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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061031
Party	Defendant National Association of Realtors
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Attachments	Schermerhorn v. NAR - MSJ.pdf(784170 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Jeffrey Schermerhorn, Petitioner, v. National Association of Realtors[®], Respondent.	Cancellation No.: 92061031 Registration No.: 519,789 Mark: REALTOR
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**RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT AND SUPPORTING MEMORANDUM OF LAW**

I. INTRODUCTION

This cancellation proceeding involves petitioner Jeffrey Schermerhorn (hereinafter "Petitioner" or "Schermerhorn") and respondent National Association of Realtors[®] (hereinafter "Respondent" or "NAR"). Schermerhorn has petitioned to cancel NAR's Registration No. 519,789 covering the collective membership mark REALTOR[®] based on allegations of genericness.

NAR hereby moves for summary judgment on the basis of licensee estoppel. As a current member of NAR and, pursuant to such membership, a current licensee of the REALTOR[®] mark, Schermerhorn is estopped from challenging the registration at issue. There is no genuine issue of material fact and NAR is entitled to judgment as a matter of law. Accordingly, NAR respectfully requests that the Board grant its motion for summary judgment and dismiss the cancellation petition with prejudice.

II. STATEMENT OF FACTS¹

NAR is a not-for-profit Illinois corporation with its principal place of business in Chicago, Illinois. The nation's largest trade association, NAR's members are composed of brokers, salespeople, property managers, appraisers, counselors and other real estate professionals engaged in all aspects of the real estate industry. Today, NAR has approximately one million members who belong to one or more of 54 State Associations (including D.C., Guam, Puerto Rico, and the Virgin Islands) and more than 1,250 local associations and boards located throughout the country. Niersbach Aff. ¶ 2.

Members must abide by and conduct their real estate businesses in accordance with NAR's strict Code of Ethics and Standards of Practice, which hold members to a high standard of professionalism. It is this commitment that distinguishes NAR's members from non-member real estate practitioners. NAR licenses members to use NAR's collective membership mark REALTOR[®] to identify and distinguish themselves as members of NAR. Niersbach Aff. ¶ 3.

Membership in NAR also confers a variety of perks, including access to a wide array of benefits, business tools, real estate market data, educational opportunities, and discount programs. NAR's membership services are designed to assist members to succeed in today's industry. For example: NAR is home to the world's largest real estate library covering topics related to commercial and residential real estate; the REALTORS[®] Benefits Program provides members with discounts and special offers on products and services; NAR's

¹ In support of this motion for summary judgment, NAR is submitting herewith the Affidavit of Cliff Niersbach with related exhibits. Mr. Niersbach is Associate General Counsel of NAR. This Affidavit will be cited herein as "Niersbach Aff. ¶ ___."

Government Affairs division is engaged in developing, advancing and implementing federal legislative objectives; REALTORS[®] Property Resource provides members with a national database of valuable property data; and NAR has a comprehensive consumer outreach program about the value of homeownership. Members may serve on a variety of committees and join (subject to any educational requirements) NAR's affiliated institutes, societies and councils. Members also must submit to adjudicative proceedings by their local association if a claim is made that they have violated the Code. Niersbach Aff. ¶ 4.

NAR's rights in the REALTOR[®] mark date back to 1916, when NAR adopted the REALTOR[®] mark to apply nationally to all members. Since then, NAR and its members have extensively used and promoted the REALTOR[®] mark nationwide. NAR licenses current members to use the REALTOR[®] mark in accordance with specified terms and conditions. This license is set forth in the local associations' and NAR's bylaws. Niersbach Aff. ¶ 5. Copies of the pertinent Bylaws addressing the licensing of members and proper use of the REALTOR[®] mark, the Code of Ethics and related matters are attached to the Affidavit of Mr. Niersbach as Exhibits A and B.

NAR also maintains and publishes the *Membership Marks Manual*, which sets forth in detail the terms, conditions and limitations governing the proper use of these marks by NAR's member licensees. NAR further reinforces proper use of the REALTOR[®] marks through member-targeted educational efforts, including videos and articles. NAR also maintains an extensive trademark protection program designed to police and enforce against misuses of the REALTOR[®] mark. Niersbach Aff. ¶ 8.

Schermerhorn is an individual engaged in the real estate business and a licensed real estate professional in Sarasota, Florida. Schermerhorn is a member of the REALTOR[®]

Association of Sarasota and Manatee, the Florida Association of REALTORS[®], and NAR. Schermerhorn joined the organization in October of 2013 by filing an application for REALTOR[®]-Associate Membership with the Sarasota Association of REALTORS[®] (now the REALTOR[®] Association of Sarasota and Manatee). The application states that Schermerhorn was then associated with the firm of Capital Real Estate in Sarasota, Florida. A copy of this application is attached to the Affidavit of Mr. Niersbach as Exhibit C. Niersbach Aff. ¶ 9. The application required Schermerhorn to attest to abide by NAR's Bylaws, Constitution and Code of Ethics. The application states, in pertinent part, as follows:

