

Real Estate Commission Bulletin



Unlicensed Assistants in a Brokerage - What Can They Do?

One of the most frequently asked questions received at the Real Estate Branch is “What can an unlicensed ‘assistant’ do in a brokerage?” There is no ready-made list of do’s and don’ts for unlicensed assistants working in a brokerage. The Commission has no rule or formal or informal interpretation on this issue. When making a determination as to the duties and responsibilities of unlicensed staff so as to remain in compliance with the real estate licensing laws (Hawaii Revised Statutes (HRS), Chapter 467, and Hawaii Administrative Rules (HAR), Chapter 99) keep in mind the following:

1. The definition of “real estate salesperson” means “ . . . any individual who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the individual of the option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesperson shall be under the direction of a real estate broker for all real estate transactions.” (See §467-1, HRS)
2. The definition of “real estate broker” means “ . . . any person who, for compensation or a valuable consideration, sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or lists, or solicits for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate, or the improvements thereon, for others, as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the person of the option and for the purpose or as a means of evading the licensing requirement of this chapter.” (See §467-1, HRS)
3. Unlicensed brokerage staff may perform duties that do not fall under the above definitions of real estate broker and salesperson. For example, if you have an unlicensed assistant in your brokerage they may not show properties to potential clients or tenants, they may not engage in any real estate negotiations with clients, they may not answer questions or provide information beyond what may be written in fact sheets approved by the principal broker regarding specific properties, and they may not sign any real estate transaction documents.
4. Note that included in the definition of both “real estate salesperson” and “real estate broker” is “ . . . manages or offers to manage, any real estate, or the improvements thereon, for others, as a whole or partial vocation; . . . ;” If you are managing properties for more than a single owner, you need a real estate license to do so.
5. There are some exceptions to real estate licensing as stated in §467-2, HRS. These exceptions apply to individuals, not to entities such as corporations, partnerships, limited liability companies, or limited liability partnerships. Perhaps the most common exception is §467-2(3), HRS, which states an individual does not require a real estate license if this individual “ . . . leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker; . . . ” A “caretaker” is defined in §467-1, HRS, “. . . any individual, who for compensation or valuable consideration, is employed as an employee by a single owner and has the responsibility to manage or care for that real property left in the individual’s trust, provided that the term “ustodian” or “caretaker” shall not include any individual who leases or offers to lease, or rents or offers to rent, any real estate for more than a

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The Real Estate Branch...

Not to be Confused with the Boards of REALTORS®

The Real Estate Branch (“REB”) includes 16 staff persons to handle many of the administrative duties and responsibilities statutorily given to the Hawaii Real Estate Commission (“Commission”), and who are employed by the Department of Commerce and Consumer Affairs (“DCCA”). It is the REB branch staff that licensees and consumers often contact for real estate-related questions, real estate licensing matters, condominium project registration and Association of Unit Owners (“AOUO”) questions and concerns.

Administrative duties include reviewing licensing applications for salespersons, brokers, and brokerages, which may be presented for a final approval/denial by the Commission, reviewing prelicense education, equivalency to the uniform section of the Hawaii real estate licensing exam, broker experience certification, and preliminary decision applications, registering prelicense education schools and instructors, registering the continuing education providers and certifying continuing education courses, overseeing the real estate recovery fund, the Real Estate Education Fund, license renewals, the Condominium Education Trust Fund, registration of condominium projects, condominium unit owner associations, condominium hotel operators, condominium managing agents, condominium mediation programs, answering telephone and walk-in inquiries regarding Hawaii real estate licensing and condominium matters, reviewing developer’s public report filings with consultants, writing and distributing quarterly real estate and condominium bulletins, writing and distributing a quarterly publication for real estate educators, and working with the real estate commissioners on the three standing committees of the Commission – the Laws and Rules Review Committee, the Condominium Review Committee, and the Education Review Committee, which meet on a monthly basis.

Questions, inquiries, comments, and suggestions pertaining to anything the REC does, should be addressed to REB staff. This is so the topic of concern will not be “tainted” by prior exposure to the issue if a commissioner is contacted, should future action be taken by the REC when reviewing disciplinary actions, settlement agreements, or issues brought before the Commission for an informal, non-binding interpretation of a real estate statute or rule, and/or a condominium statute or rule.

The Real Estate Branch does not provide legal advice and does not interpret the real estate licensing laws and rules found in Hawaii

Revised Statutes, Chapter 467, and the Hawaii Administrative Rules, Chapter 99, or Chapters 514A, 514B, and the accompanying rules in HAR, Chapter 107, which pertain to Condominiums.

The Real Estate Branch and the Real Estate Commission do not develop forms for real estate transactions. The forms commonly used in the industry are developed by the Hawaii Association of REALTORS® (“HAR”), and are available to its members. To find out if specific forms are available to non-members, contact the HAR.

The Real Estate Branch does not review and investigate complaints against real estate licensees. This is a function of the Regulated Industries Complaints Office (RICO). If the Real Estate Branch receives a complaint, it will be forwarded to RICO for further review.

License applications and change forms are first submitted and reviewed by the DCCA’s Licensing Branch. Although both REB and the Licensing Branch work under the same DCCA division, the Professional and Vocational Licensing Division (“PVL”), they are separate offices and have different functions, and their own policies and procedures, as well as processing times. The telephone number for Licensing Branch is 808-586-3000.

If a license application and/or change form has been transmitted to REB, one of the real estate specialists will be in touch for any follow-up, if necessary, to complete the application process. Note that not all license applications are reviewed by REB. Applications with “yes” answers are forwarded to REB for review.

Licensees who choose to become a member of a board of REALTORS® should not confuse the board’s membership dues and fees with the license renewal fees which are due November 30 of every even-numbered year. Licensee membership in professional organizations, such as a board of REALTORS® is NOT mandatory. However, principal brokers may dictate membership for the licensees associated with the brokerage.

The Real Estate Branch is located at 335 Merchant Street, Room 333, Honolulu, HI 96813. Website access is www.hawaii.gov/hirec. Telephone: 808-586-2643.

2015-2016 CORE COURSE, PART A

The Real Estate Commission’s mandatory core course 2015-2016, part A, was released on Friday, June 26, 2015, and continuing education providers may offer the course throughout the current biennium and through May 31 of the first year of the 2017-2018 biennium. The offering of Core A from January 1 – May 31, 2017, is primarily for those licensees who are reactivating or restoring their real estate license. All licensees who want to be current and active at the beginning of the new biennium, must complete the 20-hour CE requirement by November 30, 2016, the license renewal deadline. All licenses are valid until December 31 of the even-numbered year.

Part B will be developed and released about a year from now. The core course, worth 4 hours for each part, is on “Condominiums”. Part A covers structure and sales, and Part B will cover self-governance and some important issues regarding purchasing, selling, and living in a condominium unit.

As usual, the legislative update for each year in the biennium will also be included with the core course materials.

Core A is available in a live classroom format, as well as in an online format.

The Chair's Message



Aloha!

The National Association of REALTORS® (“NAR”) recently released a White Paper entitled, “A 2015 White Paper Report: Independent Contractor Status in Real Estate” (updated June 15, 2015). The White Paper was written in response to a wave of case laws from varying jurisdictions challenging the independent contract status of real estate licensees.

Although the industry was built on this relationship, one in which the agent should be “generally free from control,” every state’s real estate licensing laws ironically require that the broker supervise the actions of their licensees, similar to the supervisory duties of an employer over an employee.

States have been dealing with this tension between the independent contractor and employer-employee relationship by specifically exempting real estate licensees from certain labor laws, which would otherwise be applicable based on the relationship between brokers and their licensees. The following are a few of the carve outs:

- The Internal Revenue Service (“IRS”) considered real estate agents to be “statutory employees” if they meet certain criteria, exempting them from being treated as an “employee” for tax purposes.
- 29 states have worker compensation statutes that explicitly exempt real estate licensees from the definition of a “covered employee.”
- 22 states permit brokers to supervise real sales persons as independent contractors, not employees.

