

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 16-3438 RE
)	
MICHAEL J. POOL)	
)	
Respondent.)	

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

On or about April 4, 2017, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. Michael J. Pool*, No. 16-3438 RE. In that Default Decision, the Administrative Hearing Commission found that Respondent Michael J. Pool’s real estate salesperson license (license no. 2000164535) is subject to disciplinary action by the Missouri Real Estate Commission (“Commission”) pursuant to § 339.100.2, (1), (3), (12), (15), (16), and (19) RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the properly pled complaint and the Default Decision of 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, the Commission held a hearing on August 9, 2017, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent’s license. All of the members of the Commission were present throughout

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

the meeting, except Sharon Keating and Rosemary Vitale. Further, each member of this Commission has read the Default Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Craig Jacobs. Respondent having received proper notice and opportunity to appear did not appear in person or through legal 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.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

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 §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the properly pled Complaint and the Default Decision of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Michael J. Pool*, Case No. 16-3438 RE, issued April 4, 2017, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent failed to appear in person or through legal counsel at the hearing before the Commission

4. This Commission licensed Respondent Michael J. Pool as a real estate salesperson, license number 2000164535. Respondent's salesperson license was not current at

all times relevant to this proceeding. On April 15, 2015 Respondent's license was suspended due to HB600 and on September 30, 2016, Respondent's salesperson license expired.

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 properly pled complaint and Default Decision issued by the Administrative Hearing Commission dated January 18, 2017, in *Missouri Real Estate Commission v. Michael J. Pool*, Case No. 16-3438 RE, takes official notice thereof, 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 Default Decision dated April 4, 2017, 2017, Respondent's real estate salesperson license, number 2000164535, is subject to disciplinary action by the Commission pursuant to § 339.100.2(1), (3), (12), (15), (16), and (19) RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

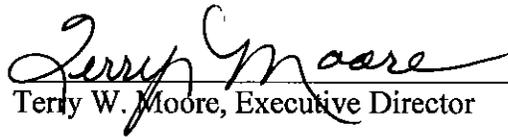
ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate salesperson license of Michael J. Pool (license no. 2000164535) is hereby **REVOKED**. All evidence of Respondent's licensure shall be immediately returned to the Commission within 30 days of this Order.

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

SO ORDERED, EFFECTIVE THIS 14TH DAY OF AUGUST, 2017.

MISSOURI REAL ESTATE COMMISSION


Terry W. Moore, Executive Director

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

**MISSOURI REAL ESTATE
COMMISSION
3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102**

Petitioner,

v.

**MICHAEL J. POOL
2904 SW 12th Terr.
Lees Summit, MO 64081
(816) 694-6788**

Respondent.

FILED

AUG 29 2016

ADMINISTRATIVE HEARING
COMMISSION

Case #: _____

COMPLAINT

Petitioner, the Missouri Real Estate Commission (“MREC”), by and through the Attorney General of the State of Missouri, and for its cause of action against Respondent, Michael J. Pool (“Pool”), states the following:

ALLEGATIONS COMMON TO ALL COUNTS:

1. The MREC is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 339, RSMo; relating to real estate salespersons and brokers.

¹ All Missouri statutory references are to RSMo 2000 as supplemented unless otherwise noted.

2. Pool was formerly licensed by the MREC as a real estate salesperson, holding license no. 2000164535. His license was suspended on April 4, 2015, and remains suspended.

3. Mr. Pool's license was active from November 8, 2011, to September 30, 2012; from October 9, 2013, to October 31, 2013; from February 21, 2014, through September 30, 2014; and from October 3, 2014, to March 13, 2015.

4. Jurisdiction and venue are proper before the Administrative Hearing Commission under Sections 621.045 and 339.100.2.

5. Section 339.100.2 states in relevant 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:

(1) Failure to maintain and deposit in 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, coming into his or her possession, which belongs to others;

....

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

....

(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[.]

6. On October 12, 2012, the MREC conducted an audit ("the Audit") of Pool's real estate business practices as an individual salesperson.

COUNT I: UNLICENSED ACTIVITY

7. The MREC realleges and incorporates paragraphs 1 through 6 of this Complaint as if fully set forth herein.

8. On or about February 24, 2012, Pool formed Lionshead Management Services, LLC ("Lionshead") with the State of Missouri.
9. Lionshead did not maintain a broker's license with the MREC at any time.
10. Pool did not maintain a broker's license with the MREC at any time.
11. Through Lionshead, Pool held himself out as a property manager and did conduct, or agreed to conduct, property management services for homeowners for their properties in Missouri from approximately February 2012 through November 2013.
12. Pool's property management activities included handling maintenance and repair issues, responding to homeowner and tenant complaints, arranging for or performing renovation work to properties, showing and leasing properties to tenants, evicting tenants, inspecting the properties, provide regular status reports to property owners, and collecting security deposits and rent payments.
13. In or about October 2012, Pool, by and through Lionshead, agreed to perform property management activities for the owner, M.N., of the properties located at 5128-5130 Paseo Blvd., Kansas City, MO 64108 (the "Paseo Blvd. Property"). Pool did in fact agree to perform, and/or did perform, the property management activities as alleged in Paragraph 12 above.

