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**SETTLEMENT AGREEMENT BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION AND STEVEN L. SMITH**

Come now Steven L. Smith ("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 broker will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("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 her 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 was 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 2000161533 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.

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<sup>1</sup> 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, Steven L. Smith, holds an inactive broker license from the Commission, license number 2000161533. The Commission issued Licensee's license on June 26, 2000. Licensee's license expires June 30, 2016. Licensee's license was current and active at all times relevant herein.

3. On December 11, 2013 and December 13, 2013, the Commission conducted a random audit of Licensee's broker license. The audit revealed numerous violations of Chapter 339, RSMo:

- a. Licensee committed numerous instances of comingling in the property management escrow account, account number ending in 4438, ("4438 account") in violation of section 339.105.1, RSMo. Bank statements for Guaranty Bank dated March 3, 2013, April 9, 2013, August 11, 2013, September 9, 2013 and November 11, 2013 all show that Licensee deposited his payroll check into the 4438 account. Additionally, 4438 account bank statements dated August 11, 2013, September 9, 2013 and October 9, 2013 show that Licensee wrote checks from the account for Licensee's own personal expenses.
- b. Licensee did not maintain records necessary to determine the adequacy of the 4438 account in violation of section 339.105.3, RSMo. The Commission's examiner was unable to reconcile the property management escrow account because of the inadequacy of Licensee's records as described below.
  - i. Licensee was unable to provide a record of liabilities for the 4438 account.
  - ii. Licensee did not provide a register, journal or any record of transactions for the 4438 account. The bank statements for the 4438 account reflect numerous transactions for the account that Licensee did not record.

- iii. Bank statements for Guaranty Bank dated March 3, 2013, April 9, 2013, August 11, 2013, September 9, 2013 and November 11, 2013 all show that Licensee deposited his payroll check into the 4438 account.
- iv. 4438 account bank statements dated August 11, 2013, September 9, 2013 and October 9, 2013 show that Licensee wrote checks from the account for Licensee's own personal expenses.
- v. 4438 account bank statements show imaged checks issued by Licensee but the statements do not show any checks issued to Licensee for management fees.
- vi. Due to Licensee's practice of paying personal expenses from the 4438 account in lieu of issuing a check for management fees, as evidenced by the 4438 account bank statements, the amount of broker funds in the account is undeterminable.
- vii. 4438 account bank statements dated March 10, 2013, July 9, 2013 and November 11, 2013 show transactions noted as POS debit, instances where Licensee used a debit card on the account. Because of Licensee's lack of any record related to transactions, the debits related to property management activity versus those related to personal expenses was also undeterminable.
- viii. 4438 account bank statements reflect numerous transactions not recorded by Licensee such that matching receipts to payments on the bank statement was impossible.
- ix. Licensee's documentation regarding the amount of management fees was insufficient to be able to determine the amount Licensee charged each owner. Licensee did not remove management fees because he was using the account for personal expenses. There was also no December 2012 statement for one owner, T.W., because he maintained his own record of income and expenses. Additionally, because of Licensee using the account for personal expenses in lieu of issuing a management fee check and the lack of documentation made it impossible to determine the fees charged to the owners.
- x. Licensee's personal transactions were logged in the cash receipt book that Licensee maintained.

- c. Licensee did not maintain records necessary to determine the adequacy of a second bank account at Guaranty Bank, account number ending in 4374 ("4374 account"), in violation of section 339.105.3, RSMo. A printout of the bank statement for the 4374 account identified a deposit on March 12, 2013 that Licensee stated was a deposit he made of broker funds to open the account. However, due to Licensee's lack of register or record of transactions, there was no way to know if Licensee removed the broker funds from the account. Licensee's work papers and records did not include any register, journal or any other record of deposits, withdrawals and transactions for the 4374 account.
- d. Licensee failed to retain records relating to property management including all leases and the bank statements for the 4374 account at Guaranty Bank in violation of regulation 20 CSR 2250-8.160(2). Licensee informed the Commission's examiner that he managed nine properties during the audit period. However, the information provided by Licensee includes only three leases. Moreover, Licensee failed to provide the monthly bank statements for the 4374 account.
- e. Licensee failed to record a related transaction of each check written on the 4438 account in that Licensee failed to indicate on each check written, the corresponding stub or record of disbursement, in violation of 20 CSR 2280-8.220(8). Imaged checks from the 4438 account did not note related transactions and Licensee failed to maintain a register, journal or other record of disbursements.

4. On or about June 18, 2014, the Commission sent Licensee a letter following its December 2013 audit. The letter stated that the Commission would allow Licensee thirty days to outline a corrective action plan to address the audit violations. The letter also informed Licensee he would be audited again within the next twelve months.

5. On July 7, 2014, the Commission received a letter from Licensee stating that he intended to place his broker license on inactive status. He also stated he contacted the people for whom he managed properties and informed them he intended to go on inactive status. He stated he returned all the money in escrow and would close the account. The letter contained no response to the Commission's request for a corrective action plan and no response to the audit violations.

6. On or about July 10, 2014, the Commission sent Licensee a letter in response to his July 2014 letter. The Commission informed Licensee that placing his license on inactive status did not relieve him of his obligations. The letter requested that within the next 30 days, Licensee provide a copy of the written notification he sent to his management clients terminating their agreement. The letter also requested documentation regarding the escrow funds including an accounting of how the funds were determined in reconciliations, bank statements or check registers. The letter also informed Licensee that as of the date of the letter, the Commission had not received a renewal for his license or a request to place it on inactive status.

7. The Commission received no response to its July 10, 2014 letter.

8. On October 8, 2014, the Commission sent Licensee a letter stating it had received no attempt at any corrective action regarding the audit. It reminded Licensee that placing his license on inactive status did not relieve him of his obligations and again requested that within the next 30 days, Licensee provide a copy of the written notification he sent to his management clients terminating their agreement. The letter also requested documentation regarding the escrow funds including an accounting of how the funds were determined in reconciliations, bank statements or check registers.

9. On or about November 19, 2014, the Commission received a letter from Licensee. In his letter, Licensee stated that "I know my record keeping is not very good[.]" He also stated that he was "not able to provide everything that [the Commission] is asking for, because, again, my record keeping was not very well." He stated that the only thing to resolve the issues would be "a notarized letter from each of the people whose property I managed, telling you that I owe them nothing." He also stated he would "gladly" give up his license to resolve the issues from the audit.

10. 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.

11. 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 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.

12. Regulation 20 CSR 2250-8.160(2) states, in relevant part:

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.

13. Regulation 20 CSR 2250-8.170(1) states:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

14. Regulation 20 CSR 2250-8.220(8) states, in relevant part:

Each check written on an escrow account, or each corresponding check stub, or other record of disbursement 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.

15. Licensee's conduct, as described in paragraphs 3 through 9 above, including audit violations and failure to respond or timely respond to the Commission's July 10, 2014 and October 8, 2014

correspondence, constitutes cause to discipline Licensee's license pursuant to § 339.100.2(1), (3), (15), (16) and 19), RSMo.

16. 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 chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

...

(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, 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;

...

(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

17. 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.

18. The terms of discipline shall include that **Licensee's license shall be REVOKED**. Licensee shall immediately return all indicia of license to the Commission.

19. 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.

20. 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.

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

22. 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.

23. 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.

24. 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.

25. 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, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

26. 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 act 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**

Steven L. Smith  
Steven L. Smith

Date 3/5/15

**COMMISSION**

Joseph Denkler  
Joseph Denkler  
Executive Director  
Missouri Real Estate Commission

Date 3/16/15