Hawaii’s real estate brokers and salespersons licensing law, Hawaii Revised Statutes (“HRS”), chapter 467, states in §467-1.5 that “Nothing in this chapter . . . shall be deemed to create an employer-employee relationship between a real estate broker and the broker’s licensees; . . .” The salesperson or broker-salesperson may be employed either directly or indirectly by a real estate broker, or an independent contractor. Hawaii has attempted to clarify the

broker-salesperson relationship as an independent contractor and not an employer/employee type of relationship through statutory carve outs. HRS, chapters 393 and 383 exempt from the definition of “Employment” for purposes of certain labor and health care applicable laws, service performed by a licensed real estate salesperson or broker if remuneration is by commission.

What could this reinterpretation of the broker-salesperson relationship mean for the real estate licensee community in Hawaii? This wave of case law could soon impact our state and despite legislatures’ efforts to clarify the independent contractor relationship, could shift the way the real estate industry has historically done business. Intended broker-salesperson relationships may be reinterpreted through case law as employer-employee relationships. Depending on the amount of control the broker has over the salesperson, brokerages could eventually be required to provide employee benefits, insurance and payment of employment taxes and would need to redesign their business models to remain lucrative.

To preserve the independent contractor relationship, NAR encourages the local industry to review and determine if additional statutory carve outs are necessary and to review local licensing and labor and employment statutes to determine if it secures the independent contractor relationship desired by the industry. Otherwise, proposing new legislation to clarify definitions and any necessary carve outs to existing law might be helpful in supporting case law in favor of the standard the industry desires – independent contractor vs. employer-employee relationships.

(s) Nikki Senter, Chair

The information in this article was taken from “A 2015 White Paper Report: Independent Contractor Status in Real Estate” (updated June 15, 2015). Go to www.realtor.org/sites/default/files/reports/2015/independent-contractor-white-paper-2015-03-25.pdf for a copy of the White Paper.

For more information on the White Paper, or this issue, contact Joe Molinaro, NAR Managing Director, Smart Growth and Housing opportunity, Community and Political Affairs (jmolinaro@realtors.org) or Lesley Walker, NAR Associate Counsel (lwalker@realtors.org).

Unlicensed Assistants in a Brokerage - What Can They Do? (cont. from page 1)

single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative, or planned unit development. ”

6. In Hawaii, there are no “specialty” real estate licenses. If you hold a current and active Hawaii real estate salesperson’s or broker’s license, you may sell commercial real estate, lease residential or commercial real estate, sell residential real estate, sell time share interests, and property manage real estate for more than a single owner. If you are a broker, you may also be a condominium hotel operator.

7. If an unlicensed receptionist is in the brokerage, handling potential walk-in clients, answering phone inquiries, etc. they may not perform any activities that require a real estate license. Think about it, it’s very difficult to stop a conversation, whether it is face-to-face or over the phone, because the unlicensed individual is being asked questions which only the licensee should be answering. It’s a best practice to have brokerage staff be real estate licensees.

4 Administrative Actions

January 2015

Todd T. Dickie
RS 53609

Case No. REC 2011-252-L
Dated 1/23/15

Findings of Fact:

On April 25, 2014, in REC 2011-252-L, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office (hereafter "Petitioner"), filed a petition for disciplinary action against the real estate salesperson's license of Respondent Todd T. Dickie (hereafter "Respondent").

A Notice of Hearing and Pre-Hearing Conference was filed on April 30, 2014, and served on Respondent on May 1, 2014.

Petitioner has been represented throughout these proceedings by Patrick K. Kelly, Esq., and Respondent has been represented throughout these proceedings by Eric A. Seitz, Esq.

On June 6, 2014, Petitioner filed a Motion for Summary Judgment.

A prehearing conference was held on June 6, 2014, and a Prehearing Order was filed June 10, 2014. The Petitioner's Motion for Summary Judgment was scheduled to be heard on August 5, 2014. Any evidentiary hearing necessary in the matter was scheduled to be held on August 5, 2014, following the hearing on Petitioner's Motion. In compliance with the Prehearing Order, Petitioner filed a Prehearing Statement on July 15, 2014.

Respondent filed his Prehearing Statement on July 22, 2014. This Prehearing Statement was also considered by the Hearings Officer to be Respondent's response to Petitioner's Motion for Summary Judgment.

The matter came before the undersigned Hearings Officer on August 5, 2014. Respondent was present with his counsel. The parties argued Petitioner's Motion for Summary Judgment, and the Hearings Officer took the motion under advisement.

An evidentiary hearing was thereafter held with respect to the recommended remedy for any statutory violations by Respondent.

Petitioner's Exhibits 1 through 8 and Respondent's Exhibits 1 through 8 were all admitted by agreement for purposes of both Petitioner's Motion for Summary Judgment and the evidentiary hearing.

Petitioner declined to call any witnesses at the evidentiary hearing. For this phase of the proceeding, Petitioner relied upon its previously submitted Prehearing Statement.

Respondent called Ms. Mary Worrall and Mr. A. James

Wriston, Jr., as character witnesses. Due to scheduling considerations, the hearing had to be adjourned at that point.

The hearing resumed on August 12, 2014. Petitioner was present and represented by counsel. Petitioner thereupon testified on his own behalf. The parties presented oral closing arguments. The entire matter was then taken under advisement.

Having reviewed and considered the evidence and argument presented at the hearing, together with the entire record of the proceeding, the Hearings Officer renders the following findings of fact, conclusions of law, and recommended order.

Beginning in December of 1993, Respondent was licensed by the Real Estate Commission (hereafter "Commission") as a real estate sales person under license number RS 53609.

Respondent is 52 years old. He grew up in Hawaii and attended the University of Southern California, where he earned a business degree. In addition to his Hawaii real estate license, he has had a real estate license in California since 1986.

Respondent has two children from a prior marriage. At the time of the hearing, one was 22 years old and had recently graduated from college on the mainland. The other child was 19 years old and still attending college on the mainland. Respondent has honored his financial obligations with respect to his children, including providing support and paying college expenses.

Respondent has worked full time for Mary Worrall's real estate company since 2002 and continues to work there currently even after there was a change of ownership in the company.

Respondent has never been sued by a client. To his knowledge, other than the present proceedings there have not been any complaints filed concerning his real estate activities or license.

Respondent and his wife are also involved in a network marketing company with respect to health products. That separate business has provided Respondent with 25% to 40% of his income in recent years.

A. Federal Court Conviction

On September 9, 2009, an indictment was filed in the United States District Court for the District of Hawaii, captioned United States of America vs. Todd Donald

Administrative Actions (cont. from page 4)

Dunphy, Krystle Jacqueline Dunphy, Todd Thurston Dickie, CR No. 09-00370 SOM. Count I of the indictment charged Respondent with conspiring and agreeing to distribute and to possess with intent to distribute approximately 60 pounds of marijuana. Count II of the indictment charged Respondent with knowingly, and for the purpose of evading federal reporting requirements, structuring transactions with a domestic financial institution. These activities were alleged to have been done while conspiring to distribute and to possess with intent to distribute marijuana and as a pattern of illegal activity involving more than \$100,000 in a 12-month period. Respondent was specifically alleged to have been involved in two financial transactions on February 27, 2008, and two financial transactions on February 28, 2008. (Pet. Exhibit 1).