I hereby apply for membership in the Sarasota Association of REALTORS[®], Inc. (SAR) in the category checked above and enclose my payment for the required dues and fees, which are **NOT refundable**. I agree that, if accepted for membership, I will pay the dues and fees as from time to time established. I agree as a condition of membership to thoroughly familiarize myself with the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS[®] (NAR), including the duty to arbitrate business disputes in accordance with the *Code of Ethics and Arbitration Manual* of NAR and the Constitution, Bylaws, and Rules and Regulations of SAR, the Florida Association of REALTORS[®] (FAR), and NAR. I further agree that my act of paying dues and fees shall evidence my initial and continuing commitment to abide by the Code of Ethics, Constitution, Bylaws, Rules and Regulations, and duty to arbitrate, all as from time to time amended. (emphasis in original).

Niersbach Aff. ¶ 9, Ex. C.

In November of 2013, Schermerhorn attended the Sarasota Association of REALTORS[®] New Member Orientation and Code of Ethics training. Schermerhorn has continued his membership in NAR since joining in 2013, and in fact his 2015 membership dues were paid in full on January 13, 2015. Niersbach Aff. ¶ 10.

As a member of NAR, Schermerhorn is licensed to use the REALTOR[®] mark in accordance with NAR's specified terms and conditions and benefits from the goodwill associated with the REALTOR[®] mark. *See* Exs. A-B. Schermerhorn is obligated to abide

by NAR's strict Code of Ethics. Schermerhorn may also take advantage of the myriad of programs and services offered by NAR and his state and local associations. Niersbach Aff.

¶ 11.

III. DISCUSSION

A. Standards Governing Summary Judgment

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The party seeking summary judgment bears the burden of establishing the lack of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Avia Group Int'l, Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1560 (Fed. Cir. 1988).

On a motion for summary judgment, the function of the Board is not to resolve issues of fact, but rather to determine if genuine issues of material fact are in dispute and, if not, to render judgment based on the law as applied to the established facts. *Flatley v. Trump*, 11 U.S.P.Q.2d 1284, 1287 (TTAB 1989). Where, as here, there is no issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.

B. Respondent Is Entitled to Summary Judgment Based on Licensee Estoppel

The doctrine of licensee estoppel is well established. The doctrine provides that a current or former licensee is estopped from challenging the validity of the mark under which it was licensed, as well as the registration of the mark. *Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002) (former licensee estopped from challenging REALTOR registration based on genericness); *Leatherwood Scopes International Inc. v.*

Leatherwood, 63 USPQ2d 1699, 1702 (TTAB 2002) (licensee estopped from challenging licensor's ownership of mark based on claim of naked licensing); *Estate of Biro v. Bic Corp.*, 18 U.S.P.Q.2d 1382 (TTAB 1991); *Donut Supplies, Inc. v. Hol'n One Donut & Supply Co.*, 155 U.S.P.Q. 98 (TTAB 1967). The doctrine applies with equal force to challenges based on claims that the licensor's mark is generic or descriptive. *See, e.g., Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002); *Council of Better Business Bureaus, Inc. v. Better Business Bureau of South Florida, Inc.*, 200 U.S.P.Q. 282 (S.D. Fla. 1978). Under that doctrine, Schermerhorn's status as a licensee of the REALTOR® mark precludes him from challenging the validity of that mark. *Id.*; *see also* 2 Ann Gilson Lalonde, Gilson on Trademarks § 6.07[7] (2015) ("By entering into the license agreement, the licensee recognizes the licensor's ownership of the mark and, by implication, covenants not to challenge the licensor's rights.")

The Board previously found that the doctrine of licensee estoppel precluded a former member of NAR from challenging the validity of this same registration, No. 519,789, in *Freeman v. National Association of Realtors*. 64 USPQ2d at 1700. There, the petitioner Freeman sought to cancel this Registration No. 519,789, alleging that the REALTOR® mark was generic. Prior to initiating the cancellation proceeding, Freeman had been a member of NAR and the San Diego Association of Realtors®. The Board held that, as a former member and licensee of NAR, Freeman was precluded by licensee estoppel from challenging the validity of the REALTOR® mark. In dismissing the petition to cancel, the Board in *Freeman* explained:

When she was a member of the San Diego Association of Realtors, petitioner acknowledged the validity of the licensed marks and benefited from the goodwill associated with those marks. Petitioner has not alleged or relied on

facts regarding the significance of respondent's marks that have changed since 1996 when she ceased being a member of the San Diego Association of Realtors. That is to say, petitioner is not here claiming that these marks became generic after the termination of her license agreement. Rather, petitioner is relying on facts, including the meaning of the term Realtor, during the term of the license. Accordingly, we agree with respondent that petitioner's claims of genericness are barred under the doctrine of licensee estoppel.

Id., 64 USPQ2d at 1704. As noted, the petitioner in the *Freeman* case was a *former* licensee of NAR. Here, by contrast, petitioner Schermerhorn is a *current* licensee. Thus, the case for licensee estoppel is even stronger in the present proceeding.

