

Real Estate Commission Bulletin



Finally!! New Rules In Effect

Over 11 years in the making, at LOOONG last, the rule amendments to Hawaii Administrative Rules (“HAR”) Chapter 99, Real Estate Brokers and Salespersons, have been signed by Governor Ige on December 9, 2016!!! The effective date is December 19, 2016, ten days after signing.

The rule-making process is a lengthy, 26-step journey which provides ample opportunity for affected parties to provide comment all along the way. The process was followed to a “T”, with NO red flags, discrepancies, controversies, opposition, or resistance ever raised. However, the advertising section of the proposed rule amendments was removed from the package for further discussion and collaboration.

The advertising language as proposed in HAR §16-99-11 read: “(a) All real estate advertising and promotional materials shall prominently and conspicuously include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission and the license number of the brokerage. The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e). . . . (d)(3) Include the licensee’s license number as issued by the commission.”

With the advertising section removed, the remaining rule package proceeded once again on the long trek back to the Governor. Independently, the advertising section will start anew on its own 26-step journey.

SO, what are the changes? In summary, here are some of the notable changes:

- 1) Real estate licensees may now REPEAT the SAME continuing education (“CE”) course (exact same title) IN EVERY OTHER BIENNIUM. The rule uses the language that a licensee shall not take a continuing education course for which the licensee has already received a certificate “within two consecutive biennia.” The old rule stipulated that no CE course could ever be repeated. (See §16-99-95)
- 2) Prelicense instructors must pass the instructor’s exam upon initial certification, but no longer have to repeat the instructor’s exam every three years. The three-year repeat exam rule was eliminated. (See §16-99-58(g), which is amended.)
- 3) §16-99-58(g)(1) is new. It now states that a prelicense instructor may NOT be certified if the individual has been disciplined by the commission or any state or by any licensing authority for fraud, misrepresentation, or deceit in connection with any real estate-related activity. Previously, this rule was only applicable to CE instructors. (See §16-99-104(d)(1))
- 4) The prelicense education equivalency (“EW”) application is changed significantly. There are now only two (2) categories a broker candidate may choose from to qualify for the EW which will waive the candidate from taking the Hawaii broker prelicense course. (See §16-99-37) The two qualifying categories are for those who hold an out-of-state broker’s license that was active within one year prior to the date of the application, and those who are graduates of an accredited law school in the U.S.

For salesperson applicants, three (3) categories remain, for those who hold a current license, active within one year prior to the date of the application, graduates of an accredited law school in the U.S., and those who hold a bachelor of arts or bachelor of science degree with a major in real estate or business from an accredited U.S. college or university. (See §16-99-37(b))

- 5) Prelicense course completions must be reported within ten days of the class completion date. Previously there was no stipulated reporting deadline. (See §16-99-62)
- 6) A CE course must be input into the commission’s online system just three calendar days prior to the course offering date. Previously, there was a fourteen (14) day requirement.
- 7) Evaluations of CE instructors – see §16-99-104(d)(3). This is a new rule. The commission does not certify CE instructors. It is the responsibility of the CE Provider to see that the instructors used to teach courses offered by the provider meet the requirements in this entire section. The evaluation component will be established with input from the real estate education community.

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8) Instructor's development workshop ("IDW"). Previously, the old rule stated the IDW should be completed "within the biennium." The new language in §16-99-104 (which applies to CE instructors) states the IDW must be completed "prior to teaching in each biennium." Instructors who completed an IDW in 2015-2016 are eligible to teach in the 2017-2018 biennium. The commission will be sponsoring an IDW in the 2017-2018 biennium. Prelicense instructors also have to complete an IDW prior to recertification.

(See §16-99-58(c))

9) There is an emphasis added on student evaluations of CE instructors. See new rules §§16-99-121(b)(5), 16-99-121.1.

To view a complete draft of the proposed rule changes, go to www.hawaii.gov/hirec. (**Note: underscored material is the new rule content. Material that is crossed through is deleted.**) Below are the approved new rules.

§16-99-3 Conduct.

