximum penalty of twenty-five thousand dollars. In determining the amount of penalty to be imposed, the commission may consider any of the following:

(5) The interest of the public.

6. Any offer of settlement to resolve a civil penalty under this section shall be in writing, state that an action for imposition of a civil penalty may be initiated by the attorney general representing the commission under this section, and identify any dollar amount as an offer of settlement, which shall be negotiated in good faith through conference, conciliation, and persuasion.

7. Failure to pay a civil penalty by any person licensed under this chapter shall be grounds for denying, disciplining or refusing to renew or reinstate a license or certificate of authority.

8. Penalties collected under this section shall be handled in accordance with section 7 of article IX of the Missouri Constitution. Such penalties shall not be considered a charitable contribution for tax purposes.

21. Therefore, cause exists to discipline Buescher and IRE's licenses under § 339.100, RSMo Cum. Supp. 2009, which states in 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:

(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;

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 who is not registered and currently eligible to practice under sections 339.010 to 339.180 [.]

II. JOINT ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order subject to the following terms and conditions. This order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party.

22. The parties request that the Administrative Hearing Commission issue a Consent Order finding that grounds exist under § 339.100.2(15), (16), and (23), RSMo, for the MREC to take disciplinary action against Buescher's license as a real estate broker and IRE's license as a real estate corporation.

23. This Joint Stipulation does not bind the MREAC or restrict the remedies available to it concerning the discipline that may be imposed after hearing pursuant to § 621.110, RSMo

24. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Buescher or IRE 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 Joint Stipulation.

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

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

27. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated,

except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

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

29. Buescher and IRE, together with their heirs, assigns, agents, partners, shareholders, officers, directors, 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 Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

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

RESPONDENTS

Daniel J. Buescher
Daniel J. Buescher Date

PETITIONER
MISSOURI REAL ESTATE
COMMISSION

By: Janet Carder 11/22/10
Janet Carder Date
Executive Director

INVESTMENT REAL ESTATE, INC.

Daniel J. Buescher
By: Daniel J. Buescher, President Date

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Attorney General

Craig H. Jacobs
Craig H. Jacobs
Assistant Attorney General
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