The decision in *Better Business Bureau* is also instructive. That case involved a dispute over the mark BETTER BUSINESS BUREAU, owned by the plaintiff Council of Better Business Bureaus, Inc. (hereinafter "National Council"). The defendant, Better Business Bureau of South Florida, Inc. (hereinafter "Local Bureau"), was a former member of the National Council. After terminating its membership, the Local Bureau continued to use the BETTER BUSINESS BUREAU mark without authorization. As a result, the National Council sued for trademark infringement and related claims.

In its defense, the Local Bureau argued that the BETTER BUSINESS BUREAU mark is either (a) generic, (b) merely descriptive and without secondary meaning, or (c) abandoned. The court held that the Local Bureau was estopped from attacking the validity of the mark on the basis of licensee estoppel. By virtue of its membership in the National Council prior to its termination, the Local Bureau was given permission to use the BETTER BUSINESS BUREAU mark in accordance with the governing Bylaws. The court explained (200 U.S.P.Q. at 289):

[I]t is clear that in order to become and remain a member of Council, each member Bureau is required to adhere to the

requirements of membership as set forth in the duly enacted Bylaws of the Council. . . .

In view of these Bylaws and in view of Defendant having been associated for over 25 years with Council and having knowingly used the registered trademark of Council during that period of time, it is clear, that although not reduced to a written instrument, a license relationship existed between Council and Defendant under which Defendant was permitted to use the Better Business Bureau Mark only so long as it remained a member Bureau in good standing.

Based on this licensing relationship between the parties, the Local Bureau was estopped from contesting the validity of the BETTER BUSINESS BUREAU mark after the license arrangement ended. *Id.*

The undeniable facts in the present case are even more compelling than those presented in *Freeman* and *Better Business Bureau*. Schermerhorn is a current member of NAR and, pursuant to such membership, a current licensee of the REALTOR[®] mark. Through his use of the REALTOR[®] mark, Schermerhorn benefits from the goodwill associated with the brand. Moreover, Schermerhorn further benefits from the myriad of programs and services NAR provides to members under the REALTOR[®] brand. His claim of genericness is therefore barred under the doctrine of licensee estoppel. *Freeman v. National Association of Realtors*, 64 USPQ2d at 1704.

In sum, the doctrine of licensee estoppel precludes Schermerhorn from challenging or contesting the validity of the REALTOR[®] mark and the underlying registration which is the subject of these proceedings. Application of the doctrine to the undisputed facts of these proceedings compels the conclusion that NAR is entitled to summary judgment.

IV. CONCLUSION

For all of the foregoing reasons, NAR respectfully requests that the Board grant its motion for summary judgment and dismiss this cancellation petition with prejudice.

Respectfully submitted,

NATIONAL ASSOCIATION OF REALTORS®

Dated: October 16, 2015

By: /Jeffery A. Handelman/

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>Jeffrey Schermerhorn,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>National Association of Realtors[®],</p> <p style="text-align: center;">Respondent.</p>	<p>Cancelation No.: 92061031</p> <p>Registration No.: 519,789</p> <p>Mark: REALTOR</p>
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AFFIDAVIT OF CLIFF NIERSBACH AND RELATED EXHIBITS

State of Illinois)
) ss
County of Cook)

1. My name is Cliff Niersbach. I am Associate General Counsel of the National Association of Realtors[®] (hereinafter "NAR"), the respondent in the above-captioned proceedings. I am familiar with NAR's overall business operations and the benefits and services provided to its members. I am familiar with the use and licensing of NAR's marks and the Bylaws and guidelines governing the use of these marks.

2. NAR is a not-for-profit Illinois corporation with its principal place of business in Chicago, Illinois. The nation's largest trade association, NAR's members are composed of brokers, salespeople, property managers, appraisers, counselors and other real estate professionals engaged in all aspects of the real estate industry. Today, NAR has approximately one million members who belong to one or more of 54 State Associations

(including D.C., Guam, Puerto Rico, and the Virgin Islands) and more than 1,250 local associations and boards located throughout the country.

3. Members must abide by and conduct their real estate businesses in accordance with NAR's strict Code of Ethics and Standards of Practice, which hold members to a high standard of professionalism. It is this commitment that distinguishes NAR's members from non-member real estate practitioners. NAR licenses members to use NAR's collective membership mark REALTOR[®] to identify and distinguish themselves as members of NAR.

4. Membership in NAR also confers a variety of perks, including access to a wide array of benefits, business tools, real estate market data, educational opportunities, and discount programs. NAR's membership services are designed to assist members to succeed in today's industry. For example: NAR is home to the world's largest real estate library covering topics related to commercial and residential real estate; the REALTORS[®] Benefits Program provides members with discounts and special offers on products and services; NAR's Government Affairs division is engaged in developing, advancing and implementing federal legislative objectives; REALTORS[®] Property Resource provides members with a national database of valuable property data; and NAR has a comprehensive consumer outreach program about the value of homeownership. Members may serve on a variety of committees and join (subject to any educational requirements) NAR's affiliated institutes, societies and councils. Members also must submit to adjudicative proceedings by their local association if a claim is made that they have violated the Code.