(k) The brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm. This requirement shall not apply in cases where the licensee or the licensee's estate is receiving compensation from a former brokerage firm for commission earned while the licensee was affiliated with that former brokerage firm[.], regardless of whether the licensee is on inactive status or on forfeited status or deceased.

(o) Prior to the time the principal broker or the ~~[broker in charge] broker-in-charge~~ is absent from the principal place of business for more than thirty calendar days, and no other ~~[broker in charge] broker-in-charge~~ is registered [with] for the principal place of business, the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary ~~[broker in charge] broker-in-charge~~, who shall acknowledge the temporary designation by signing the notification. In case of prolonged illness or death where the principal broker or ~~[broker in charge] broker-in-charge~~ is unable to act, another broker shall be designated as the temporary principal broker or ~~[broker in charge] broker-in-charge~~ within thirty days of the illness or death with appropriate notification ~~[to the commission] and statement of a licensed medical doctor certifying to the commission the inability of the broker to practice. [A temporary principal broker or broker in charge arrangement shall not exceed a period of six months, with the right to extend prior to expiration for another six months for good cause and with the approval of the commission.]~~

A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months unless, prior to expiration of the initial six-month period, the principal broker requests and obtains, upon a showing of good cause for such extension, approval of the commission to extend the temporary arrangement for up to an additional six months.

§16-99-4 Client's account; trust funds; properties other than funds.

(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts. The neutral escrow depository shall be located in the same state where the property is located.

§16-99-5.1 Involuntary inactive license status.

(d) A brokerage firm's license, whether a corporation, limited liability company or partnership, shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

(1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;

(2) The brokerage firm is no longer registered with the business registration division;

(3) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-993(o);

(4) The brokerage firm has no approved place of business; and

(5) The principal broker is absent from the place of business for more than thirty days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99-3(o).

§16-99-36 Education requirement. The education requirement for the salesperson license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-five] ~~sixty~~ class hours and conforming to the approved curriculum for salesperson adopted by the commission or such equivalent education or experience as shall be determined by the commission. The education requirement for the broker license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-six] ~~eighty~~ class hours and conforming to the approved curriculum for brokers adopted by the commission or equivalent education or experience as shall be determined by the commission. A "class hour" as used in this section means sixty minutes of classroom instruction.

The Chair's Message



Happy New Year!

This appears to be a year that will bring many changes, expected and unexpected. The long awaited passage of the rule amendments to Chapter 99, Hawaii Administrative Rules, was achieved effective December 19, 2016. The number of licensees appears to have decreased about 15%. This is not

a final result and is subject to change in the next month or so. This biennium's core course topics will be technology and real estate, and agency-dual agency. Take time to read the below California Supreme Court decision regarding dual agency. Dual agency is a slippery slope, so beware if acting as a dual agent.

On November 21, 2016, the California Supreme court affirmed the appeals court decision in *Horiike v. Coldwell Banker Residential Brokerage Company et al.*¹ that listing agents owe a fiduciary duty to buyers when both buyers and sellers are represented by the same brokerage firm.

This case involves a transaction in 2007 between two agents of two different offices of Coldwell Banker. Chris Cortazzo was the listing agent out of the Malibu West office and Chizuko Namba was the buyer's agent from the Beverly Hill's office.² During the showing, Cortazzo gave the buyer a flyer advertising the living area of the \$12.25 million Los Angeles home to be approximately 15,000 square feet. After purchasing the home, the buyer discovered the 1998 building permit, provided to buyer by Cortazzo, listed the square footage at 11,050 square feet. The MLS listing did not specify any square footage and Cortazzo was aware that there were discrepancies in the living area of the home prior to the sale. The MLS listing, however, contained a disclosure that "Broker / Agent does not guarantee the accuracy of the square footage" and Cortazzo provided the buyer a standard advisory that buyer should hire an appraiser or surveyor to get an accurate square footage.