On June 17, 2010, a Memorandum of Plea Agreement (“Memorandum”) was filed in the aforementioned federal criminal case. Pursuant to this Memorandum, signed by both Respondent and his attorney, Respondent agreed to the following:

a. Respondent would enter a voluntary plea of guilty to Count II of the Indictment charging him with attempting to cause a domestic financial institution to fail to file a currency transaction report for a currency transaction in excess of \$10,000 in violation of 31 United States Code (“USC”) 5324(a)(3) and 5324 (d)(2) as well as Code of Federal Regulations Section 103.11 and 18 USC 2.

b. In exchange for this plea of guilty, the government would move to dismiss Count 1 of the indictment.

c. As part of the Memorandum, Respondent agreed to the following language:

Defendant enters these pleas because he is in fact guilty of knowingly and for the purpose of evading the reporting requirements of 31 USC 5313(a) and the regulations promulgated thereunder, did structure cash bank deposits with domestic banks and did so as a part of a pattern of illegal activity involving more than \$100,000 in a 12-month period.

Pet. Exhibit 1, Section 6 at page 2-3.

d. Section 8 of the Memorandum, beginning on page 4 thereof, states that:

Defendant [Respondent herein] admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charges to which Defendant is pleading guilty. (Emphasis supplied)

Among the facts admitted by Respondent in the aforesaid Memorandum are the following:

a. The evidence at trial would show that co-defendant Todd Dunphy arranged to have marijuana shipped from California to Hawaii and distributed on Oahu by D.Y. that D.Y. gave the proceeds from marijuana sales to either Respondent’s two co-defendants or Respondent, and that Todd Dunphy and Respondent would meet D.Y. to collect proceeds from D.Y.

b. The evidence at trial would also show that “if Dunphy was not able to meet D.Y. to collect the proceeds then Dunphy would instruct D.Y. to give proceeds to Todd DICKIE. The evidence at trial would further show that DICKIE would call D.Y. to confirm the meeting and then meet D.Y. at D.Y.’s house where D.Y. gave him the proceeds.”

c. Respondent opened a savings account at the Kahala branch of Central Pacific Bank on February 27, 2008. That day, Respondent made a cash deposit of \$100 into that account. Respondent returned to that bank approximately one and one-half hours later and made a cash deposit of \$9,995 into that same account.

d. The next day, February 28, 2008, Respondent made a cash deposit of \$8,980 into the aforesaid account at the Kahala Branch of Central Pacific Bank. Approximately 40 minutes later, Respondent went to the Kapahulu Branch of Central Pacific Bank and made a cash deposit of \$1,160 into that same account.

e. Respondent “knew that banks have an obligation to report currency transactions in excess of \$10,000.” Pet. Exhibit 1, page 6.

9. On or about July 23, 2010, a document signed by United States District Judge Susan Oki Moll way and entitled “Acceptance of Plea of Guilty, Adjudication of Guilt and Notice of Sentencing” was filed in the federal criminal case. Pet. Exhibit 4. The document stated:

Pursuant to the Report and recommendation of the United States Magistrate Judge, to which there has been no timely objection, the plea of guilty of the Defendant [Respondent herein] to Count II of the Indictment is now Accepted and the Defendant is Adjudged Guilty of such offense. All parties shall appear before this Court for sentencing as directed. (Emphasis supplied)

10. On December 22, 2010, Respondent electronically submitted his license renewal application. His license was otherwise scheduled to expire on December 31, 2010.

11. Question No. 3 on that application asked: “In the past 2 years have you been convicted of a crime which has not been annulled or expunged?” Respondent answered “No” to that question. Pet. Exhibit 7.

12. On October 6, 2011, a Judgment against Respondent was entered in the federal criminal case. The Judgment recited that Respondent pleaded guilty to Count II of the indictment, that Respondent was “adjudicated guilty” of violating 31 USC 5324(a)(3) and 5324(d)(2) as well as 31 CFR 103.11 and 18 USC 2, and contained the sentence imposed on Respondent. Pet. Exhibit 6

13. Respondent was sentenced at that time to probation for a three year period, which time was to include four months of home detention during nonworking hours, 100 hours of community service, and a mandatory statutory assessment of \$100.00.

14. By letter dated October 17, 2011, Respondent’s attorney provided a copy of the Judgment of October 6, 2011, to an investigator at the Regulated Industries Complaints Office (“RICO”) of the Department of Commerce and Consumer Affairs. Resp. Exhibit 8.

(cont. page 6)

Administrative Actions (cont. from page 5)

15. Even though this October 17, 2011 letter was not sent to the Real Estate Commission, Respondent believed that submission of the letter qualified as reporting the conviction to the Real Estate Commission. Respondent did not explain the basis for this belief.

16. On November 29, 2012, Respondent electronically submitted his license renewal application. His license was otherwise scheduled to expire on December 31, 2012.

17. Question No. 3 on that application asked: "In the past 3 years have you been convicted of a crime which has not been annulled or expunged?" Respondent answered "No" to that question. Pet. Exhibit 8. This answer was false.

18. Respondent testified that he understood submission of the October 17, 2011 letter (Resp. Exhibit 8) satisfied all obligations regarding the October 6, 2011 conviction. He believed therefore, that he did not have to truthfully answer question number 3 on his 2012 license renewal application. Respondent did not explain the basis for this belief.

19. Respondent testified under direct examination by his attorney that he was asked as a favor by Todd Dunphy to make the cash deposits in question. This was consistent with the assertion on the second page of Respondent's Prehearing Statement that he was convicted "after making cash deposits at the request for[sic] a client." Said Prehearing Statement also asserted that "Respondent had no financial interest in those deposits."

20. On cross examination, however, Respondent testified differently and asserted that he "requested" the funds from Todd Dunphy and that the deposits were a loan because he wanted to borrow for his daughter's college education.

21. The money was in \$20 bills and was contained in a Bank of America deposit bag when Respondent received it. Respondent did not open the bags and count the money. Todd Dunphy told him how much was being deposited. When Respondent received the money, a deposit slip had already been made out with Respondent's bank account number on it. However, there could have been no such deposit slip when Respondent first opened the Central Pacific Bank account with a \$100 deposit. Respondent must have told Todd Dunphy the new account number in the approximately 90 minutes between the first and second deposits that day.

22. It should be noted that at the time of these deposits in 2008, Respondent's oldest daughter was approximately 16 years old and most probably not attending college since she is now 22 years old and has just finished college.

23. There was no promissory note or other documentation on this alleged loan. No interest was charged by Todd Dunphy, and Respondent asserted that there was no deadline to pay back this alleged loan. Respondent asserted that he has paid the money back but has no documentary evidence of that.

24. At the time of the cash deposits in question, Respondent already had a checking account at the Bank of Hawaii. Instead of using that checking account for the deposits, Respondent went to Central Pacific Bank and opened a new account which he used for the deposits of

the funds. Respondent had no pre-existing account at Central Pacific Bank. He asserted that he wanted a location close to his office but also noted that the Bank of Hawaii has a location near his office.

25. Respondent provided no explanation of why he opened a separate account for receipt of the deposits in question or why he gave Todd Dunphy the account number for this newly opened account.

26. Respondent testified that he did not know where the money came from, and, contrary to the expected testimony of the bank tellers, he asserted that the money did not smell of marijuana.

27. Respondent testified that he did not think it strange that the alleged loan came in multiple parts, with some parts close to \$10,000 and other parts that were much smaller amounts of money.

28. Respondent asserted that he did not know structuring the financial transactions as he did was a crime or against the law. Even so, however, in the Memorandum (Pet. Exhibit 3), Petitioner admitted that he was guilty of structuring the transactions "knowingly and for the purpose of evading the reporting requirements."

29. When asked what was on his mind when Todd Dunphy asked him to make the deposits, Petitioner admitted to using bad judgment but avoided answering the question.