5. NAR's rights in the REALTOR[®] mark date back to 1916, when NAR adopted the REALTOR[®] mark to apply nationally to all members. Since then, NAR and its members have extensively used and promoted the REALTOR[®] mark nationwide. NAR licenses

current members to use the REALTOR® mark in accordance with specified terms and conditions. This license is set forth in the local associations' and NAR's bylaws. True and correct copies of the pertinent Bylaws addressing the licensing of members and proper use of the REALTOR® mark, the Code of Ethics and related matters are attached hereto as **Exhibits A and B**.

6. Exhibit A consists of the Bylaws of the REALTOR® Association of Sarasota and Manatee pertaining to the use of the REALTOR® mark. These bylaws authorize Schermerhorn to use the REALTOR® mark in accordance with NAR's Constitution, Bylaws, and Rules and Regulations. Similarly, Exhibit B consists of Article V of the Bylaws of NAR, which authorizes members to use the REALTOR® mark and is the basis of the terms and conditions governing its use by members (licensees).

7. The bylaws of the REALTOR® Association of Sarasota and Manatee state that use of the REALTOR® mark “by members shall, at all times, be subject to the provisions of the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®* and to the Rules and Regulations prescribed by its board of directors.” *See* Exhibit A (emphasis in original). The Bylaws of the National Association, in turn, provide that members are licensed to use the REALTOR® marks in accordance with specified terms and conditions. To this end, Article V, Section 2 of the NAR Bylaws provides as follows (see Exhibit B):

REALTOR® Members are hereby licensed to use the term REALTOR®, REALTORS® or REALTOR-ASSOCIATE® in connection with their business, subject to the right of each Member Board to control, jointly and in full cooperation with the NATIONAL ASSOCIATION OF REALTORS® such use within its territory.

8. NAR also maintains and publishes the *Membership Marks Manual*, which sets forth in detail the terms, conditions and limitations governing the proper use of these marks by NAR's member licensees. NAR further reinforces proper use of the REALTOR® marks through member-targeted educational efforts, including videos and articles. NAR also maintains an extensive trademark protection program designed to police and enforce against misuses of the REALTOR® mark.

9. Petitioner Jeffrey Schermerhorn ("Schermerhorn") is an individual engaged in the real estate business and a licensed real estate professional in Sarasota, Florida. Schermerhorn is a member of the REALTOR® Association of Sarasota and Manatee, the Florida Association of REALTORS®, and NAR. Schermerhorn joined the organization in October of 2013 by filing an application for REALTOR®-Associate Membership with the Sarasota Association of REALTORS® (now the REALTOR® Association of Sarasota and Manatee). The application states that Schermerhorn was then associated with the firm of Capital Real Estate in Sarasota, Florida. A true and correct copy of this application is attached hereto as **Exhibit C**.

10. In November of 2013, Schermerhorn attended the Sarasota Association of REALTORS® New Member Orientation and Code of Ethics training. Schermerhorn has continued his membership in NAR since joining in 2013, and in fact his 2015 membership dues were paid in full on January 13, 2015.

11. As a member of NAR, Schermerhorn is licensed to use the REALTOR® mark in accordance with NAR's specified terms and conditions and benefits from the goodwill associated with the REALTOR® mark. Schermerhorn is obligated to abide by NAR's strict

Code of Ethics. Schermerhorn may also take advantage of the myriad of programs and services offered by NAR and his state and local associations.

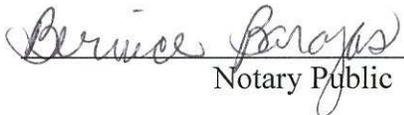
12. Thus, pursuant to the governing Bylaws of the REALTOR® Association of Sarasota and Manatee and NAR, as a member Schermerhorn is authorized to use the REALTOR® mark as a licensee during the period of his membership.



Cliff Niersbach

SUBSCRIBED AND SWORN to
Before me this 16th day of October, 2015





Notary Public

10/16/2015

EXHIBIT A

Bylaws of the
REALTOR® Association of Sarasota and Manatee, Inc.

(Effective date January 1, 2015)

Article I – Name

Section 1. Name. The name of this organization shall be the REALTOR® Association of Sarasota and Manatee, Incorporated, hereinafter referred to as the "association".

Section 2. REALTORS®. Inclusion and retention of the Registered Collective Membership Mark REALTORS® in the name of the association shall be governed by the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®* as from time to time amended.

Article II – Objectives

The objectives of the association are:

Section 1. To unite those engaged in the recognized branches of the real estate profession for the purpose of exerting a beneficial influence upon the profession and related interests.

Section 2. To promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

Section 3. To provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced.

Section 4. To further the interests of home and other real property ownership.

Section 5. To unite those engaged in the real estate profession in this community with the Florida Association of REALTORS® and the NATIONAL ASSOCIATION OF REALTORS®, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.