The buyer filed suit against Cortazzo and Coldwell Banker, alleging that they both breached their fiduciary duties to him.³ The sole issue before the California Supreme Court was whether Cortazzo, as an associate licensee representing Coldwell Banker, had a duty to buyer to inform him about the area discrepancy and more specifically to investigate and disclose all facts materially affecting the residence's value or desirability, regardless of whether the buyer could've discovered such facts through its own diligence.

California's licensing statute states, "[w]hen an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions."⁴ Cortazzo argued that the "equivalent" duty pertains to responsibilities and duties as an associate salesperson. The buyer argued that it extends to all duties of the brokerage, including fiduciary duties. The court held that Cortazzo owed the buyer the same dual agency duties as the brokerage company, including fiduciary duties. This means that an associate licensee does not have an independent agency relationship with the clients of his or her broker, but rather an agency relationship that is derived from the agency relationship between the broker and the client. The court explained that Cortazzo was thus charged with carrying out Coldwell Banker's fiduciary duty to buyer to learn and disclose all material information affecting the value or desirability of the property.

In the Horiike case, the court's holding was based on the California's broker statutes. In Hawaii, our rules dealing with dual agency only address requirements for sufficient disclosure. With this recent precedent setting case in our 9th circuit, what does this mean for Hawaii dual agency standards? The court recognized some inherent issues with dual agency, including how an agent would be able to provide "undivided loyalty of an exclusive salesperson," and how the required fiduciary duty to both parties could actually harm the original client by disclosing clients' motivations and beliefs. These are concerns which may be trending our way and that the legislature and the courts in Hawaii may have to address in the near future.

(s) Nikki Senter, Chair

¹ *Horiike v. Coldwell Banker Residential Brokerage Co. et al.*, 383 P.3d 1094, 210 Cal. Rptr. 3d, 2016 Cal. LEXIS 9428.

² California law permits dual agency, provided that the real estate agents inform their clients of the agency relationships involved and obtain the client's consent. The statute also requires the agents to provide their clients with a form entitled "Disclosure Regarding Real Estate Agency Relationship." Both agents provided the required dual agency disclosures to their clients. Civ. Code §§2079.14, 2079.16, 2079.17.

³ The trial judge dismissed the claim against Cortazzo holding that he was an exclusive seller's agent and owed the buyer no fiduciary duty. Buyer appealed to the appellate court, which reversed and remanded.

⁴ Civil Code §2079.13(b).

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§16-99-37 Education equivalency. (a) The commission may grant an equivalency to the respective education requirements for applicants for the salesperson ~~and broker~~ license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited law school in the United States; ~~of~~ or
- (3) Bachelor of arts or bachelor of science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business[;].
- [(4) Those who have successfully completed at least six semester credits in real estate, business, business law, real estate development, or finance courses at an accredited college or university; and
- (5) Those who have received a professional designation and recognized certificates of completion as accepted by the commission including a GRI designation; certificate in advanced real estate from the University of Hawaii, small business management program.]

~~(b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:~~

- ~~(1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and~~
- ~~(2) Graduates of an accredited law school in the United States.~~

~~[(b)] (c) All requests for equivalency to the educational requirements shall be submitted in writing, together with all supporting documents of an official nature to the commission for its review, prior to filing the application for examination.~~

~~[(c)] (d) An approved education equivalency shall be valid for two years from the date of issuance.~~

§16-99-52.1 Independent study courses. . . .

(b) An independent study course for satisfaction of the salesperson education requirement shall reasonably require the student to expend [forty-five] a minimum of sixty hours in completing the course. An independent study course for satisfaction of the broker education requirement shall reasonably require the student to expend [forty-six] a minimum of eighty hours in completing the course.

§16-99-53 Application for registration. . . .

~~(c)(8)(C) No bond shall be required to cover real estate students only enrolled in an independent study course delivered electronically or as approved by the commission;~~

§16-99-58 Faculty.

(d) Each instructor shall initially take and pass an examination with a minimum passing score of eighty-five per cent or as prescribed by the commission and shall:

~~(g) [Every instructor, every three years, as a condition of recertification for each course the instructor chooses to teach, shall take and pass an instructor's exam, demonstrating the instructor's current command of the prelicense course.] An instructor may not be certified if the individual has been:~~

(1) Disciplined by the commission or any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; or

(2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate.