B. District Court Judgment of 2009

30. Prior to October 23, 2009, ten (10) charges of willful failure to file a tax return in violation of HRS §231-55 were filed against Respondent in the District Court of the First Circuit, State of Hawaii. On October 23, 2009, a Judgment and Order of Restitution was entered against Respondent in said District Court. Respondent was ordered to pay restitution in the total amount of \$59,770.00

31. Respondent did not report this Judgment and Order of Restitution to the Commission within thirty days of its entry.

32. Respondent testified that this Judgment was paid in full but did not testify as to when that was done, so there was no evidence that the Judgment was satisfied within thirty days of entry.

33. On the second page of his Prehearing Statement, Respondent claims that the failure to report this Judgment to the Commission "was simply an oversight." At the hearing, however, Respondent claimed he did not understand that he had to report the judgment even though it was satisfied.

C. District Court Judgment of 2012

34. On December 5, 2012, a judgment against Respondent in the amount of \$444.97 was entered in the District Court in the case of EM Associates, Inc. etc. vs. Todd Dickie. Pet. Exhibit 5.

35. Respondent did not report this Judgment to the Commission within thirty days of its entry.

36. Respondent did not know about this judgment until receiving the Petitioner's Motion for Summary Judgment with attached exhibits.

Administrative Actions (cont. from page 6)

37. Respondent speculated about the basis of the judgment but does not really know what the judgment was about and has not investigated the matter since receiving a copy of the judgment.

38. Petitioner did not introduce any evidence concerning the basis of this \$444.97 judgment.

A. Respondent's 2010 Renewal Application

Respondent's 2010 license renewal application is dated December 22 of that year. Pet. Exhibit 7. At that time, Petitioner had already pleaded guilty in federal court and had been adjudged guilty by United States District Judge Susan Old Mollway. See Pet. Exhibit 4, dated July 23, 2010, which states:

Pursuant to the Report and Recommendation of the United States Magistrate Judge, to which there has been no timely objection, the plea of guilty of the Defendant [Respondent herein] to Count 11 of the Indictment is now Accepted and the Defendant is Adjudged Guilty of such offense. All parties shall appear before this court for sentencing as directed. (Emphasis supplied)

The 2010 license renewal application, however, was submitted before the October 6, 2011 entry of "Judgment in a Criminal Case" in federal court. Pet. Exhibit 6.

Respondent asserts that he was not "convicted of a crime" until the 2011 entry of judgment so that his 2010 license renewal application was correct when he answered "no" to whether he had "been convicted of a crime which has not been annulled or expunged" in the past two years.

The word "convicted" is not defined on the license renewal application form. Both parties provided argument on whether the 2010 adjudication of guilt amounted to a "conviction," but neither side provided any helpful research on this issue. Based upon independent research, the Hearings Officer finds and concludes as follows:

a. The license renewal application form is a State of Hawaii form utilized in State of Hawaii licensing procedures and the State of Hawaii's regulation of real estate salespersons within the State. It should be interpreted under Hawaii law.

b. With respect to the subject of convictions, Hawaii has adopted a Uniform Act on Status of Convicted Persons, HRS §831-1 et seq.

c. HRS §831-2(b) requires that a public office is forfeited as of the "date of conviction" of a felony. This statute further defines the "time of conviction" as "the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court." ¹ The statute also states: "An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section."

¹ For convictions in federal court, the date for forfeiture is the "date a certification of the conviction is filed in the office of the lieutenant governor." This procedural vehicle does not provide a relevant analogy for determining the date of conviction for licensing purposes.

d. Utilizing HRS §831-2(b) by analogy in this proceeding, Respondent was "convicted" when "determined to be guilty by the court." That date was July 23, 2010, when Respondent was "adjudged guilty" by Judge Mollway.

e. HRS §831-3.2(a) sets forth parameters for the expungement of an arrest record of someone "charged but not convicted of a crime." In connection therewith, HRS §831-3.2(f)(l) defines "conviction" as "a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court." In this case, guilt was determined by Judge Mollway's order of July 23, 2010. The later 2011 Judgment repeated that Respondent was guilty and provided for his sentence, but he had already been determined to be guilty in 2010.

f. In Hawaii criminal proceedings:

The meaning of the term "convicted" or "conviction" varies according to the context in which it appears and the purposes to which it relates. The word "conviction" is more commonly used and understood to mean a verdict of guilty or a plea of guilty. The more technical definition includes the judgment or sentence rendered pursuant to an ascertainment of guilt. (Citations omitted)

State v. Akana. 68 Haw. 164, 167, 706 P.2d 1300, 1303 (1985). In that case, for a statute mandating revocation of probation upon a "conviction," the term meant the determination of guilt by a guilty plea or verdict, and not a judgment of conviction. Here, Respondent argues for "the more technical definition." However, it makes more sense from the point of view of protection of the public in licensing situations to require notification of a conviction to the licensing authority at the first instance of a conviction, an adjudication of guilt, rather than wait a lengthy period of time (some 14 months in this case) before all aspects of the criminal proceeding are finally concluded and sentence is imposed.

Accordingly, the Hearings Officer finds and concludes that Respondent had been convicted of a crime as of July 23, 2010, and that he falsely answered question number 3 on his December 22, 2010 license renewal application in violation of HRS §467-20.

The Hearings Officer further finds and concludes that the incorrect answer to the aforesaid question number 3 was a material misrepresentation in violation of HRS §467-20. For purposes of the licensing statute in question, a negligent or unintentional material misrepresentation is sufficient to show a violation of that statute. Kim v. Contractors License Board, 88 Haw. 264, 965 P. 2d 806 (1998).

B. Respondents 2012 License Renewal Application

There is no question that Respondent had been convicted of a crime within three years of his submission of the November 29, 2012 license renewal application. Even under Respondent's more technical definition of "conviction," the conviction occurred on October 6, 2011.

Administrative Actions (cont. from page 7)

Respondent asserts an excuse here. He claims he “understood” that reporting the conviction to a RICO investigator was sufficient notice to the Commission so that he could incorrectly say “no” in answering question number 3 on his 2012 renewal application. The logic of this excuse escapes the undersigned Hearings Officer because the answer to question no. 3 is indisputably “yes” whether the conviction was otherwise reported earlier or not.

Accordingly, the Hearings Officer finds and concludes that Respondent falsely answered question number 3 on his December 22, 2010 license renewal application in violation of HRS §467-20.

The Hearings Officer further finds and concludes that the incorrect answer to the aforesaid question number 3 was a material misrepresentation in violation of HRS §467-20.

Respondent’s reasoning, motivation, and/or negligence in answering question number 3 are irrelevant. For purposes of the licensing statute in question, a negligent or unintentional material misrepresentation is sufficient to show a violation of that statute. Kim v. Contractors License Board, 88 Haw. 264, 965 P. 2d 806 (1998).

C. Failure to Report the Conviction

Respondent did not report his July 23, 2010 conviction to the Commission within thirty days. This is a violation of HRS §436B-16. While Respondent may not have considered this a conviction, that issue goes to the question of the appropriate recommended disciplinary action. It does not excuse the failure to report.

Further, assuming for purposes of argument that Respondent’s conviction did not occur until October 6, 2011, Respondent did not report that conviction to the Commission within thirty days. This is a violation of HRS §436B-16. The significance of the report made to the RICO investigator can be taken into account with respect to the recommended disciplinary action for this violation, but that report is not sufficient to satisfy the statutory requirement of written notice “to the licensing authority.”

D. The Two District Court Judgments Against Respondent

The Respondent admitted failing to report the 2009 judgment to the Commission. This was a significant judgment both in terms of amount (almost \$60,000) and in terms of the underlying liability of failure to pay taxes. That Respondent allegedly did not understand that he had an obligation to make such a report does not excuse the failure to report. Accordingly, the failure to report the 2009 judgment is a violation of HRS §436B-16.