Section 6. To designate, for the benefit of the public, individuals authorized to use the terms REALTOR® and REALTORS® as licensed, prescribed, and controlled by the NATIONAL ASSOCIATION OF REALTORS®.

Article III – Jurisdiction

Section 1. The territorial jurisdiction of the association as a Member of the NATIONAL ASSOCIATION OF REALTORS® is: Manatee County, Florida and that portion of Sarasota County, Florida starting at a point where the Sarasota-Manatee County line meets the Gulf of Mexico, running E, S and E along the Sarasota-Manatee County line; thence S along the Sarasota-Desoto County line; thence W and S along the Sarasota-Charlotte County line to the Myakka River; thence northerly with the Myakka River to the S line of Section 13, Township 38S, Range 19E; thence W along the section lines to the Gulf of Mexico; thence northerly to the point of beginning; except that portion of Sarasota County known as North Port Charlotte and Warm Mineral Springs, relinquished to the Punta Gorda-Port Charlotte Association, described as beginning at a point where the Myakka River crosses the Sarasota-Charlotte County line; thence northward with the Myakka River to the S line of Section 35, Township 39S, Range 20E; thence E to the SE corner of Section 35, Township 39S, Range 20E; thence N along the E line of Sections 35 and 26, Township 39S, Range 20E, to the NW corner of Section 25, Township 39S, Range 20E; thence E along the N line of Section 25, Township 39S, Range 20E to the NE corner of Section 25, Township 39S, Range 20E; thence N along the E line of Sections 24, 13, 12, and 1, Township 39S, Range 20E; thence E along the S line of Sections 31, 32, 33, 34, 35 and 36, Township 38S, Range 21E, to the SE corner of Section 36, Township 38S, Range 21E; thence S along the W line of Sections 6, 7 and 18, Township 39S, Range 22E, to the SW corner of Section 18, Townships 39S, Range 22E; thence E along the S line of Sections 18, 17, 16, 15, 14 and 13, Township 39S, Range 22E, to the SE corner of Section 13, Township 39S, Range 22E; thence S along the Sarasota-Desoto County line to the Charlotte County line; thence W and S along the Charlotte-Sarasota County line to the point of beginning.

Section 2. Territorial jurisdiction is defined to mean:

(a) The right and duty to control the use of the terms REALTOR® and REALTORS®, subject to the conditions set forth in

amended from time to time, which is by this reference incorporated into these Bylaws, provided, however, that any provision deemed inconsistent with state law shall be deleted or amended to comply with state law.

Section 2. It shall be the duty and responsibility of every REALTOR® member of this association to abide by the Constitution and Bylaws and the rules and regulations of the association, the Constitution and Bylaws of the State Association, the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®*, and to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, including the duty to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further defined and in accordance with the procedures set forth in the Code of Ethics and Arbitration Manual of this association, as from time to time amended.

Section 3. The responsibility of the association and association members relating to the enforcement of the Code of Ethics, the disciplining of members, the arbitration of disputes, and the organization and procedures incident thereto, shall be consistent with the cooperative professional standards enforcement agreement entered into by the association, which by this reference is made a part of these Bylaws.

Article VIII – Use of the Terms REALTOR® and REALTORS®

Section 1. Use of the terms REALTOR® and REALTORS® by members shall, at all times, be subject to the provisions of the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®* and to the Rules and Regulations prescribed by its board of directors. The association shall have the authority to control, jointly and in full cooperation with the NATIONAL ASSOCIATION OF REALTORS®, use of the terms within its jurisdiction. Any misuse of the terms by members is a violation of a membership duty and may subject members to disciplinary action by the board of directors after a hearing as provided for in the association's Code of Ethics and Arbitration Manual.

Section 2. REALTOR® members of the association shall have the privilege of using the terms REALTOR® and REALTORS® in connection with their places of business within the state or a state contiguous thereto so long as they remain REALTOR® members in good standing. No other class of members shall have this privilege.

Section 3. A REALTOR® member who is a principal of a real estate firm, partnership, or corporation may use the terms REALTOR® and REALTORS®, only if all the principals of such firm, partnership, or corporation who are actively engaged in the real estate profession within the state or a state contiguous thereto are REALTOR® members or Institute Affiliate members, as described in Section 1(b) of Article IV.

(a) In the case of a REALTOR® member who is a principal of a real estate firm, partnership, or corporation whose business activity is substantially all commercial, the right to use the term REALTOR® or REALTORS® shall be limited to office locations in which a principal, partner, corporate officer, or branch office manager of the firm, partnership, or corporation holds REALTOR® membership. If a firm, partnership, or corporation operates additional places of business in which no principal, partner, corporate officer, or branch office manager holds REALTOR® membership, the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business.

Section 4. Institute Affiliate members shall not use the terms REALTOR® or REALTORS®, nor the imprint of the emblem seal of the NATIONAL ASSOCIATION OF REALTORS®.