§16-99-61 Certificate of completion. . . . The certificate shall be valid for a period of two years from the date of issuance. The date of issuance shall be the class completion date.

§16-99-62 Records. (a) Each school shall maintain records on the following:

(3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued[;], which shall be submitted to the commission within ten days of the class completion date;

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(b) Within ten days of issuance of a Hawaii school completion certificate, the school shall submit to the commission:

(1) A listing of students who have completed the course with their course completion certificate number, curriculum instructor names and date when the when the certificate of completion was issued; and

(2) Other information requested by the commission.

[(b)] (c) These records shall be maintained for a three-year period, shall be kept current, and shall be available for inspection by the commission.

§16-99-66 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by an accredited real estate school for the purpose of promoting the school or soliciting students and shall include, but not be limited to, all printed, [and] audio, and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, current and future technology, and others.

§16-99-87 Definitions. As used in this subchapter:

"Course and course offering" means a continuing education module of instruction certified by the commission, consisting of a minimum of three clock hours [.] and a maximum as the commission may determine.

"Professional standards and practice courses" means course content relating to real estate professional development[.] that improves real estate competency of the licensee or for the benefit of the real estate consumer, or both.

§16-99-03 Excess continuing education hours. Except as permitted by sections 16-99-91 and 16-99-92, continuing education clock hours obtained in excess of [ten hours] the continuing education hours required by section 467-11.5, HRS, cannot be carried forward to satisfy the continuing education requirements for any subsequent license renewal.

§16-99-95 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course [that is substantially similar to a course] for which the licensee has already received a certificate[.] within two consecutive biennia. [A continuing education provider shall not issue to a licensee a certificate for substantially the same course completed by the licensee. "Substantially similar" as used in this section means that at minimum, seventy five per cent of the course content of a course is repeated in another course offering.]

§16-99-96 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any two consecutive biennium, the clock hours for each course taught[.] except the core course which may be recognized for clock hours each biennium. The one time use applies even when the instructor has taught the course more than once.

§16-99-99 Application for registration as a continuing education provider. . . .

(a) A continuing education provider shall be responsible for the administration of the course offering. An application for registration as a continuing education provider shall be made to the commission on a form prescribed by the commission. . . . and include at least the following: . . .

(7) A surety bond conditioned for the protection of all contractual rights of real estate students in an amount not less than \$2,000 issued by a surety authorized to do business in the State; provided that no bond shall be required if [the provider submits a statement certifying that no monies shall be collected from real estate students in advance of the class date;] the course is delivered electronically or as approved by the commission; . . .

§16-99-101 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which:

(1) Does not directly relate to real estate law or real estate practice;

(2) Is related to passing a prelicense real estate salesperson or broker exam;

(3) Teaches general office [and business] skills, such as [typing,] word processing, basic internet skills, computer software or other technology, [speed reading, memory improvement, report writing,] personal motivation, [salesmanship, sales psychology,] and time management;

(4) Includes sales or promotions of a product or service or other meetings held in conjunction with general real estate brokerage activity;

(5) Is devoted to meals or refreshments;

(6) Is less than three clock hours in duration; and

(7) Does not meet the definition of continuing education as determined by the commission.

§16-99-104 Criteria for certification of a continuing education instructor.

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(d) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the provider if the individual has been:

(3) Determined to have scored below the minimum requirements as established by the commission, which may include a standardized student evaluation rating.

(e) The commission may require that each instructor complete an instructor's workshop as approved by the commission [or complete viewing a commission approved audio videotape of such workshop within the biennium.] prior to teaching in each biennium.

§16-99-112 Record keeping information and retention period. (a) A real estate continuing education provider shall maintain for a period of at least four years records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, student evaluations, and personal information and resumes of its instructors and administrators. . .

§16-99-121 Faculty

(b) The administrator shall be responsible for:

(5) Administering and maintaining the student evaluations; and minimum rating standards of instructors

(6) Ensuring that instructors do not fall below minimum rating standards.