The December 5, 2012 judgment for \$444.97 is a different story. While Respondent showed a remarkable lack of interest in finding out what this judgment was about, nevertheless there was no proof that Respondent ever knew about this judgment prior to the institution of this proceeding. Respondent could not report a judgment that he did not know had been entered against him. Accordingly, the Hearings Officer finds and concludes that Respondent did not commit a disciplinary violation of HRS §436B-16 with respect to a failure to report the December 5, 2012 judgment.

E. Respondent’s Federal Court Conviction

Respondent pleaded guilty to a serious crime involving financial manipulations of a significant amount of money not once but twice. Furthermore, this was not a mere “status” crime or one merely involving arcane or obscure federal regulations.

As set forth in the Judgment of Conviction (Pet. Exhibit 6) Petitioner was guilty of violating 31 USC §5324(a)(3). The statute has the overall title of: Structuring transactions to evade reporting requirement prohibited.” The specific section in question states:

(a) Domestic coin and currency transactions involving financial institutions - No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or record keeping requirements imposed by an order issued under 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508:

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

When this anti-money laundering law was originally passed, only a person who “willfully” violated the prohibition on structuring could be found guilty. The Supreme Court held in Ratzlaf v. United States, 510 U.S. 135 (1994), that proving a “willful” violation required the government to prove the defendant acted with knowledge that his conduct was unlawful. Following this decision, Congress promptly amended the statute to eliminate willfulness as an element necessary for a conviction.

Since the statute was amended in 1994, the government must prove the following elements in order to obtain a conviction:

1. The defendant must, in fact, have engaged in acts of structuring;
2. [The defendant] must have done so with knowledge that the financial institutions involved were legally obligated to report currency transactions in excess of \$10,000; and
3. [The defendant] must have acted with the intent to evade this reporting requirement.

United States v. MacPherson, 424 F.3d 183, 189 (2d Cir. 2005). (Emphasis supplied)

Thus, Respondent acted not once but twice with the intent to evade reporting requirements that he knew Central Pacific Bank would be obligated to fulfill on account of his transactions in February of 2008. Contrary to Respondent’s closing argument, the crime here was not one merely of “strict liability” involving no proof of knowledge or intent.

In addition, Respondent incurred imposition of a significant judgment for failure to pay his taxes on several occasions and hid this from the Commission by failing to report the judgment.

Administrative Actions (cont. from page 8)

These circumstances add up to a failure of honesty, truthfulness, and financial integrity. The Hearings Officer finds and concludes that, based upon the federal conviction and the 2009 judgment, Respondent is subject to disciplinary action under HRS §467-14(20) as well as HRS §436B-19(12) and HRS §436B-19(14).

F. Procuring a license through misrepresentation

Respondent also violated HRS §436B-19(5) when he procured the renewal of his license at the end of 2010 by answering “no” to question no. 3. As discussed above, he had already suffered a conviction at that time. The alleged lack of legal clarity as to whether he did suffer a conviction created by his arguments in this proceeding could be pertinent to the type of sanction recommended (discussed below), but it does not provide a defense to this charge because, as discussed above, an innocent or negligent misrepresentation is still a misrepresentation for the purposes of the licensing statutes.

Similarly, Respondent violated HRS §436B-19(5) when he answered “no” on question number 3 of his 2012 license renewal application. The relevant time frame for this question was three years (increased from two years on the previous license renewal application). Thus, the 2010 conviction should have been acknowledged on the 2012 license renewal application. Again, the alleged legal uncertainty surrounding the issue of whether Respondent was convicted in 2010 could be pertinent to the type of sanction recommended. Alternatively, if the conviction did not occur until 2011, the answer to question no. 3 on the 2012 license renewal application was still false.

There are some gaps in the record if the conviction is considered to have occurred in 2011. Respondent reported the conviction to one division of the Department of Commerce and Consumer Affairs because that division had informed Respondent that his conduct was being investigated. While that does not technically satisfy the reporting requirements of HRS §436B-16, it is possible that there was or could/should have been some coordination between the investigator and the Commission after the investigator received the report. Petitioner introduced no evidence on this subject. Thus, while there was a misrepresentation on the 2012 license renewal application, Petitioner has not satisfied its burden of proving that the license renewal of 2012 was “procured” by this misrepresentation. With the record murky here, the Hearings Officer declines to find a violation of HRS §436B-19 with respect to the 2012 license renewal application.

ORDER

A. Revocation of License

The crime to which Respondent pleaded guilty was a serious one. To admit, as Respondent does, that his actions were the result of “bad judgment” is to admit the obvious. However, to the Hearings Officer, there is more than mere bad judgment involved here.

1. Respondent illegally structured two transactions. There was more than one isolated incident.
2. Respondent first claimed that he made the deposits as a favor for a friend. How could he not know there was something unsavory going on with his friend? Friends do not normally hand you bags of \$20 bills totaling around \$20,000 to deposit “as a favor.” Didn’t Respondent wonder why his friend could not physically deposit this money himself? Didn’t Respondent wonder why his friend couldn’t deposit this money in his own account? If Respondent was perform-

ing a “favor,” why did he open a totally new bank account just to deposit all this cash? Even if Respondent did not know this large amount of money was involved with an illegal marijuana operation of some kind, he must have known that some kind of illegal activity was going on.

3. Respondent changed his story between his direct examination and his cross-examination. His first version of events did not put him in a very good light. His second version of events – there was no favor to Todd Dunphy but, instead, a loan to Respondent – did not put Respondent in a better light. There are still all of the questions set forth immediately above about all of this money in \$20 bills and the opening of a separate bank account when Respondent already had a bank account. Further, Respondent admitted there were no records of any loan or and there were no terms of any loan. The testimony about a loan was not very convincing because it was so sketchy. Respondent’s change of story only made him look worse.

4. Respondent knew what he was doing was wrong. As discussed above, he knew there was a reporting requirement and he acted as he did “for the purpose of evading that requirement.” As noted above, the Hearings Officer cannot accept Respondent’s argument that this was a mere “strict liability” crime with no knowledge or intent of any kind involved. To the contrary, in pleading guilty, Respondent admitted that he knew there were reporting requirements and he structured the transactions for the purpose of evading them. i.e., he did what he did with the intent to evade the requirements. To argue that this was a mere “strict liability” crime is to actually attempt to denigrate the seriousness of the offense. Such an argument only contributes to the impression that Respondent has not come to grips with the seriousness of his offense.

5. Besides changing his story during the hearing, Respondent was evasive in his testimony. When asked what he was thinking when he structured the transactions, Respondent avoided answering the question. Responding that it was bad judgment on his part was not an answer to the question. Respondent is an educated person, and there is no doubt that he understood the question. The question went to the heart of what Respondent did, and he deliberately avoided answering it.

6. In addition, the judgment for almost \$55,000 in unpaid taxes was a serious matter. Although not a conviction, the judgment resulted from ten criminal charges of willful failure to pay taxes. There was, therefore, more than one incident of non-payment – there was an alleged pattern of failure to pay over a period of time. Further, someone who allegedly needs a \$20,000 loan for college expenses normally does not accumulate \$55,000 in taxes due to the State of Hawaii in one year (as an estimate, at an 8% income tax rate, income of a little less than \$680,000 would be involved). The fact that the judgment was paid off at some unknown date (and Respondent could have, but did not, introduce evidence of a specific payment date or dates) is noteworthy but not a mitigating factor – financial integrity involves paying your tax obligations when they are due, not failing to make payments over a period of time and only paying once criminal charges are filed.

7. The failure to report the judgment is also a serious matter. In essence, Respondent hid his financial problems from the Commission by that failure. To claim that this was an “oversight” demonstrates Respondent’s disregard for the rules relating to his profession. To claim that he did not “understand” the judgment had to be reported because it was satisfied, which is not the same excuse as an “over-

(cont. page 10)

Administrative Actions (cont. from page 9)

sight," also demonstrates Respondent's disregard for the rules. It is an unreasonable excuse. Respondent did not point to anything in the rules that would even hint that reporting the judgment was excused because the judgment was satisfied. Further, if Respondent had thought clearly about the matter, he would have "understood" that the Commission was entitled to know about such a serious matter so that it could make its own judgment as to how to deal with it, taking into account, as well, any payments made to satisfy the judgment.