Article IX – State and National Memberships

Section 1. The association shall be a member of the NATIONAL ASSOCIATION OF REALTORS® and the Florida Association of REALTORS®. By reason of the association's membership, each REALTOR® member of the Member Board shall be entitled to membership in the NATIONAL ASSOCIATION OF REALTORS® and the Florida Association of REALTORS® without further payment of dues. The association shall continue as a member of the State and National Associations, unless by a majority vote of all of its REALTOR® members, decision is made to withdraw, in which case the State and National Associations shall be notified at least one month in advance of the date designated for the termination of such membership.

Section 2. The association recognizes the exclusive property rights of the NATIONAL ASSOCIATION OF REALTORS® in the terms REALTOR® and REALTORS®. The association shall discontinue use of the terms in any form in its name, upon ceasing to be a member of the National Association, or upon a determination by the board of directors of the National Association that it has violated the conditions imposed upon the terms.

Section 3. The association adopts the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® and agrees to enforce the Code among its REALTOR® members. The association and all of its members agree to abide by the *Constitution, Bylaws, Rules and Regulations*, and policies of the National Association and the Florida Association of

EXHIBIT B

2015 Constitution and Bylaws

BYLAWS

ARTICLE I

MEMBERSHIP

Section 1.

(A) Local boards shall be enrolled as Member Boards when their written applications have been received and presented to the Board of Directors and when the Board of Directors shall find that the applicants have complied with the requirements of the Constitution and Bylaws. An applicant for REALTOR® membership pursuant to Article III, Section 1(C) 1.(b) shall be enrolled as a REALTOR® Member of the local Board designated in their application as their primary Board, and that Member Board shall accept the applicant as such when their written application has been received and presented to the National Association Board of Directors, the Board of Directors has found that the applicant has complied with the requirements of the Constitution and Bylaws, and the applicant has paid their initial dues, and any applicable initiation and processing fees to their primary Board.

(B) The application of any local board for membership in the National Association shall be in such form as may be prescribed by the Board of Directors and shall contain a statement to the effect that it has been approved by a majority of the REALTOR® Members of the applicant board. Effective January 1, 1974.

Section 2.

(A) No Member Board, nor any multiple listing service owned by one or more Member Boards, nor any Institute, Society or Council, shall apply any arbitrary numerical or other inequitable limitation on its membership nor adopt any rule, regulation, practice or policy inconsistent with or contrary to any policy adopted by the Board of Directors.

(B) Member Boards and their multiple listing services shall be honest and truthful in their communications and shall present a true picture in their advertising, marketing, and other representations. Member Boards and their multiple listing services shall avoid false, deceptive, or misleading advertising and marketing practices and shall not knowingly or recklessly make false or misleading statements about other Member Boards, or Member Boards' programs, products or services.

Section 3. Unless qualified salesmen and independent contractors employed by or affiliated with a REALTOR® Member are eligible for REALTOR® membership in Member Boards, such salesmen and independent contractors shall be eligible for REALTOR-ASSOCIATE® membership in such Member Boards, and all Member Boards from and after January 1, 1974, shall make provision for such REALTOR-ASSOCIATE® membership.

Section 4. Resignations of local boards shall be considered and acted upon by the Board of Directors of the National Association; provided, however, that any local board tendering its resignation shall not be delinquent in its dues to the National Association, and provided further, that such resignation shall state the reasons therefore and shall verify that at least a majority of all its REALTOR® Members shall have voted in favor of such resignation.

ARTICLE II

ANNUAL DUES

Section 1.

(A) The annual dues of each Member Board (local Board) as defined in Article III, Section 1(B)(1) of the Constitution, shall be in an amount established annually by the Board of Directors at the Midyear Meeting times the sum of the number of REALTOR® and REALTOR-ASSOCIATE® members of the Board and the number of individuals who are licensed with such REALTOR® members of the Board and who are not themselves REALTOR®, REALTOR-ASSOCIATE® or Institute Affiliate members of the Board provided such individuals are not otherwise included in the computation of dues payable by another Member Board.

The annual dues of each Member Board (State Association) as defined in Article III, Section 1(B)(2) of the Constitution, shall be the amount established by the Board of Directors pursuant to Section 1(A) hereof times the sum of the number of REALTOR® and REALTOR-ASSOCIATE® members of the Board whose real estate office is located in a territory within the state which is outside the jurisdiction of any local Board and who are not primary members of any local board and the number of individuals who are licensed with such REALTOR® members of the Board and who are not themselves REALTOR®, REALTOR-ASSOCIATE® or Institute Affiliate members of the Board .

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Enforcement of the Code of Ethics also prohibits Member Boards from knowingly granting REALTOR® or REALTOR-ASSOCIATE® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Board or Association of REALTORS® for violation of the Code of Ethics.

ARTICLE V

USE OF THE TERMS REALTOR®, REALTORS® AND REALTOR-ASSOCIATE®

Section 1. Upon application of a Member Board, the Board of Directors may license such Board to use the term REALTOR® or REALTORS® as a part of its name under the following conditions:

(A) Such Board shall sign a written agreement with the Board of Directors of the National Association agreeing to eliminate the term REALTOR® or REALTORS® from its name immediately when and if it either shall cease to maintain or shall lose its membership in the National Association.