§16-99-121.1 Instructor evaluation. (a) Course providers shall implement a standardized student evaluation process as determined by the commission.

(b) Course providers shall ensure that student evaluations of instructors do not fall below the minimum rating standards as determined by the commission.

§16-99-147.1 Condominium hotel operations. The condominium hotel operator shall operate only in areas specifically authorized by county zoning codes. The condominium project declaration and bylaws shall specifically permit transient lodging of less than thirty days

§16-99-147.2 Who may register as a condominium hotel operator. (a) Only those persons who do not hold a real estate license, either salesperson or broker, may register as a condominium hotel operator.

(b) Where an entity includes the following persons holding a real estate salesperson or broker's license, that entity may not register as a condominium hotel operator:

(1) General or employee of a partnership condominium hotel operator;

(2) An officer or employee of a corporation condominium hotel operator;

(3) A member of a member-managed limited liability company condominium hotel operator; or

(4) A principal having direct management and responsibility over condominium hotel operations, including performing or facilitating the delivery of customary hotel services.

§16-99-148 Fidelity Bond

(g) The fidelity bond shall not be required of an individual owner providing apartments or units for transient lodging; provided that ownership of the apartment or unit is in the individual owner's name and not in an entity's name; and provided further that the owner has no employees. Where the individual owner has an employee, the individual owner shall obtain and maintain a fidelity bond.

§16 99 149 Client's trust funds, accounting, and records. (a) Condominium hotel operators, including condominium hotel operators who are [excluded or exempt from obtaining a real estate broker's license pursuant to section 467 30(f), HRS] precluded from holding a license as a real estate broker or real estate salesperson pursuant to 467-30(g)(2), HRS shall comply with section 16 99 4. For purposes of compliance, when the condominium hotel operator is not a real estate broker, references to broker or principal broker in section 16 99 4 shall also mean "condominium hotel operator."

The Client's Trust Account

"The devil is in the details."

The Client's Trust Account ("CTA") is a requirement in Hawaii Administrative Rules ("HAR"), §16-99-4, Client's account; trust funds; properties other than funds. All principal brokers (PB) and brokers-in-charge ("BIC") should familiarize themselves with the "details" in this section. Why? The "devil" will get you if you don't!

The HAR rules on client's accounts remains unchanged. Here are the important facts to understand when creating a CTA and maintaining it well.

- 1) A trust fund account shall be maintained in this State. The principal broker is the designated trustee of the account. (HAR §16-99-4(a))
- 2) Records must be retained for at least three years, and kept in Hawaii. (HAR §16-99-4(b))
- 3) Trust funds must be placed into a neutral escrow depository or in a trust fund account by the next business day following receipt. The escrow depository shall be located in the same state where the property is located. (HAR §16-99-4(d))
- 4) The PB or BIC shall not commingle client's funds with other moneys. It is not considered commingling to: (a) Hold an uncashed check until offer acceptance when directed to do so by the buyer; (b) Hold an uncashed check after offer acceptance when directed to do so by the seller; (c) Maintain a minimum amount in the CTA to keep the account open. (HAR §16-99-4(h))
- 5) §16-99-4(h) also states, "Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the brokerage firm's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned."
- 6) Only with written authorization by the PB or BIC may a salesperson, broker-salesperson, or employee handle trust properties other than funds. Without written authorization, the salesperson, broker-salesperson or employee shall not handle trust properties. The PB or BIC is responsible for trust properties they authorize a salesperson, broker-salesperson, or employee to handle. (HAR §16-99-4(i))
- 7) No person may have custody or control of trust properties held by the PB or BIC except as provided in Chapter 467, Hawaii Revised Statutes. (HAR §16-99-4(j))
- 8) A PB may allow a BIC to have custody and control of trust properties. The PB and BIC shall be jointly responsible for any trust properties the PB authorizes the BIC to handle. (HAR §16-99-4(k))
- 9) Escrow account information, records for real estate transactions for the brokerage firm shall be retained for at least three years, and is subject to inspection by the commission or its representative at the place of business. (HAR §16-99-4(l))

