

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE	)	
COMMISSION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-2071 RE
	)	
VERONICA C. CHARLES,	)	
	)	
Respondent.	)	

**DECISION**

Veronica Charles' real estate salesperson license is subject to discipline because she engaged in misconduct by falsifying an acknowledgment document.

**Procedure**

On December 9, 2013, the Missouri Real Estate Commission (MREC) filed a complaint seeking to discipline Charles. We served our notice of complaint/notice of hearing on Charles by certified mail on December 9, 2013, and the signed return receipt was filed December 16, 2013. We issued a default decision on January 23, 2014 because no answer or other responsive pleading was filed by that date. On January 30, 2014, Charles filed a motion to set aside the default decision, and we granted the motion and reopened the case on January 31, 2014.

On August 8, 2014, the parties filed a waiver of hearing, stipulation of facts and request for briefing schedule. The original exhibit in the case was received on August 14, 2014. The case became ready for decision on October 24, 2014, the date the last written argument was filed.

## **Findings of Fact**

1. Charles holds a license as a real estate salesperson that was current and active at all relevant times.<sup>1</sup>
2. In November of 2011, Charles was associated with the Toni Tygart Real Estate Group, Inc., ReMax Elite, in Lee's Summit, Missouri. Her supervising broker was Toni Tygart.
3. Jodi Sharp, an escrow agent for Stewart Title, is a notary public who often notarized documents for the Toni Tygart Real Estate Group.
4. On or about November 22, 2011, Charles prepared a document in the form of an acknowledgement for a loan modification on behalf of Jerry A. Reifeiss, her son.
5. In order to create the appearance that Sharp had notarized the signature on the acknowledgment, Charles cut a notary seal from another document, fixed it to the acknowledgment, and photocopied the acknowledgment with the transferred notary seal.
6. Reifeiss authorized Charles to prepare a document bearing his signature.
7. Sharp did not know of or consent to Charles' conduct in affixing her signature and notary seal to a document Sharp had not seen.
8. After preparing the document, Charles tore the original in half and placed it in a locked box with documents to be shredded. She left the photocopied version on the copy machine.
9. Charles did not provide the acknowledgment to Mr. Reifeiss, the lender, or anyone else.
10. The acknowledgement was subsequently executed before a different notary public.
11. The document with the transferred notary seal was found on the copier by another member of Tygart's staff, who placed it in Sharp's mailbox.

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<sup>1</sup> According to the stipulated facts, the license was due for renewal on September 30, 2014.

12. Upon reviewing the document in her mailbox, Sharp realized she had not notarized it and informed Tygart of this fact.

13. At Tygart's direction, the locked shredding box was opened and the original documents discovered in the box.

14. Tygart recognized the name of Reifeiss as Charles' son, and confronted Charles about the matter.

15. Tygart met with Charles, who acknowledged that she had prepared the document, that it was a mistake, and that she had never done such a thing before.

16. On November 11, 2011, Tygart reported the matter and returned Charles' license to the MREC, which led to the instant proceeding.

### **Conclusions of Law**

We have jurisdiction to decide the MREC's complaint. Sections 339.100.2 and 621.045.<sup>2</sup> The MREC has the burden of proving, by a preponderance of the evidence, that Charles has committed an act for which the law allows discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989); *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Schumer v. Lee*, 404 S.W.3d 443, 448 (Mo. App., W.D. 2013).

In its complaint, the MREC alleges there is cause to discipline Charles under § 339.100.2, which states:

The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any person or entity licensed under this chapter . . . for any one or any combination of the following acts:

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<sup>2</sup> Statutory citations are to the RSMo Supp. 2013 unless otherwise indicated.

(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;

\* \* \*

(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;

\* \* \*

(26) Engaging in, committing, or assisting any person in engaging in or committing mortgage fraud, as defined in section 443.930[.]

Section 339.040, referred to in section 339.100.2(16), sets forth the requirements for licensure and states in part:

1. Licenses shall be granted only to persons who 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.

In its proposed findings of fact and conclusions of law, the MREC withdrew its allegation that Charles was subject to discipline under § 339.100.2(26), and we do not discuss whether her conduct was cause for discipline under that provision in this decision.