8. Respondent presented a very unreasonable excuse about failing to answer "yes" to question number 3 on his 2012 license renewal application. Respondent has not pointed to anything on the application form or in the Commission's rules that say you can falsely say you had not suffered a conviction on an application form when you had reported it earlier. This is another instance of Respondent's disregard for the rules.

9. In making this recommendation, the Hearings Officer is not relying upon the failure to report the criminal conviction on Respondent's 2010 license renewal application. There was considerable debate about whether Respondent was convicted in 2010. Although the Hearings Officer has determined that the correct answer is "yes," the Respondent could in good faith have been thinking differently. Petitioner did not prove otherwise. Thus, while there was a statutory violation in the failure to report the judgment, the circumstances do not provide any additional support for revocation of Respondent's license.

10. In making this recommendation for revocation, the Hearings Officer has taken into consideration the mitigating factors presented by Respondent, e.g., the letter of support written to the federal court four years ago, the testimony of Ms. Worrall and Mr. Wriston, the lack of further violations since the ones described above, and the lack of known complaints regarding Respondent's real estate activities. Nevertheless, the Hearings Officer does not believe them sufficient to overcome the factors cited above that are the basis for the revocation recommendation.

11. At page 2 of its Prehearing Statement, Petitioner lists ten previous Commission decisions in support of its request for revocation. Merely providing a list of cases without any analysis of their alleged similarities to the present case was not helpful. For example, are cases involving convictions for kidnapping or third degree assault particularly relevant to the present situation? In addition, some of the cases involved pro se respondents or respondents who did not appear at their hearing, and the Hearings Officer does not normally rely upon such cases as persuasive precedent. Further, none of these cases are publicly available at the present time because they were made well before January 2, 2009, and only decisions made after that date are currently posted on the website of the Office of Administrative Hearings (and there is no evidence that Petitioner made copies of those old decisions available to Respondent). For these reasons, the Hearings Officer's recommendation of revocation is not based in any way on the cases cited by Petitioner.

12. The Hearings Officer has considered the case of Office of Disciplinary Counsel v. Christopher M. Fujiyama, Haw. ___, P.3d __ (August 13, 2014), involving disciplinary proceedings against an attorney who suffered a federal conviction for intentionally and knowingly trafficking in counterfeit goods. He was sentenced to three years of probation, a six-month home detention during non-working hours, and a \$20,000 fine (his crime injured the corporate owners of the rightful trademarks). The criminal activity reflected

adversely on the attorney's honesty, trustworthiness, and fitness as a lawyer and involve dishonesty, fraud, deceit or misrepresentation. Mitigating factors included:

His previously clean disciplinary record, his timely, good-faith effort at restitution, his cooperative attitude with federal investigators, his full disclosure to the Disciplinary Board, his cooperative attitude toward the disciplinary proceedings, the other penalties imposed upon him for his conduct [listed above], the support he received from 19 individuals attesting to his character, and his expressions of genuine remorse.

In view of all of the above, Mr. Fujiyama's license to practice law was suspended for two years.

In comparing Mr. Fujiyama's case to that of the Respondent, the Hearings Officer notes that imprisonment was not ordered in either case. Mr. Fujiyama had to pay a fine, and his conduct involved economic injury to others, but neither of those elements is present here. Both men had support from members of the public. However, the Hearings Officer considers Respondent's crime to be more serious because of the intent involved, the obvious connections of the bags of \$20 bills to some kind of criminal activity, and Respondent's action of facilitating that connection by opening up a separate bank account. Furthermore, Respondent's inconsistent, evasive, and sometimes unlikely testimony, as well as his unreasonable excuses, are in contrast to Mr. Fujiyama's cooperation and genuine remorse. The Hearings Officer therefore is recommending revocation of Respondent's license rather than merely a two year suspension of his license.

B. Imposition of a Fine

In addition to the recommended revocation of Respondent's real estate salesperson's license, the Hearings Officer also recommends imposition of a fine in the total amount of \$2,000.00 based upon the following:

1. A fine of \$500.00 . . . due to the failure to timely report the 2009 judgment.
2. A fine of \$500.00 . . . due to the misrepresentation on the 2012 license renewal application that Respondent had not suffered a conviction in the previous three years.
3. A total fine of \$1,000.00 for the violations of HRS §§467-14(20), 436B-19(12), and (14).

Final Order: Revocation of license. Fine of \$2,000.00.

Violations: HRS §§467-20, 467-14(20), 436B-16, 436B-19(5), (12), and (14).

Administrative Actions (cont. from page 10)

April 2015

Jennifer G. Miguel

Case No. REC 2013-88-L
Dated 4/24/15

Findings of Fact:

1. Respondent was originally licensed as a real estate salesperson, License No. RS 60311, on or about February 20, 2002. Said license expired on December 31, 2012 and is currently forfeited.
2. On or about November 16, 2011, a Superseding Indictment was filed in the United States District Court of Hawaii in a case designated as *United States of America vs. Estrellita "Esther" Garo Miguel, et al., Cr. No. 10-00527 SOM* ("Criminal Case").
3. The Indictment charged the defendants, including Respondent, with knowingly conspiring and agreeing with others to commit federal offenses including conspiracy to commit wire fraud and making false statements on loan applications, wire fraud, mortgage loan fraud and money laundering.
4. According to the Indictment, Respondent engaged in a conspiracy the purpose of which was to defraud lending institutions and others by making materially false representations that induced them to engage in and fund loan transactions related to residential properties, and in so doing, to obtain a portion of the funds, as well as to profit from the fees and commissions.
5. On or about May 22, 2012, Respondent entered into a plea agreement in the Criminal Case in which she entered a voluntary plea of guilty to the charges of knowingly conspiring and agreeing with others to commit federal offenses, to wit,

conspiracy to commit wire fraud and wire fraud.

6. Respondent acknowledged, among other facts, that she worked as a loan officer at Easy Mortgage, which was owned and operated by Estrellita Garo Miguel; that in Respondent's capacity as a loan officer, she made false representations on Uniform Residential Loan Application Form 1003s on behalf of loan applicants which were submitted to mortgage lenders some of which were federally insured; that she caused materially false documents such as Verification of Rent forms, CPA letters and Verifications of Deposit to be submitted to lenders in support of loan applications; and that in reliance on the false statements in the loan applications and the falsified supporting information, lenders approved residential real estate loans and wired funds from their bank accounts in other states to the bank accounts of escrow companies in Hawaii responsible for the closing of the real estate transactions based upon the fraudulent representation in the application forms.

7. On February 12, 2013, Judgment was entered in the Criminal Case and Respondent was sentenced to 17 months imprisonment followed by 3 years of supervised release.

Sanction: Revocation of License.

Violations: HRS §467-14(20), §436B-19(12) and §436B-19(14)

May 2015

Waikiki Realty II, Inc.,
RB 16133
Gwen M. Tanno,
RB 9965

Case No. REC 2011-136-L
Dated 5/29/15

Allegations:

In 2010 Elizabeth Steed filed a RICO complaint (hereafter "Steed RICO Complaint") against the Respondents on behalf of her daughter Hannah Steed. Hannah Steed began a tenancy with the Respondents sometime in 2009.