Some common questions posed to the Real Estate Branch by entities seeking to obtain licensing as a real estate brokerage in Hawaii:

- 1) The owner of the entity wants control of the brokerage's monies, which includes check disbursements. The owner is not a Hawaii real estate licensee. ANSWER: NO! The PB is the bottom-line, responsible individual. Only the PB or designated BIC has control over the brokerage's monies.
- 2) The brokerage's bank account is located in another state. ANSWER: NO! The trust fund account must be maintained in Hawaii.
- 3) The bank requires two signatures for check disbursements. Can the 2nd signature be a non-licensuree or licensee other than the PB? ANSWER: The PB is the trustee of the account. If the bank requires a second signature, the real estate rules do not specify who that second signatory may be.
- 4) Do all monies received by the brokerage have to flow through the client's account? ANSWER: NO. If monies are the result of a fiduciary relationship, then these funds flow through the client's account. And in light of #5 above, funds for disbursement for commissions, management fees, and other fees need to be disbursed in a reasonable amount of time, from the client's account. See HAR, §16-99-3(e), "The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items."

8 Administrative Actions

September 2016

**Roxanne S. Reyes and
Kim M. Asuncion**
RB 59575

Case No. REC 2008-72-L
Dated 9/30/16

Findings of Facts:

Respondent Reyes was licensed as a real estate salesperson on June 14, 2001, License No. RS 59575. Respondent's license expires on December 31, 2016. Respondent Reyes was employed by Fred M. Uedoi, dba Komo Mai Asset Management ("Komo Mai") or ("Principal Broker") from July 24, 2001 to January 31, 2008, and Brooks T. Bowman from February 1, 2008 to July 7, 2010.

On November 13, 2003, Respondent Reyes filed Articles of Incorporation for "R&R All Star Asset Management, Inc." The nature of business was identified as "Personal Real Estate Assets". Respondent Reyes was identified as a Director, and was listed as an incorporator of the company with David Reyes.

R&R All Star Asset Management, Inc. was never licensed to engage in real estate activity in Hawaii.

On June 1, 2005, R&R All Star Asset Management, Inc. was dissolved. Also on June 1, 2005, Respondent Reyes filed Articles of Incorporation for Limited Liability Company for "R&R All Star, LLC". Respondent Reyes was listed as an initial member along with David Reyes.

On April 29, 2008, the Business Registration Division, Department of Commerce and Consumer Affairs, received notification that R&R All Stars, LLC changed its members from Respondent Reyes and David Reyes to Erica Antonello.

R&R All Star, LLC was never licensed to engage in real estate activity in Hawaii.

In 2007, Justin Decker and Jodee Mhoon ("Complainants") filed a complaint with the Honolulu Board of Realtors against Principal Broker and Respondent Reyes. After a hearing on December 12, 2007, an Opinion and Decision was issued on January 11, 2008, where the Hearing Panel found that Mr. Decker presented a clear, strong and convincing case that Respondent Reyes and Principal Broker did not act in the best interests of Mr. Decker by failing to account for client funds, in violation of Article I of the Code of Ethics of the National Association of Realtors. The Hearing Panel found:

They did not provide documents, accounting statements and invoices to Complainant Decker in a timely manner and after repeated requests to do so. Invoices

provided to Complainant Decker were vague and did not clearly indicate who provided the services and who was paid for the services. Further, Respondents Reyes and Uedoi failed to transfer the tenant's security deposit to Complainant Decker. or Complainant Mhoon when the fiduciary relationship was terminated and even after repeated requests to do so.

The Hearing Panel also found that Mr. Decker presented a clear, strong and convincing case that Respondent Reyes had not kept the tenant's and owner's money separate from her own funds and Principal Broker had not responsibly made sure that the Complainants' funds were in a separate trust account run by Principal Broker, in violation of Article 8 of the Code of Ethics of the National Association of Realtors.