14. In or about October 2012, Pool, by and through Lionshead, agreed to perform property management activities for the owner of the property, R.S., located at 5735 Forest Ave., Kansas City, MO 64110 (the "Forest Ave. Property"). Pool did in fact agree to perform, and/or did perform, the property management activities as alleged in Paragraph 12 above.

15. In or about October 2012, Pool, by and through Lionshead, agreed to perform property management activities for the owner of the property, R.S., located at 7921 Ditzler Ave., Raytown, MO 64138 (the "Ditzler Ave Property"). Pool did in fact agree to perform, and/or did perform, the property management activities as alleged in Paragraph 12 above.

16. In or about March 2013, Pool agreed to perform property management activities for the owner of the property, A.N., located at 4423 Flora Ave., Kansas City, MO 64130 (the "Flora Ave. Property"). Pool did in fact agree to perform, and/or did perform, the property management activities as alleged in Paragraph 12 above.

17. Missouri law requires that an individual who performs property management work of the kind that Pool conducted maintain a broker's license with the MREC and/or work under the supervision of a broker licensed with the MREC.

18. The use of an unlicensed entity while conducting business and the performance of the activities of property manager without a broker's

license is a violation of Sections 339.020, 339.180.1, and 339.010.9(5), as well as 20 CSR 2250-4.070.

19. Section 339.010.1 states:

A **“real estate broker”** is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

- (1) Sells, exchanges, purchases, rents, or leases real estate;
- (2) Offers to sell, exchange, purchase, rent or lease real estate;
- (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;
- (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;
- (6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- (7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

- (8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
- (9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public;
- (10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

20. Section 339.020 states in part:

It shall be unlawful for any person, partnership, limited liability partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

21. Section 339.180.1 states in part:

It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required . . . [.]

22. Section 339.010.9(5) states:

Any person employed or retained to manage real property by, for, or on behalf of the agent or the owner of any real estate shall be exempt from holding a license, if the person is limited to one or more of the

following activities:

- (a) Delivery of a lease application, a lease, or any amendment thereof, to any person;
- (b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment, for delivery to, and made payable to, a broker or owner;
- (c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker or owner, including the execution of leases or rental agreements;
- (d) Conveying information prepared by a broker or owner about a rental unit, a lease, an application for lease, or the status of a security deposit, or the payment of rent, by any person;
- (e) Assisting in the performance of brokers' or owners' functions, administrative, clerical or maintenance tasks;
- (f) If the person described in this section is employed or retained by, for, or on behalf of a real estate broker, the real estate broker shall be subject to discipline under this chapter for any conduct of the person that violates this chapter or the regulations promulgated thereunder[.]

23. Rule 20 CSR 2250-4.070(1) states in part:

(1) Every partnership, association, or corporation must obtain a separate and distinct real estate broker license before transacting business as a broker pursuant to Chapter 339, RSMo. If the partnership,

association, or corporation wishes to do business under an assumed or fictitious name, it shall first comply with 20 CSR 2250-4.030 regarding registration of the name.

24. Through his conduct as alleged in this Count, Pool engaged in the activities of a broker under Section 339.010.1. Pool was required to obtain a broker's license from the MREC to engage in those activities. Pool did not obtain a broker's license.

25. Pool's activities went beyond the limited activities enumerated in Section 339.010.9(5), and therefore he engaged in unlicensed activity.

26. Pool's unlicensed activities amounts to a lack of good moral character and a lack of honesty, integrity, and fair dealing.

27. Based on Pool's conduct as alleged in this Count, cause exists to discipline Pool's real estate salesperson license under Sections 339.100.2(12), (15), (16), and/or (19).

COUNT II: BROKER DISCLOSURE

28. The MREC realleges and incorporates by reference paragraphs 1 through 27 as though fully set forth herein.

29. Between approximately October 8, 2013 and October 28, 2013, Pool was affiliated as a salesperson with Chartwell Realty, LLC ("Chartwell"), an entity possessing a broker's license with the MREC.

30. Pool did not inform Chartwell that he was performing property

management activities outside of his duties as a salesperson affiliated with Chartwell.

31. On or about October 28, 2013, Chartwell cancelled its affiliation with Pool upon learning that Pool had been conducting property management activities.

32. As part of his agreement to perform property management activities as alleged above, Pool accepted valuable consideration in the form of a monthly management fee from the property owners.

33. Pool's failure to disclose his property management activities to Chartwell amounts to a lack of good moral character and a lack of honesty, integrity, and fair dealing.

34. By his conduct as alleged in this Count, Pool violated Section 339.100.2(12), (16), and/or (19) and therefore cause exists to discipline his real estate salesperson license.

COUNT III: COMINGLING OF FUNDS

35. The MREC realleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. Lionshead maintained a bank account at Bank Midwest, account number ending in 0098 ("Bank Midwest Account").

37. Pool collected rent payments and security deposits from property owners with whom he had a property management agreement, and deposited

those funds into the Bank Midwest Account.