While the Steed RICO Complaint was still pending, Hannah Steed filed two lawsuits (hereafter "Steed Lawsuits") against the Respondent Waikiki Realty II in the Small Claims Division of the District Court of the First Circuit, Honolulu Division, State of Hawaii. The Steed Lawsuits sought damages for a variety of alleged wrongs including a claimed failure to return security deposit funds, and property damage, stemming from Hannah Steed's 2009 tenancy. Plaintiff prevailed in both

of her lawsuits and two separate judgments, totaling \$9763.79, were entered in her favor and against Respondent Waikiki Realty II on or around 4/5/11 (hereafter "Steed Judgments").

During the course of investigating the Steed RICO Complaint Petitioner discovered two more lawsuits that were filed against the Respondents, in small claims court, in 2005 involving security deposit and/or rental-property related claims. Both plaintiffs prevailed in their individual lawsuits, and, two separate judgments totaling \$4050.82 were entered against Respondent Waikiki Realty II later that year.

Respondents vigorously contested the Steed Lawsuits and considered appealing the Steed Judgments but did not.

(cont. page 12)

Administrative Actions (cont. from page 11)

May 2015

Respondents did not report the two Steed Judgments in writing to the Commission within 30 days. However, in response to Petitioner's investigation, on or around 6/12/12 Respondent Tanno provided a copy of a written summary of the two Steed Judgments directly to the Commission.

The Steed Judgments have been satisfied in full.

The 2005 Judgments were satisfied also.

Representations by Respondents

Respondents assert that they vigorously contested the Steed Lawsuits and the Steed RICO complaint. Respondents assert further

that Respondents considered appealing the Steed Judgments but did not after said judgments were satisfied.

Respondents assert that until Petitioner began investigating the Steed RICO Complaint that they were unaware that adverse actions like judgments must be reported in writing to the Commission in 30 days. Respondents assert further that they did not try to hide or conceal any judgment that is the subject of this case.

Sanction: Fine of \$500.00.

Violations: HRS §436B-16(a), HRS §436B-19(17)

Abe Lee Realty, LLC dba Able Lee Realty, and, Abraham W.H. Lee a.k.a. Abe Lee, real estate brokers

Case No. REC 2011-292L
Dated 5/29/15

Allegations:

Sometime in 2009 the Respondents entered into a contract (hereafter "Contract;") with Phillip G. Kuchler, Inc. (hereafter "Kuchler") to purchase Kuchler's real property management agreements for certain properties in effect at the time of the sale. Kuchler, like the Respondents, was a real estate broker at the time the parties entered into the contractual relationship.

Sometime thereafter a dispute or dispute(s) arose between the parties regarding and respecting the Contract, and, in or around February of 2010 Kuchler filed a demand for arbitration.

The arbitration between the parties was held, over a period of several days, in 2010 and 2011.

On or around 4/25/11 the arbitrator entered a written award (hereafter "Arbitration Award") in favor of Kuchler as the prevailing party, and against the Respondents, in the amount of \$172,845.55. The Arbitration Award determined also that Respondent Abe Lee was personally responsible for \$66,941.87 of the total monetary sum pursuant to a guarantor provision in the Contract.

After 4/25/11 Kuchler filed a special proceeding, in the Circuit Court of the First Circuit, to confirm said Arbitration Award.

The dispute(s) at the arbitration level and in the Circuit Court of the First Circuit appears, to Petitioner, to have been vigorously contested by both parties. It further appears to Petitioner that unfortunate and unforeseen circumstances, and different expectations and opinions, rather than intentional bad faith or reckless conduct, may have led to the disagreement(s) and dispute(s) that resulted in the arbitration.

Respondents did not report to the Commission, in writing within thirty days of 4/25/11, the Arbitration Award.

In response to Petitioner's investigation of this matter, however, Respondent Abe Lee provided Petitioner with a copy of the Arbitration Award in around November of 2011.

Respondent Abe Lee provided Petitioner with a copy of an "Entry of Satisfaction of Judgment and Order re: Abraham W.H. Lee" soon after it was entered in Circuit Court in February of 2012.

Sanction: Fine of \$500.00.

Violations: HRS §436B-16(a), HRS §436B-19(17)

Paul A. Mainzer, a Real Estate Salesperson RS 74792

Case No. REC 2014-132-L
Dated 5/29/15

Allegations:

On or around 11/11/13 the Respondent was adjudged guilty in the District Court of the Second Circuit, State of Hawaii, of the crime of driving under the influence (hereafter "Conviction"). See HRS § 291E-61.

The Respondent disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §436B-19(12), HRS §436B-19(14), HRS §436B-19(17)

(cont. page 13)

Administrative Actions (cont. from page 12)

June 2015

Jeremy T. Stice,
a.k.a. **Jeremy Stice,**
a **Real Estate Broker**
RB 21286

Case No. REC 2013-253-L
Dated 6/26/15

Allegations:

Sometime in 2003 the Respondent was convicted in the State of Hawaii of the crime of driving under the influence (hereafter "2003 Conviction"), see HRS § 291E-61, and, in 2007 the Respondent was convicted in the State of Hawaii of the crime of reckless driving (hereafter "2007 Conviction"). See HRS § 291-2.

The Respondent fulfilled all Court-imposed terms and conditions of the 2003 and 2007 Convictions.

The Respondent did not disclose the 2003 Conviction on the original RS application form that was submitted to the Commission in 2006 nor did the Respondent disclose the information in connection with any license renewal form submitted thereafter.

The Respondent did not disclose the 2007 Conviction in connection with any license renewal form submitted to the Commission thereafter.

The Respondent eventually disclosed both Convictions to the Commission in connection with a broker application form that was submitted in or around March of 2013.

Sanction: Fine of \$1,000.00.

Violations: HRS §§436B-19(12), (14), HRS §§436B-19(1), (2), (5), (12), and (14), HRS §467-8(a)(3), HRS §467-14(13), and HRS §467-20.

James Small,
a **Real Estate Salesperson**
RS 72279

Case No. REC 2013-272-L
Dated 6/26/15

Allegations:

Sometime on or around 2/9/10 the Respondent pled no contest in the District Court of the First Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction"). See HRS § 291E-61.

The Respondent disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §§436B-19(12), (14), and (17)

Shannon T.K.S. Feliciano, Jr.,
a **Real Estate Salesperson**
RS 69571

Case No. REC 2014-35-L
Dated 6/26/15

Allegations:

Sometime on or around 12/17/13 the Respondent pled no contest in the District Court of the First Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction"). See HRS § 291E-61.

The Respondent disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §§436B-19(12), (14), and (17)

Joel T. Koetje,
a **Real Estate Salesperson**
RS 22037

Case No. REC 2014-103-L
Dated 6/26/15

Allegations:

On or about 4/2/09 the Respondent pled guilty in the District Court of the First Circuit, State of Hawaii, to the crime of driving under the influence (hereafter "Conviction"). See HRS § 291E-61.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

When the Respondent submitted a license renewal application to the Commission in 2010 the Respon-

dent did not answer "yes" to the question that asks whether the licensee has been convicted of a crime in the previous 2 years. There are, however, mitigating factors present in connection with Respondent's failure to disclose the Conviction at that time.

Sanction: Fine of \$500.00.

Violations: HRS §§436B-19(12), (14), and (17)

Justin V. Bizer,
a **Real Estate Salesperson**
RS 70616

Case No. REC 2014-118-L
Dated 6/26/15

Uncontested Facts:

On or about 6/8/09 the Respondent was adjudged guilty in the District Court of the First Circuit, State of Hawaii, of the crime of driving under the influence (hereafter "Conviction"). See HRS § 291E-61.

The Respondent eventually disclosed the Conviction in writing to the Commission.

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction.

Sanction: Fine of \$500.00.

Violations: HRS §§436B-19(12), (14), and (17)

Statutory/Rule Violations

Settlement Agreement (Allegations/Sanction): The Respondent does not admit to the allegations set forth by the Regulated Industries Complaints Office (RICO) and denies having violated any licensing law or rule. The respondent enters in a Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing on the matter.