The Hearing Panel found that Mr. Decker presented a clear, strong, and convincing case that Respondent Reyes and Principal Broker had not provided competent property management services in violation of Article 11 of the Code of Ethics of the National Association of Realtors by:

failing to keep client funds separate from their own personal funds; providing wrong information requiring a property owner to have a licensed real estate agent to manage a property for an owner not residing on the same island where the property is located, failing to turn over documents, contracts and information in a timely manner even after the fiduciary relationship was terminated; and failing to return the tenant's security deposit in a timely manner.

The Board of Directors of the Professional Standards Panel of the Honolulu Board of Realtors affirmed the Hearing Panel's decision on February 11, 2008.

By a letter dated February 14, 2008, the Honolulu Board of Realtors notified Petitioner of the decision by the Hearing Panel and the affirmation of the decision by the Professional Standards Panel.

At the Honolulu Board of Realtors hearing, Respondent Reyes testified that the only properties she managed were her own personally owned property, and only agreed to manage Mr. Decker's property through R&R All Star because she believed that she could legally manage one property for one owner, other than herself and collect a fee without running it through Komo Mai.

Administrative Actions (cont. from page 8)

By a letter dated March 28, 2008, Petitioner informed Respondent Reyes and Principal Broker about the complaint filed against them. By a letter dated April 4, 2008, Respondent Reyes responded to the complaint by asserting that Respondent Asuncion managed Mr. Decker's rental and that Principal Broker refused to allow Respondent Asuncion to process the rental through Komo Mai so they processed it through another business account. Respondent Reyes also told Petitioner's investigator that R&R All Star was created to manage her own property that she rented out and that the Decker property was the only property managed by R&R All Star that she did not own.

By a letter dated April 24, 2008, Principal Broker responded to the complaint by asserting that Respondent Reyes acted:

"unilaterally and without my knowledge as it pertains to the Opinion and Decision ... However with respect to the matters outlined in the Opinion and Decision, I was wholly unaware, until it was too late ... As a remedial matter, upon receiving word of the Complaint before the HBR, it was my intention to release her from my office--as it was clear to me that it would be impossible for me to supervise any individual who secretly conducted real estate activities-- which I did on January 21, 2008.

R&R All Star LLC had 2 checking accounts at Bank of Hawaii, Account No. 7080 from March 15, 2006 to August 21, 2009 and Account No. 981 from August 20, 2009 to January 31, 2010. R&R All Star LLC also had a Money Market Savings Account No. 3631 from March 15, 2006 to January 31, 2010.

R&R All Star Asset Management, Inc. had a checking account at Bank of Hawaii, Account No. 3039 from November 19, 2003 to May 9, 2006, and a Savings Account No. 0369 from November 19, 2003 to March 15, 2006.

Petitioner subpoenaed records from the Honolulu Board of Realtors. When comparing the copy of Mr. Decker's rental management agreement from the Honolulu Board of Realtors with the one Respondent Reyes gave to Petitioner, Petitioner discovered that the two were not identical. The one from Respondent Reyes omitted "R&R All Star LLC" from the title and was only two pages. The copy subpoenaed from the Honolulu Board of Realtors (which was received from Mr. Decker) was three pages.

Petitioner subpoenaed records from the Bank of Hawaii and found that property management activity was being conducted through the three business checking accounts referenced in Findings of Fact Nos. 15 and 16. Petitioner found that a sampling of rents and security deposits handled by Respondents Reyes and Asuncion from 2003 to 2010 totaled \$394,961.91.

Respondent Reyes, through R&R All Star, managed properties owned by people other than Respondent Reyes.

Respondent Reyes, through R&R All Star managed rental property for Judy Cheng from 2006 to 2009.

Petitioner had to subpoena records from the Bank of Hawaii because Respondent Reyes did not comply with Petitioner's request to provide it copies of her records.

Petitioner incurred a total of \$752.40 in fees, costs, or expenses to serve Respondent Reyes with the Notice through publication of the Notice in the *Honolulu Star-Advertiser*.

Violations: HRS §§ 467-1, 467-14(6), (8), (13), (20), 436B-19(6), (7), (8), (16), and HAR §§ 16-99-3(b), 16-99-4(a), 16-99-4(d), 16-99-4(g), 16-99-4(i).

