

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
JEFFREY A. KLINE

Jeffrey A. Kline (Kline) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Kline's license as a professional corporation broker salesperson, no. 2003030763, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2013. The MREC and Kline jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Kline 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

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

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 Kline may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Kline 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 him.

Kline acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Kline stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Kline's license as a professional corporation broker salesperson, license no. 2003030763, is subject to disciplinary action by the MREC in accordance with

the relevant provisions of Chapter 621, RSMo, and 621, RSMo, and §§ 339.010 through 339.205 and 339.710 through 339.855 , RSMo, as amended.

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

I.
Joint Stipulation of Facts and Conclusions of Law

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

1. Kline is licensed by the MREC as a professional corporation broker salesperson, license.no. 2003030763. Kline's license was current and active at all time relevant herein.
2. During the events at issue, Kline belonged to a brokerage named Savannah LLC, a.k.a. Prudential Select Properties ("Prudential"), located in St. Louis, Missouri.
3. Kline currently belongs to a brokerage named Camden Properties, LLC, located in St. Charles, Missouri.

4. From approximately 2006 until January 2011, Kline acted as a sellers agent and listing agent for Steven Drago ("Drago"). Kline listed Drago's property located at 467 Highway A, Hawk Point, Missouri, 63349 ("the Hawk Point property").

5. On or about September 16, 2010, Troy and Judith Brittain ("the Brittains") and Drago entered into a real estate contract whereby the Brittians would purchase the Hawk Point property from Drago for \$550,000.00

6. The Brittains were unable to obtain financing. During this process, the closing date was extended on October 11, 2010 and again on November 30, 2010, in order to allow Drago time to clear title on the Hawk Point property. The sales contract between the Brittains and Drago eventually expired on December 15, 2010.

7. Kline was approached by a second buyer for the Hawk Point property by Elmer Turner ("Turner") while the Hawk Point property was under contract with the Brittains. Kline acted as a dual agent between Drago and Turner. On or about December 6, 2010, Drago accepted a backup offer from Turner on the Hawk Point property. After the Brittain contract expired, the Turner contract became the primary contract. Under the Turner contract, the sales price for the Hawk Point property was \$550,000.00.

8. Kline presented Turner with a Seller's Disclosure Statement, which was signed by Turner on or about December 6, 2010. The Seller's Disclosure Statement did not disclose a lien on the Hawk Point property's title.

9. According to Prudential's policy, Kline would receive 70% of the commission while Kline was employed by Prudential. However, if Kline were to leave Prudential before payment of the commission, he would receive a reduced portion of 53% of the commission.

10. Under the Turner contract, Turner was to pay a down payment of \$130,000.00, followed by payments ranging from \$12,000.00 to \$15,000.00 each month until closing scheduled on August 25, 2011.

11. Kline and Prudential's commission was \$27,500.00, or 5%. Pursuant to an amendment to the Turner contract, made on or about December 20, 2010, and to the Commission Agreement, signed on or about December 20, 2010, the Commission was paid out of the original \$130,000.00 deposit and was non-refundable.

12. Turner insisted on a prepaid, non-refundable, sales commission to be paid before the property closed, to be paid from Turner's first down payment.

13. On or about January 6, 2011, Turner wrote a check in the amount of \$27,500.00 to Prudential. On or about January 17, 2011, Prudential paid Kline \$19,087.50, or 70%, of the \$27,500.00 commission.

14. On or about January 12, 2011, Kline left Prudential in order to work for Camden Properties, LLC.

15. By June 2011, Turner had paid approximately \$180,000.00 toward the Hawk Point property. Because of problems with closing, he became frustrated and requested that the sales contract be terminated. The contract was terminated and Drago returned the \$180,000.00 to Turner.

16. To date, Kline has not returned his commission to Drago or Drago's estate.

17. Section 339.100.2, RSMo Supp. 2013, authorizes the MREC to file a complaint with the Administrative Hearing Commission and states, in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(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;

...

(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*;

...

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

18. Kline violated § 339.100.2(19) when he arranged for the Turner contract's commission to be paid up front and non-refundable, knowing of the difficulties that the cloud on the title represented and knowing that he would soon leave Prudential, demonstrating fraudulent or improper business dealings, bad faith, misconduct or gross negligence.

19. Section 339.730.1(3)(C), RSMo, states that:

1. 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:

...

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

...

(c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee[.]

20. Kline violated § 339.730.1(3), RSMo, when he made his commission non-refundable, in that he demonstrated that he did not have the interests of Drago in mind because he knew that the cloud on the Hawk Point property may prevent closing and, therefore, Drago would forfeit the commission paid to Kline. This violation of Section 339.730.1(3) also represents a violation of Section 339.100.2(15), RSMo Supp. 2013.

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2013.

25. Kline's license is on probation for three years. Kline's real estate salesperson license is hereby placed on PROBATION for a period of three (3) years. During the period of probation on his real estate salesperson license, Kline shall be entitled to practice as a real estate salesperson provided he

adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

(A) Kline shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of residence and business. Kline shall notify the MREC in writing within ten (10) days of any change in this information.

(B) Kline shall timely renew his real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Kline shall not place his real estate license on inactive status as would otherwise be allowed under or 20 CSR 2250-4.050. . Alternatively, without violating the terms and conditions of this Settlement Agreement, Kline may surrender his real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Kline applies for a real estate license after surrender, Kline shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the

findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

(C) Kline shall meet in person with the MREC or its representative on any business day, during business hours, and either at Kline's place of business or at MREC's place of business as required by the MREC or its designee upon notification from the MREC or its designee. Any exceptions would be made by mutual agreement of the parties. Said meetings will otherwise be at the MREC's discretion and may occur periodically during the probation period.

(D) Kline shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

(E) During the probationary period, Kline shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

(F) Kline shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws.: "State" as used herein refers to the

State of Missouri and all other states and territories of the United States. Any cause to discipline Kline's license as a real estate salesperson under Section 229.100.2, RSMo, that occurs during the disciplinary period shall also constitute a violation of this Settlement Agreement.

(G) Broker Acknowledgement. If at any time during the disciplinary period Kline wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Kline must obtain the Broker Acknowledgement form from the MREC.

27. Upon the expiration and successful completion of the disciplinary period, Kline's real estate salesperson license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Kline has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Kline's real estate salesperson license.

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

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

30. If any alleged violation of this Order occurs during the disciplinary period, the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

31. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Kline of 621, RSMo, and §§ 339.010 through 339.205 and 339.710 through 339.855 , RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

32. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement unrelated to this Hawk Point transaction that are either now known to the MREC or may be discovered.

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

34. 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.

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

36. Kline, 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 may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

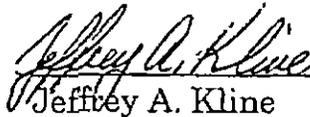
37. Kline understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Kline's license. If Kline desires the Administrative Hearing Commission to review this Settlement Agreement, Kline 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 65102.

38. If Kline 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 Kline's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Kline as allowed by law. If Kline does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

Missouri Real Estate Commission


Jeffrey A. Kline

5/20/14
Date


Janet Carder, Executive Director
Date: June 9, 2014

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