(B) The use of the term REALTOR® or REALTORS® in the name of such Board shall be in such manner as may be prescribed by the Board of Directors.

Section 2. REALTOR® Members are hereby licensed to use the term REALTOR®, REALTORS® or REALTOR-ASSOCIATE® in connection with their business, subject to the right of each Member Board to control, jointly and in full cooperation with the NATIONAL ASSOCIATION OF REALTORS® such use within its territory.

Section 4.

(A) A firm, partnership, corporation, or branch office whose principals actively engaged in the real estate business are REALTOR® members of a Member Board, except for the corporations of those REALTOR® members who hold membership pursuant to Article III, Section 1(C) 1.(b) of the Constitution, may use the term REALTOR® or REALTORS® in connection with, but not as a part of, its name thus: 'The _____ Real Estate Company, REALTORS®', but this privilege shall cease upon suspension or expulsion of any such principal from membership in the Board, and shall not revive unless or until he is readmitted to

membership therein or his suspension expires or he severs his connection with the firm, partnership or corporation.

(B) The right to use the term REALTOR® or REALTORS® in connection with a firm, partnership, corporation or branch office shall be limited to office locations which a principal, partner, corporate officer or branch office manager of the firm, partnership or corporation holds REALTOR® membership. If a firm, partnership or corporation operates additional places of business which no principal, partner, corporate officer, or branch manager holds REALTOR® membership, the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business.

Section 5. Each Member Board is hereby licensed to use the term REALTOR® or REALTORS® in the name of its headquarters building, in the title of its official publication, and of educational or civic meetings, services, or clinics sponsored by the Board, provided that the affiliation of the undertaking with the Member Board or the National Association is indicated, and that Board Members may participate therein.

Section 6. REALTOR® members are hereby licensed to use the terms REALTOR® or REALTORS® in connection with activities in support of specific candidates in specific elections to public office or nomination for election to public office, provided the definition of the term REALTOR® as a registered collective membership mark which identifies members of the NATIONAL ASSOCIATION OF REALTORS® and the identification of those conducting such activities as members of a member Board(s) is included on all letterhead and other written campaign literature, in all campaign media aids and on other materials unless not reasonably practical. Any such use must cease immediately after the election.

Section 7. Except as specifically otherwise provided in this Article, use of descriptive words or phrases in connection with the term REALTOR®, REALTORS® or REALTOR-ASSOCIATE® is expressly prohibited.

Section 8. Wherever the terms REALTOR®, REALTORS® or REALTOR-ASSOCIATE® are used in these Bylaws, they shall be understood to include the imprint of the emblem seal of the National Association.

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Section 9. Any Member Board which shall neglect or refuse to maintain and enforce the provisions of this Article, or neglect or refuse to cooperate with the NATIONAL ASSOCIATION OF REALTORS® in the maintenance and enforcement of this Article with respect to its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association.

Section 10.

(A) No Member Board shall sponsor, endorse, recognize, or award, directly or indirectly, any professional designation or certification that is confusingly similar to those available through the National Association, the Real Estate Buyer's Agent Council, or the Institutes, Societies, and Councils of the National Association.

(B) In the event a Member Board sponsors, endorses, recognizes or awards, directly or indirectly, any professional designation or certification that is not offered by the National Association, such Member Board shall clearly and affirmatively state in all course materials and related advertising and promotional materials that the professional designation or certification is not affiliated with or endorsed by the National Association of REALTORS®.

ARTICLE VI

COMMITTEES

Section 1. The President shall appoint such standing and special committees as shall be designated from time to time by the Board of Directors and such other special committees as he may deem necessary or appropriate.

Section 2. Unless otherwise provided in the NATIONAL ASSOCIATION OF REALTORS® Constitution or in these Bylaws, any action by a committee shall be subject to the approval of the Board of Directors.

ARTICLE VII

AMENDMENTS

Section 1. These Bylaws may be amended at any meeting by two-thirds of the Directors present at such

meetings, provided that a quorum is present at such meeting, and provided the substance of the proposed amendments shall have been submitted to the Member Boards at least 30 days in advance of their adoption. The notice may be sent by first-class mail, electronic communication, including e-mail, or any other means permitted by law that has been approved by the Board of Directors for sending such notices.

ARTICLE VIII

RULES FOR MEETINGS

Section 1. Wherever notice of meetings or of the subjects to be considered at meetings is required or authorized by these Bylaws, publication of such notice in an official publication which is mailed to all members of the National Association within the required time limits, shall be deemed to be good and sufficient notice.

Section 2. The order of business of the National Association and its Institutes, Societies and Councils and committees, except where otherwise provided, shall be:

1. Call to Order
2. Taking of the Roll
3. Applications for Membership
4. Reading of Minutes
5. Reports of Officers
6. Reports of Committees.
7. Reports of Institutes, Societies and Councils
8. Unfinished Business
9. New Business
10. Appointment of Committees
11. Election of Officers

Section 3.

