

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

SHERRY P. STARNES)	
)	
Petitioner,)	
)	
v.)	Case No. 11-0407 RE
)	
MISSOURI REAL ESTATE COMMISSION,)	
)	
Respondent.)	

DISMISSAL AND SETTLEMENT AGREEMENT

Petitioner, Sherry P. Starnes (“Starnes”) and Respondent, The Missouri Real Estate Commission (the “MREC”) hereby agree and request that the Administrative Hearing Commission to dismiss this matter pursuant to the settlement agreement hereby entered into. The parties enter into this agreement for the purpose of resolving the question of whether Starnes will be issued a real estate salesperson license. 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. The parties jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Starnes acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the

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

record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her 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 her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission.

Being aware of these rights provided to Starnes by law, Starnes 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 her.

Starnes stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that pursuant to Section 339.080.1, RSMo such allegations may constitute cause for the MREC to refuse to issue licensure to Starnes. Starnes further stipulates that pursuant to § 324.038, the MREC has authority, as an alternative to refusing to issue licensure, to issue Starnes a license subject to probation.

I.

Joint Stipulation of Facts and Conclusions of Law

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

1. Starnes plead guilty on April 22, 2009 to Driving While Intoxicated-Aggravated Offender and was sentenced on June 18, 2009 to seven (7) years Suspended Execution of Sentence (SES) and five (5) years supervised probation.

2. On May 19, 2003, Starnes was charged with Assault Second Degree-Operate Vehicle While Intoxicated Resulting in Injury, and on January 19, 2006, Starnes pled guilty and received a SES and three (3) years supervised probation.

3. Starnes failed to disclose on her application for licensure as a real estate salesperson that she was charged on September 30, 2005 with Driving While Intoxicated-Prior Offender, and on May 15, 2006, Starnes pled guilty and received a SES and two (2) years probation.

4. Starnes failed to disclose on her application for licensure that she had pled guilty on November 24, 2003 to the following charge: Drove in the Center Lane of a 3 Lane Roadway When View Obstructed or Not Clear of Traffic, Resulting in An Accident. Starnes received a SES and two (2) years supervised probation.

5. Section 339.040.1, RSMo, sets forth the requirements for a salesperson license, and states:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, 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 salesperson in such a manner as to safeguard the interest of the public.

6. MREC Rule 20 CSR 2250-3.010(1), pertaining to applications for licenses, states:

(1) Licenses shall be granted only to persons who present, and corporations, associations or partnerships whose officers, associates or partners present, satisfactory proof to the commission that they are persons of good moral character; bear a good reputation for honesty, integrity, and fair dealing; and are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

7. Section 339.080.1, RSMo. states:

The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100, or to any person previously licensed whose license has been revoked, or may refuse to issue a license to any association, partnership, corporation, professional corporation, limited partnership, or limited liability company of which such person is a manager, officer or general partner, or in which as a member, partner or associate* such person has or exercises a controlling interest either directly or indirectly, or to any corporation of which such person is an officer or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly.

8. Based on the facts set forth above, the MREC is authorized under § 339.080.1, RSMo Cum Supp. 2010 to refuse to issue a license to Starnes.

9. Pursuant to § 339.100.2(10), (16), (18) and (19), RSMo Cum. Supp.2010, the MREC may refuse to issue a license to Starnes for:

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(16) .Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

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

II.

Issuance of Probated Real Estate Salesperson License

10. Based on the foregoing, the parties mutually agree and stipulate as follows effective the date this agreement is executed:

- i. The MREC hereby withdraws its denial of Starnes's application for licensure as a real estate salesperson.

ii. The MREC hereby grants a **PROBATED** Real Estate Salesperson license to Sherry P. Starnes. Starnes's license as a real estate salesperson is hereby placed on PROBATION for a period of **FORTY-FOUR (44)** months. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Starnes shall be entitled to practice as a salesperson under chapter 339, RSMo, as amended, provided Starnes adheres to all the terms and conditions of this agreement.

Terms of Probation

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

B. Starnes shall timely renew her real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license(s) in a current and active status.

C. Starnes shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Starnes 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, Starnes shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. If at any time during the disciplinary period, Starnes changes her residence from the State of Missouri, ceases to be currently licensed in Missouri under Chapter 339, RSMo, as amended, fails to timely pay all fees required for license renewal, or fails to keep the MREC advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

G. Starnes shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

H. Starnes shall prepare and submit quarterly written reports to the MREC regarding compliance with the terms and conditions of this settlement agreement. Starnes is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Starnes shall submit the first such report so that the MREC receives it on or before **October 10, 2011**.

11. Upon the expiration of the disciplinary period, the license of Starnes shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Starnes has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion vacate this Settlement Agreement and impose such further discipline as the MREC shall deem appropriate.

12. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

13. The MREC agrees not to take any further disciplinary action against the real estate salesperson license issued to Starnes or against any other license issued by the MREC to Starnes as a result of the matters set out in Section I, Joint Stipulation of Facts and Conclusions of Law of this Settlement Agreement. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in Section I, Joint Stipulation of Facts and Conclusions of Law of this Settlement Agreement, (2) facts or conduct which are not now known to the MREC, and (3) facts or conduct which may be hereafter discovered by the MREC.

14. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that 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. Starnes agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

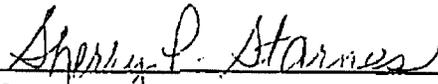
16. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

17. 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 339, 610, and 324, RSMo, as amended.

18. Starnes, together with her 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 now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this 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.

LICENSEE

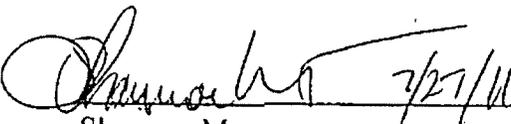

Sherry P. Starnes

Date 7-27-11

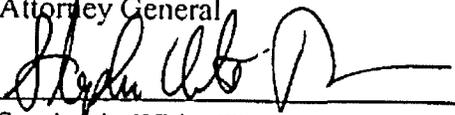
MISSOURI REAL ESTATE COMMISSION


Janet Carder, Executive Director

Date August 8, 2011


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