

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

SIXTH JUDICIAL CIRCUIT

KANSAS CITY PREMIER)
APARTMENTS, INC.,)
))
Plaintiff,)
))
v.)
))
MISSOURI REAL ESTATE)
COMMISSION,)
))
Defendant.)

F I L E D
JUN 30 2010
SANDRA L. DOWD
Clerk of the Circuit Court Platte County, MO

Case No. 07AE-CV01240
Division 1

JUDGMENT

On the 23rd day of June, 2010, Plaintiff Kansas City Premier Apartments appeared by corporate representative and by Counsel Dave Roland and Timothy J. Thompson. Tiffany Lewis and Ryan Gran appeared in person and by Counsel Dave Roland and Timothy J. Thompson. The Missouri Real Estate Commission appeared by Counsel Edwin Frownfelter.

The Court heard evidence and arguments of the parties.

Now on this 30th day of June, 2010, the Court makes the following findings and enters judgment as follows.

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. Kansas City Premier Apartments (KCPA) filed on April 16, 2007, requesting a declaratory judgment that § 339.010.1 does not encompass its business activities; that KCPA is exempt from the provisions of Chapter 339; that the Missouri Real Estate Commission (MREC) violated KCPA's right to due process as protected under the Fourteenth Amendment and the Missouri Constitution; that the statute violates KCPA's

freedom of speech as protected under the First Amendment and the Missouri Constitution, and that the statute violates KCPA's right to equal protection of the law as protected under the Fourteenth Amendment and the Missouri Constitution. The MREC filed a motion to dismiss. In an order issued on November 26, 2007, Judge Hull dismissed KCPA's procedural due process claims, but allowed the rest of KCPA's claims to proceed. On June 4, 2009, the MREC filed a Petition for Preliminary Injunction and Permanent Injunction, asking the court to prohibit KCPA from continuing any of its business activities that, in the estimation of the court, would constitute performing real estate activities without a license. The requested injunction alleges violations of §§ 339.101.1(3), (4), (7), (8), and (10).

3. The MREC is responsible for administering and enforcing the statutes and regulations relating to the licensing and practice of real estate brokers and salespersons, powers delegated through Chapter 339, RSMo. Ms. Lewis does not hold and has never held a real estate broker or salesperson license issued by the MREC.

4. KCPA is internet based with several components, including a database of real estate advertisements; a search function that allows interested members of the public to view only those advertisements that match criteria that they select themselves; an online roommate matching service, a collection of useful information about the advantages of living in the Kansas City area; a blog and other social media outlets that allow owners or managers of rental properties to notify prospective renters of the availability of specials that might otherwise escape the renters' notice. KCPA enters into written agreements with owners and managers of rental property under which KCPA agrees to post on its

website advertisements prepared and submitted by the property owners, managers, or brokers working on their behalf. KCPA does not alter these advertisements once they have been provided by the properties. The MREC did not prove that any of the property advertisements on the KCPA website were false or misleading. If a renter notifies the owner or manager of a rental property with whom KCPA has an agreement that they discovered the property through KCPA, KCPA is paid a percentage of the first months rent. The MREC did not prove that KCPA's rental advisors have conveyed any false or misleading information about specific rental units.

5. KCPA's business activities do not include collecting rents or security deposits for owners. KCPA does not accept money directly from renters or prospective renters and does not handle tenant complaints for owners or managers of rental properties. KCPA does not "show" properties to prospective renters through actual in person inspection. It does not advertise or hold itself out as a licensed real estate broker or salesperson. KCPA does not charge or accept advance fees for advertisements appearing on the KCPA website.

6. Before KCPA began operations, Ms. Lewis contacted both the Kansas Real Estate Commission and the MREC to find out if state laws would require her business to have a license. The Kansas commission responded that no license would be necessary. A representative of the MREC responded that her proposed activities occupied a "grey area" of the law. Ms. Lewis thereafter commenced business operations with KCPA.

7. In June of 2004, the MREC notified Ms. Lewis that her former employer had filed a complaint alleging that KCPA was unlawfully engaging in real estate activities. On December 26, 2006, the MREC announced its determination that KCPA was violating the law. A letter signed by Janet Carder, the Executive Director of the MREC, demanded that KCPA cease conducting real estate activity. On January 25, 2007, KCPA's attorney, Timothy J. Thompson, sent a well written and well reasoned letter to the MREC explaining why KCPA believed the law did not apply to its business. On March 22, 2007, Kimberly Grinston, an attorney for the MREC sent another letter stating that KCPA was violating § 339.010.1, which the letter quoted. The letter specifically highlighted §§ 339.010.1(4), (7), and (9), placing these provisions in bold and italic font, but the letter did not specify any of KCPA's business activities that it believed to violate these provisions. The letter specifically advised KCPA that operating as a real estate broker or salesperson without a license was a criminal offense and it threatened to refer KCPA's activities to the Missouri Attorney General's Office and all applicable prosecuting authorities for official and immediate legal action.

8. The commission did not direct Ms. Grinston to highlight the particular provisions emphasized in the cease-and-desist letter that bore her signature.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. KCPA is not exempt from the restrictions and requirements of Chapter 339.
2. Sections 339.010.1(3), (4), (7), (8), (9) and (10) are not unconstitutional under the Missouri or Unites States Constitution.

3. The application of Sections 339.010.1(3), (4), (7), (8), (9), and (10) are not facially unconstitutional under the Missouri or United States Constitution.
4. Sections 339.010.1(3), (4), (7), (8), (9), and (10), are not unconstitutionally overbroad.
5. Sections 339.010.1(3), (4), (7), (8), (9), and (10) are not unconstitutionally vague.
6. Section 339.010.6 is not unconstitutional.
7. KCPA is not excepted from the definition in Section 339.010.1 by any of the exceptions in Section 339.010.6.
8. The Court finds that the application of Chapter 339 RSMo to the activities of KCPA does not violate any section of the United States or Missouri Constitutions.

With regard to the request for Injunctive Relief by MREA the Court finds and

Orders as follows:

1. MREC has shown that KCPA has performed acts which require licensure under Chapter 339, RSMo, and KCPA does not hold a Missouri real estate license under Chapter 339, RSMo.
2. MREC has shown that there are grounds for an injunction restraining KCPA from certain actions under the provisions of Section 339.180.1(1), RSMo.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

1. That until KCPA complies with the requirements of Chapter 339 applicable to KCPA operations, KCPA is restrained and enjoined from :


- A. Contracting with property owners to receive compensation in return for referring prospective tenants who rent from property owners, which is not an enforceable contract under the terms of Section 339.160, RSMo;
- B. Any act requiring real estate licensure pursuant to the terms of Chapter 339 RSMo.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That KCPA is restrained and enjoined from paying a reward or incentive to tenants who notify property owners that they were directed to the property through KCPA's services, which would violate Section 339.100.2(13) if performed by a licensed real estate broker.

All requests for relief not granted herein are denied. Costs are assessed against Plaintiff, KCPA.

Dated: _____



 Judge
 6/30/2010



CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
OF
MISSOURI
COURTHOUSE, PLATTE CITY, MO 64079

ABE SHAFER
CIRCUIT JUDGE
DIVISION I

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FAX TRANSMISSION SHEET

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COMMENTS