38. Through the Bank Midwest Account, Pool also conducted business unrelated to his property management work.

39. Pool failed to deposit rent payments he collected from tenants at the Paseo Ave. Property, Ditzler Ave. Property, Forest Ave. Property, and/or Flora Ave. Property, into a separate property management escrow account.

40. At all relevant times, Pool failed to establish and maintain a separate escrow account for his property management activities.

41. Pool failed to deposit security deposits he collected from tenants at the Paseo Ave. Property, Ditzler Ave. Property, Forest Ave. Property, and/or Flora Ave. Property, into a separate property management escrow account.

42. At all relevant times, Pool failed to establish and maintain a separate security deposit escrow account for the security deposits he collected from tenants on behalf of property owners with which he had a property management agreement.

43. A licensee's failure to establish and maintain separate accounts for property management activities and the collection of rent and security deposits is a violation of Section 339.105 and 20 CSR 2250-8.220.

44. Section 339.105 states in 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.

45. Rule 20 CSR 2250-8.220 states in 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.

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management account(s), pursuant to section 339.105, RSMo, unless the owner(s) have agreed otherwise in writing.

46. By his conduct as alleged in this Count, Pool improperly comingled funds, in violation of Section 339.105 and 20 CSR 2250-8.220.

47. Pool's comingling of funds amounts to a lack of good moral character and a lack of honesty, integrity, and fair dealing.

48. Based on Pool's conduct as alleged in this Count and the violation

of the aforementioned statutes and regulation, cause exists to discipline his real estate salesperson license under Section 339.100.2(1), (15), (16), and/or (19).

**COUNT IV: FAILURE TO REMIT RENT PAYMENTS
AND SECURITY DEPOSITS**

49. The MREC realleges and incorporates by reference paragraphs 1 through 48 as though fully set forth herein.

50. In connection with his agreements to perform property management activities for the Ditzler Ave. Property, Forest Ave. Property, Flora Ave. Property, and Paseo Blvd. Property, Pool agreed to remit all rent payments he collected to the properties' owners.

51. In February 2013, Pool, by and through Lionshead, collected a \$750.00 security deposit from a tenant at the Forest Ave. Property.

52. Pool has failed to remit this security deposit to the owner of the Forest Ave. Property after the tenant moved out.

53. In July 2013, Pool, by and through Lionshead, collected an \$800.00 security deposit from a tenant at the Forest Ave. Property.

54. Pool has failed to remit this security deposit to the owner of the Forest Ave. Property after the tenant moved out.

55. In February 2013, Pool, by and through Lionshead, collected a \$700.00 security deposit from the tenant at the Ditzler Ave. Property.

56. Pool has failed to remit this security deposit to the owner of the Ditzler Ave. Property after the tenant moved out.

57. Between approximately March 2013 through October 2013, Pool, by and through Lionshead, collected rent payments from tenants leasing the Flora Ave. Property. The property was leased at \$782.00 per month.

58. Pool has failed to remit approximately \$2,654.14 to the owner of the Flora Ave. Property.

59. 20 CSR 2250-8.230 states:

(1) The return of security deposits to lessees and disputes with lessees are governed by section 535.300, RSMo and any other applicable law.

60. Section 535.300.2 states:

2. Within thirty days after the date of termination of the tenancy, the landlord shall:

(1) Return the full amount of the security deposit; or

(2) Furnish to the tenant a written itemized list of the damages for which the security deposit or any portion thereof is withheld, along with the balance of the security deposit. The landlord shall have complied with this subsection by mailing such statement and any payment to the last known address of the tenant.

61. Through his conduct as alleged in this Count, Pool failed within a reasonable time to remit funds in his possession belonging to R.S., the owner of the Ditzler Ave. Property and Forest Ave. Property, and A.N., the owner of

the Flora Ave. Property.

62. Through his conduct as alleged in this Count, Pool violated 20 CSR 2250-8.230 and Section 535.300.2.

63. Pool's failure to remit rent payments and security deposits amounts to a lack of good moral character and a lack of honesty, integrity, and fair dealing.

64. Through his conduct as alleged in this Count, Pool violated Section 339.100.2(3), (16), and/or (19) and therefore cause exists to discipline his real estate salesperson license.

COUNT V: SECTION 339.100.2(19)

65. The MREC realleges and incorporates by reference paragraphs 1 through 64 as though fully set forth herein.

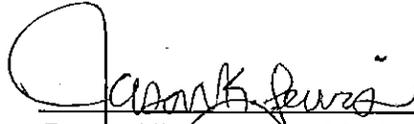
66. The MREC may file a complaint for any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence. See § 339.100.2(19).

67. Pool's conduct as alleged in each count of this Complaint constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, providing cause to discipline his license pursuant to Section 339.100.2(19).

WHEREFORE, Petitioner prays this Administrative Hearing Commission conduct a hearing pursuant to Chapter 621, RSMo, and thereafter issue its findings of fact and conclusions of law that the Petitioner may discipline Michael J. Pool's real estate salesperson license under Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

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