### Subdivision (2) – Substantial Misrepresentation

“Misrepresentation is generally defined as a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.” *Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n. 3 (Mo. App. W.D. 1997), quoted in *Kerwin*, 375 S.W.3d at 299. The MREC argues that by simply making the document in the manner described, Charles made a substantial misrepresentation in the conduct of her business. We agree that the document created by Charles was untrue and made with the intent to deceive. But based upon the stipulated facts, she did not create the document in the conduct of her business.

Charles modified the document in question for the benefit of her son, who was seeking a loan modification. The defining activities of a real estate broker or salesperson are found in § 339.010.1. They do not include assisting a person in obtaining a loan modification. Moreover, there is no evidence that Reifeiss was a client of Toni Tygart Real Estate Group, Inc., or that the loan he sought to modify was a mortgage loan or was related to a real estate transaction. Thus, we do not conclude that Charles created the document in the course of her business as a real estate salesperson. Consequently, we do not find that Charles’ conduct in making the false document amounted to a substantial misrepresentation or the making of any false promises or that she suppressed, concealed, or omitted material facts *in the conduct of her business*.

The intended misrepresentation was made in the context of a personal matter where a mother was trying to do a favor for her son. Section 339.100.2(2) exists for the protection of the public from MREC licensees who engage in willful misrepresentations and untrustworthy conduct in generating and handling the business of doing real estate transactions for compensation. *See* § 339.010.2 (a real estate sales person is one who performs any activities set forth in § 339.010.1 for compensation or valuable consideration). That is not what happened when Charles created the false acknowledgment for her son.

We find no cause for discipline under 339.100.2(2).

Subdivision (19) – Any Other Conduct

The MREC alleges that Charles is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986). Therefore, subdivision (19) refers to conduct different from that specified in the remaining subdivisions of the statute. We seldom find cause for discipline under this statute because the conduct at issue usually falls within the ambit of other subdivisions of § 339.100.2. That is not the case here. Therefore, we examine Charles’ conduct under the terms of § 339.100.2(19).

Because we have already determined that Charles did not create the false document in the course of her business as a real estate salesperson, we do not analyze whether her conduct constitutes an “untrustworthy, improper, or fraudulent” business dealing. We do, however, agree with the MREC that what Charles did was misconduct. Misconduct is the intentional commission of a wrongful act. *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001). Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

Charles argues that her creation of the false document was not misconduct because the document was never presented to or relied on by anyone, and she took steps to destroy the original documents from which she had created the fabricated document by placing the originals in a locked shredder box. She argues that she made a “hasty decision” to help her son get his

loan paperwork completed, but quickly retreated from her actions when she realized they would violate the law. These arguments are unconvincing. Charles' creation of a false document was, itself, an intentional and wrongful act. The fact that the document was discovered before she furnished it to anyone reveals nothing about subsequent state of mind; she could have simply not yet had the chance to furnish the document as she intended. Her placement of the originals in the locked shredder box more likely evidenced the desire to conceal her conduct rather than her decision not to carry through with the scheme.

In this case, we have no direct evidence of Charles' intent. The parties elected to submit stipulations rather than go to a hearing where Charles could have testified. We must, therefore, infer her intent from the surrounding circumstances. *Duncan*, 744 S.W.2d at 533.

When we consider those circumstances, we find it more likely than not that Charles created the false document with the intent to use it. Her conduct, therefore, meets the definition of misconduct – a wrongful act done with a wrongful intention.

We find cause for discipline of Charles' license under § 339.100.2(19).

Subdivision (16) – Commission of Acts Which are Grounds for Refusal to License

The MREC argues that Charles is subject to discipline under § 339.100.2(16) for committing acts that would otherwise be grounds for it to refuse her a license. The MREC argues that because of her creation of the document with the false seal, Charles cannot now demonstrate that she is of good moral character and has a reputation for honesty, integrity, and fair dealing.

Reputation means “the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character[,]” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986). It is the “consensus view of

many people[.]” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). The MREC presented no evidence as to Charles’ reputation.

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez*, 936 S.W.2d at 899 n.1. By creating a false document, Charles demonstrated a lack of honesty and respect for the law. But one such incident is insufficient as a basis for determining that a person lacks good moral character. The MREC made no argument regarding Charles’ competence, but we likewise do not find that a single incident is a sufficient basis for a finding of incompetence. *See Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009).

We find no cause for discipline under § 339.100.2(16).

#### **Summary**

Charles is subject to discipline under § 339.100.2(19).

SO ORDERED on December 12, 2014.

\\ Karen A. Winn  
KAREN A. WINN  
Commissioner