

**SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND INVESTMENT PROPERTY HEADQUARTERS LLC**

Come now Investment Property Headquarters LLC, d/b/a IPHQ, ("Licensee") and the Missouri Real Estate Commission ("Commission") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a real estate association will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Commission that Licensee's license, numbered 2014015364 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

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

Joint Stipulation 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, 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.

2. Licensee, IPHQ, held an active real estate association license from the Commission, license number 2014015364. The Commission issued Licensee's license on May 16, 2014. Licensee's license expires June 30, 2020. Licensee's license was current and active at all times relevant herein but is now closed/out of business.

3. On or about January 23-25 and February 23, 2017, the Commission conducted an audit of Licensee. The Commission's audit revealed the following violations:

- a. In violation of sections 339.100.2(1) and 339.105.1, RSMo, and regulations 20 CSR 2250-8.120(4) and 2250-8.120(3), on numerous instances, Licensee's designated broker, Freddy Dwayne Spencer, did not deposit and maintain rent in an escrow account.
- b. In violation of section 339.100.2(3), Licensee's designated broker, Freddy Dwayne Spencer, failed to timely account for money that belonged to others.
- c. In violation of section 339.105.1, RSMo, on numerous instances, Licensee's designated broker, Freddy Dwayne Spencer, commingled funds.
- d. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker, Freddy Dwayne Spencer's errors, there was a net overage of \$12,140.00 in the property management escrow account, account ending in 3287 (Account 3287) which could only be partially identified:
 - i. There were identified overages totaling \$12,250.00 for managing four different properties without an agreement.
 - ii. There was no identified shortage.
 - iii. There was a net unidentified shortage of \$110.00.
- e. In violation of section 339.760.1, RSMo, Licensee's designated broker, Freddy Dwayne Spencer, failed to adopt a single written policy that identifies and describes the relationships in

which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant.

- f. In violation of section 339.780.1, RSMo, and regulation 20 CSR 2250-8.090(9)(L), on six instances, a licensee affiliated with the Licensee entered into a property management agreement on behalf of the brokerage without written authorization from the designated broker.
- g. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-200(1), on four instances, Licensee's designated broker, Freddy Dwayne Spencer, managed property without a current written management agreement.
- h. In violation of regulation 20 CSR 2250-4.030(1), Licensee's designated broker, Freddy Dwayne Spencer, did not register Licensee's fictitious name, IPHQ, with the Secretary of State.
- i. In violation of regulations 20 CSR 2250-4.030(1) and 2250-8.010(2), Licensee's designated broker, Freddy Dwayne Spencer, did not ensure that Licensee's business sign bore the name, Investment Property Headquarters under which the brokerage was licensed and the fictitious name was not registered with the Secretary of State.
- j. In violation of regulation 20 CSR 2250-8.090(9)(A) on five instances, property management agreements of Licensee's affiliated licensees did not properly identify the property in that there was no property address on two occasions and no city on three occasions.
- k. In violation of regulation 20 CSR 2250-8.096(1), on eight instances, a licensed affiliate of Licensee's brokerage relationship was not disclosed in writing.
- l. In violation of regulation 20 CSR 2250-8.160(2), on four instances, Licensee's designated broker, Freddy Dwayne Spencer, failed to retain records (cash receipts).
- m. In violation of regulation 20 CSR 2250-8.220(1), on five occasions, Licensee's designated broker, Freddy Dwayne Spencer, disbursed funds from the account when the owner's account balance was not sufficient to cover the disbursement.
- n. In violation of regulation 20 CSR 2250-8.220(1), on numerous instances, Licensee's designated broker, Freddy Dwayne Spencer, failed to maintain a separate account for the deposit of current rents and owner funds.

- o. In violation of regulation 20 CSR 2250-8.220(3), Licensee's designated broker, Freddy Dwayne Spencer, failed to deposit rent within ten banking days.
- p. In violation of regulation 20 CSR 2250-8.220(8), on two instances, Licensee's designated broker, Freddy Dwayne Spencer, failed to indicate the related transaction on each deposit ticket for the security deposit escrow account.

4. On or about August 27-29 and September 6, 12-13, 17, and 24, 2018, the Commission conducted a re-audit of Licensee. The Commission's re-audit revealed the following violations:

- a. In violation of section 339.100.2(3), RSMo, on numerous occasions, Licensee's designated brokers, Freddy Dwayne Spencer and Glenda Hardin, failed to account for funds of others.
- b. In violation of section 339.100.2(3), RSMo, on numerous occasions, Licensee's designated brokers, Freddy Dwayne Spencer and Glenda Hardin, failed to timely account for funds of others in that 1) a check cleared the account on February 15, 2018 but was not booked until March 7, 2018; 2) a deposit of \$16,852.50 was made on January 11, 2018 but \$14,618.89 of the deposit was not booked until May 8, 2018 and the examiner was unable to determine that the remainder of the deposit was booked; and 3) numerous deposits and transfers were made and not booked.
- c. In violation of section 339.100.2(3), RSMo, on numerous occasions, Licensee's designated broker, Glenda Hardin, failed to timely remit funds that belonged to others in that she failed to timely return security deposits.
- d. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker Glenda Hardin's errors, there was a net overage of \$8,430.83 in the security deposit escrow account, account ending in 3287 (Account 3287) which could only be partially identified:
 - i. There were identified overages totaling \$26,250.44 as a result of 11 overages for, including, but not limited to, failure to account for the funds of others;
 - ii. There were identified shortages totaling \$23,233.00 as a result of 11 shortages for, including but not limited to, failure to account for the funds of others;
 - iii. There was a net unidentified overage of \$5,413.39.