Disciplinary Action (Factual Findings/Order): The respondent is found to have violated the specific laws and rules cited, and the Commission approves the recommended order of the Hearings Officer.

HRS §467-14(20)	Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
HRS §467-20	False statement
HRS §436B-16	Notice of judgments, penalties
HRS §436B-16(a)	Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.
HRS §436B-19(5)	Procuring a license through fraud, misrepresentation, or deceit.
HRS §436B-19(12)	Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license.
HRS §436B-19(14)	Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

Clarification of Reporting Requirements - Transient Accommodations Operators By Department of Taxation

During the 2012 Legislative Session, Act 326, Session Laws of Hawaii, (Act 326) was enacted, requiring associations of apartment/unit owners to report certain relevant information on units being operated as transient accommodations, as well as requiring the display of certain information in advertisements. With the pending sunset of Act 326 on December 31, 2015, the State Legislature revisited the requirements of Act 326, and ultimately, passed out Senate Bill 519 SD1 HD1 CD1, which attempts to improve compliance by transient accommodations operators.

For the remainder of 2015, the reporting requirements under Act 326 are still in effect - therefore, associations are required to continue to report this relevant information to the Department's reporting website through December 31, 2015. Relevant information for units being operated as transient accommodations during 2015 must be reported by December 31, 2015, or within 60 days of a change in records. To accommodate reporting of any changes that may occur in late 2015, the Department will continue to maintain the reporting website until at least March 1, 2016.

Governor David Ige signed Senate Bill 519 SD1 HD1 CD1 into law on July 2, 2015. The bill, now known as Act 204, Session Laws of Hawaii 2015, (Act 204) is effective January 1, 2016. Act 204 improves and clarifies some of the reporting requirements of Act 326. Unlike Act 326, Act 204 does not require that information be reported to the Department of Taxation or any other State agency, nor create any obligations for associations of apartment/unit owners or planned com-

munity associations. Instead, Act 204 creates requirements strictly on the owners or other operators of the transient accommodations, and upon operators of websites advertising transient accommodations in the State of Hawaii.

Specifically, Act 204 requires that operators of transient accommodations designate an on-island local contact; display the local contact's name, telephone number and email address inside the unit; and provide the local contact information either in online advertisements, or to the guest upon check-in. Act 204 also requires that the TAT license number used to report the transient accommodation revenue be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link.

The penalty for failure to display the local contact information is a fine of \$500 per day for first violations; \$1,000 per day for a second violation; and \$5,000 per day for third and subsequent violations. Similarly, the penalty for failure to display the TAT license number is \$500 per day for first violations; \$1,000 per day for second violations; and \$5,000 per day for third and subsequent violations. The penalty for failure to display the TAT license number in online advertisements may be imposed on both the operator of the transient accommodation, and the operator of the website advertising the unit.

Act 204 may be viewed in its entirety at www.capitol.hawaii.gov. Additional information or clarification may be issued by the Department of Taxation prior to January 1, 2016.

Prelicense Schools

Abe Lee Seminars	808-942-4472
Akahi Real Estate Network LLC	808-331-2008
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
Carol Ball School of Real Estate	808-871-8807
Coldwell Banker Pacific Properties Real Estate School	808-597-5550
Continuing Ed Express LLC	866-415-8521
Dower School of Real Estate	808-735-8838
Fahrni School of Real Estate	808-486-4166
Inet Realty	808-955-7653
ProSchools, Inc.	800-452-4879
Ralph Foulger's School of Real Estate	808-239-8881
REMI School of Real Estate	808-230-8200
Seiler School of Real Estate	808-874-3100
University of Hawaii Maui College - OCET Real Estate School	808-984-3231
Vitousek Real Estate Schools, Inc.	808-946-0505

Continuing Education Providers

Abe Lee Seminars	808-942-4472
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
American C.E. Institute, LLC	727-224-3859
American School of Real Estate Express, LLC	866-739-7277
Carol Ball School of Real Estate	808-871-8807
Carol M. Egan, Attorney at Law	808-222-9725
Coldwell Banker Pacific Properties Real Estate School	808-597-5550
Continuing Ed Express LLC	866-415-8521
Dower School of Real Estate	808-735-8838
Eddie Flores Real Estate Continuing Education	808-951-9888
Hawaii Association of Realtors	808-733-7060
Hawaii Business Training	808-250-2384
Hawaii CCIM Chapter	808-528-2246
Hawaii Island Realtors	808-935-0827
Honolulu Board of Realtors	808-732-3000
Institute of Real Estate Management – Hawaii Chapter No. 34	808-536-4736
Institute of Real Estate Management – National	312-329-6058

Condominium Direct Subscription Email

The Real Estate Commission has launched a condominium direct subscription email list to provide greater access to unit owners and the general public to relevant educational and informational materials. The REC may occasionally send out the condominium bulletin, law changes and other information. Interested parties may subscribe to the REC email list at: cca.hawaii.gov/reb/subscribe/.

Aleta Klein Confirmed



Interim commissioner Aleta Klein, CRS, GRI, BPO, was confirmed by the Hawaii Senate on April 22, 2015 as a Real Estate Commissioner, representing O'ahu. She was an interim commissioner effective July 16, 2014.

Ms. Klein is active in the real estate community having served on the Commission's Education

Evaluation Task Force, and the current Ad Hoc Committee on Education. She has also served on the Board of Directors for the Hawaii Association of REALTORS® from 2004-2008, and as its Treasurer in 2008. She served eight years on HAR's Standard Forms Committee, and on the Professional Standards and Arbitration Committee from 2003-2008.

She is a trained mediator.

International Association of Certified Home Inspectors (InterNACHI)	303-502-6214
Kama'aina Realty LLC, dba RP Seminars Unlimited	808-753-3083
Kauai Board of Realtors	808-245-4049
Lorman Business Center, Inc. dba Lorman Education Services	715-833-3940
McKissock, LP	800-328-2008
OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
Pacific Real Estate Institute	808-524-1505
ProSchools, Inc.	800-299-2207
Ralph Foulger's School of Real Estate	808-239-8881
Real Class, Inc.	808-981-0711
Realtors Association of Maui, Inc.	808-873-8585
REMI School of Real Estate	808-230-8200
Russ Goode Seminars	808-597-1111
Servpro Industries, Inc.	615-451-0200
Shari S. Motooka-Higa	808-457-0156
The CE Shop, Inc.	888-827-0777
Vitousek Real Estate Schools, Inc.	808-946-0505
West Hawaii Association of Realtors	808-329-4874

Rules

The light at the end of the tunnel is visible. The rule amendments for Hawaii Administrative Rules, Chapter 99, are in the last stages of approval. The rule amendments are being reviewed by the Commission's Deputy Attorney General, after which the new rules will go to Governor Ige for the final approval.

WHEN? The new rules should be good to go by the "end of summer".

State of Hawaii
Real Estate Commission
King Kalakaua Building
335 Merchant Street, Room 333
Honolulu, HI 96813

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2015 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

**Condominium Review Committee – Upon adjournment of the Laws & Rules
Review Committee Meeting**

**Education Review Committee – Upon adjournment of the Condominium
Review Committee Meeting**

Wednesday, August 12, 2015
*** Friday, September 4, 2015**
Wednesday, October 7, 2015
Tuesday, November 10, 2015
Wednesday, December 2, 2015

* The Friday, September 4, 2015 meetings will be held at the
West Hawaii Civic Center, Community Meeting Hale (Bldg. G),
74-5044 Ane Keohokalole Highway, Kailua-Kona, HI 96740.

Real Estate Commission – 9:00 a.m.

Friday, August 28, 2015
Friday, September 25, 2015
Friday, October 23, 2015
Wednesday, November 25, 2015
Friday, December 18, 2015

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586-2643 to submit your request.

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