(A) The substance of any resolution to be acted upon at any National Convention or other meeting of delegates shall be submitted in writing to the Member Boards at least 45 days in advance of the convention or meeting.

(B) This provision may be waived by the consent of two-thirds of the delegates present and entitled to vote at such convention or meeting.

(C) This provision shall not apply to any resolution adopted by the affirmative vote of at least two-thirds of the Directors present at any regularly constituted meeting of the Board of Directors.

EXHIBIT C

Secondary Member-Primary board membership is with another Association

Primary members are those who pay their FAR and NAR dues through SAR and whose principal broker also holds membership in SAR. Secondary membership is available only to REALTORS® whose Primary membership is in another Association. Secondary REALTORS® must provide a letter of good standing from their Primary Association stating they have paid the state and national dues for current year.

I hereby apply for membership in the Sarasota Association of REALTORS®, Inc. (SAR) in the category checked above and enclose my payment for the required dues and fees, which are **NOT refundable**. I agree that, if accepted for membership, I will pay the dues and fees as from time to time established. I agree as a condition of membership to thoroughly familiarize myself with the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® (NAR), including the duty to arbitrate business disputes in accordance with the Code of Ethics and Arbitration Manual of NAR and the Constitution, Bylaws, and Rules and Regulations of SAR, the Florida Association of REALTORS® (FAR), and NAR. I further agree that my act of paying dues and fees shall evidence my initial and continuing commitment to abide by the Code of Ethics, Constitution, Bylaws, Rules and Regulations, and duty to arbitrate, all as from time to time amended.

I acknowledge that SAR will maintain a membership file of information which may be shared with other boards/associations where I subsequently seek membership. This file shall include previous applications for memberships; all final findings of Code of Ethics violations and violations of other membership duties within the past three years; pending complaints alleging violations of the Code of Ethics or alleging violations of other membership duties; incomplete or pending disciplinary measures; pending arbitration requests; and information related to unpaid arbitration awards or unpaid financial obligations to SAR or its MLS.

I acknowledge that if I subsequently resign from the Association or otherwise cause my membership to terminate with an ethics complaint pending, the Association may condition renewal of membership upon my certification that I will submit to the pending ethics proceeding and will abide by the decision of the Hearing Panel. If I resign or otherwise cause membership to terminate, the duty to submit arbitration continues in effect even after membership lapses or is terminated, provided the dispute arose while I was a REALTOR®.

Please PRINT or TYPE to ensure accuracy

Name as Shown on License Jeffrey Schermerhorn PA
 Home Address 7070 Curtiss Ave.
 City Sarasota State FL Zip 34231
 Home Phone # 518-429-1996 Cell Phone # 518-429-1996
 Home Fax # 866-226-2644 Date of Birth 7/11/72 Sex M
 Your E-Mail jsny72@gmail.com
 Firm Name Capital Real Estate
 Office Address 3212 Gulf Gate Dr.
 City Sarasota State FL Zip 34231
 Office Phone # _____ Office Fax # _____
 Website(URL) _____

Association Use Only	
Member #	<u>3278327</u>
MLS ID#	<u>28152304</u>
MLS PASS	<u>password!</u>
NRDS#	_____
CK or MC or V or AmEx or	_____
CASH	_____
Total Paid	<u>673.50</u>
NAR	_____
FAR	_____
Local	_____
MLS	_____
Processing	_____
Fees	_____
Reinstatement Fees	_____


 10/24/13

jsny72@gmail.com

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Mail Email/Electronic Copy (The Greener Choice)

Foreign Languages _____

Are you presently a member of any other Association of REALTORS®? Yes No

If yes, name of Association and type of membership held: _____

Have you previously held membership in any other Association of REALTORS®? Yes No

If yes, name of Association and type of membership held: _____

Have you been found in violation of the Code of Ethics or other membership duties in any Association of REALTORS® in the past three (3) years or are there any such complaints pending? Yes No
(If yes, provide details as an attachment.)

If you are now or have ever been a REALTOR®, indicate your NAR membership (NRDS) #: _____ and last date (year) of completion of NAR's Code of Ethics training requirement: _____

Have you ever been refused membership in any other Association of REALTORS®? Yes No

If yes, state the basis for each such refusal and detail the circumstances related thereto: _____

Do you hold, or have you ever held, a real estate license in any other state? Yes No

If so, where: _____

Have you been found in violation of state real estate licensing regulations or other laws prohibiting unprofessional conduct rendered by the courts or other lawful authorities within the last three years? If yes, provide details: _____

Have you been convicted of a felony or other crime? If yes, provide details: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING
MEMORANDUM OF LAW was served on Petitioner by first class mail on this 16th day of
October, 2015 in an envelope addressed as follows:

Jeffrey Schermerhorn
7070 Curtiss Avenue
Sarasota, FL 34231

/Andrew J. Avsec /