- e. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker Glenda Hardin's errors, there was an identified shortage of \$233.18 in the property management escrow account, account ending in 1415 (Account 1415), due to a negative owner balance.
- f. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker Freddy Dwayne Spencer's errors, there was an identified overage in Account 1415 in the amount of \$600.00 as a result of Spencer's failure to account for the funds of others.
- g. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker Freddy Dwayne Spencer's errors, there was a temporary shortage of \$191.63 in Account 1415 between February 15, 2018 and March 7, 2018 due to Spencer's failure to timely account for funds of others.
- h. In violation of section 339.105.1, RSMo, as a result of Licensee's designated broker Freddy Dwayne Spencer's errors, there was a temporary overage of \$14,618.89 in Account 3287 due to Spencer's failure to timely account for funds of others in that Spencer made the deposit January 11, 2018 but did not book it until May 8, 2018.
- i. In violation of section 339.105.3, RSMo, Licensee's designated broker, Glenda Hardin, did not maintain records necessary to determine the adequacy of the property management escrow, Account 1415 in that:
 - i. On numerous instances, checks cleared the bank but were not booked on Licensee's register;
 - ii. On numerous instances, Hardin booked payments on the register but the checks did not clear and the Commission's examiner was unable to determine if the transaction cleared or was outstanding because of other items clearing the bank that were not tied to a transaction on the register;
 - iii. On numerous instances, Hardin made transfers in and out of the rental account but did not book them on the register;
 - iv. On numerous instances, Hardin made deposits into the rental account but did not timely book them or book them at all in the register;

- v. Hardin failed to complete reconciliations to the bank or liabilities for the entire audit period; and
 - vi. Hardin failed to book the transfers to and from the security deposit account.
 - j. In violation of section 339.730.1(1), on multiple instances, Licensee's designated broker, Glenda Hardin, failed to follow the terms of the written agreement with the landlord in that she assessed the incorrect management fees and held security deposits when the management agreement stated that the owner would hold them.
 - k. In violation of regulation 20 CSR 2250-8.096(1), on six instances, licensed employees affiliated with Licensee failed to disclose the brokerage relationship in writing.
 - l. In violation of regulation 20 CSR 2250-8.160(2), on three instances, Licensee's designated broker, Glenda Hardin, failed to retain records, three voided checks, related to property management.
 - m. In violation of regulation 20 CSR 2250-8.220(1), on 49 instances, Licensee's designated brokers, Freddy Dwayne Spencer (40 instances) and Glenda Hardin (9 instances), disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
5. Section 339.040.1, RSMo, states, in relevant part:
- 1. Licenses shall be granted only to persons who present, and corporations, associations, 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 broker salesperson in such a manner as to safeguard the interest of the public.
6. Section 339.105, RSMo, 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. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

...

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.

7. Section 339.730.1(1), RSMo, states, in relevant part:

A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client[.]

8. Section 339.760, RSMo, states, in relevant part:

Every designated broker who has affiliated licensees shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

9. Section 339.780.1, RSMo, states, in relevant part:

All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

10. Regulation 20 CSR 2250-4.030(1) states:

Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of section 417.200-417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

11. Regulation 20 CSR 2250-8.010(2) states:

A broker's business sign of a sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the

regular business name, shall be displayed outside of the broker's regular place of business.

12. Regulation 20 CSR 2250-8.090(9) states, in relevant part:

Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

(A) Identify the property to be managed;

(L) Contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker[.]

13. Regulation 20 CSR 2250-8.096(1) states, in relevant part:

Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

1. Identify the licensee's brokerage relationship[.]

14. Regulation 20 CSR 2250-8.120 states, in relevant part:

(3) The escrow or trust account maintained by a broker, as required by the license law, shall be a checking account in a bank, savings and loan or credit union. If the escrow or trust account maintained by the broker is an interest-bearing account, the broker shall disclose in writing to all parties to the transaction that the account is interest-bearing and the disclosure shall indicate who is to receive the interest.

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo.

Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt

of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

15. Regulation 20 CSR 2250-8.160(2) states:

Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

16. Regulation 20 CSR 2250-8.200(1) states:

When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

17. Regulation 20 CSR 2250-8.220 states, in relevant part:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

...

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

...

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

18. Licensee's conduct, as described in paragraphs 3 and 4 above, constitutes cause to discipline Licensee's license pursuant to § 339.100.2(1), (3), (15), (16) and (19), RSMo.

19. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(1), (3), (15), (16) and (19), RSMo, which 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:

(1) Failure to maintain and deposit into a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

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

...

(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 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[.]

Joint Agreed Disciplinary Order

20. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

21. The terms of discipline shall include that **Licensee's license shall be SURRENDERED IN LIEU OF DISCIPLINE.** Licensee shall immediately return all indicia of licensure to the Commission.

22. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

23. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

24. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

25. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

26. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided 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.

27. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof to be void or unenforceable.

28. If no contested case has been filed against Licensee, Licensee has the right, either at the time the Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Settlement Agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**

29. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the Agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If the Licensee does not submit the Agreement to the Administrative Hearing Commission for determination, the Agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEE


Investment Property Headquarters LLC
Glenda J. Hardin, Designated Broker

Date 7-26-19

COMMISSION


Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date AUGUST 16, 2019