Order:

Voluntary revocation of Respondent's license.

Fine of \$50,000.00.

Pursuant to HRS §§ 92-17 Respondent pays a cost of \$752.40. Payment of the fine and costs are a condition of relicensure.

10 Administrative Actions (cont. from page 9)

Atlantica K.V. Tanuvasa
RS 63212

Case No. REC 2010-237-L
Dated 9/30/16

Findings of Facts:

Respondent was licensed as a real estate salesperson on January 30, 2004, License No. RS 63212. Respondent's license expired on December 31, 2010 and was forfeited on December 31, 2015.

On August 11, 2010, an Indictment was filed against Respondent and others in the United States District Court for the District of Hawaii in *United States of America v. Atlantica Kahaunani "Nani" Tanuvasa, et al.*, Cr. No. 10-00528. The Indictment was based on conduct the Respondent allegedly engaged in as a loan officer with Easy Mortgage Corporation, Unlimited Wealth Transfer Mortgage, and as a real estate agent in the State of Hawaii.

The Indictment alleged 33 counts of violations of federal law related to a knowing and willful conspiracy among Respondent and others that began in July 2004 in order to devise and carry out a scheme to defraud and obtain money from lenders and others by submitting false and fraudulent loan applications to lending institutions for sham real estate transactions. The lenders then transferred funds from their bank accounts to escrow companies in Hawaii responsible for the closings of the fraudulent real estate transactions and then the defendants distributed the proceeds to coconspirators and collected their standard transaction fees, commissions, and costs associated with the transactions.

On September 21, 2012, a Memorandum of Plea Agreement was filed, in which Respondent agreed: 1) to enter a voluntary plea of guilty to Counts 1, 21 and 27 of the Indictment, 2) that the Memorandum of Plea Agreement shall be filed and become part of the record in the case, and 3) to enter the guilty pleas "because she is in fact guilty of conspiring to commit wire fraud and make false statements on loan applications in furtherance of a scheme to defraud financial lending institutions".

In the Plea Agreement, Respondent admitted that she was a loan officer working first at Easy Mortgage and later at Wealth Transfer Mortgage which Respondent owned and operated. Respondent also admitted that she made or caused to be made false representations on behalf of loan applicants and in so doing submitted materially false and fraudulent loan applications to lending institutions. At times, Respondent directed distribution of loan proceeds to participants of the scheme and collected equity that the property gained, standard transaction fees, commissions, and costs associated with the transactions.

Respondent also recruited co-defendant Michelle Kama to sign a loan application dated July 10, 2006, related to the re-finance of a property located at 1021 6th Avenue, Honolulu, Hawaii. The loan application signed by Ms. Kama contained false information about her intention to use the property as her primary residence. Respondent and Ms. Kama knowingly submitted information they knew to be false in order to induce RESMAE Mortgage Corporation to wire funds in interstate commerce to fund the loan transaction. On July 20, 2006, RESMAE transferred \$771,728.19 from their account in New York to the Hawaii bank account of Old Republic Title and Escrow.

Respondent also recruited T.N. to sign a loan application dated January 18, 2007 related to the purchase of a property located at 94-353 Apowale Street. The loan application contained false information about T.N.'s intent to occupy the property as a primary residence. Respondent and T.N. knowingly submitted information they knew to be false in order to induce Impac Lending Group to wire funds to fund the loan transaction. On January 25, 2007, Impac Lending Group transferred \$876,522.00 from their bank account in New York to the Hawaii bank account of Old Republic Title and Escrow.

On October 11, 2012, an Acceptance of Pleas of Guilty, Adjudication of Guilt and Notice of Sentencing was issued by Susan Oki Mollway, Chief United States District Judge.

On October 30, 2013, a Judgment in a Criminal Case ("Judgment") was entered against Respondent. The Judgment set forth that Respondent pleaded guilty to Counts 1, 21 and 27 of the Indictment, that Respondent was sentenced to 55 months imprisonment with all terms to run concurrently, that she was to surrender for service of sentence before 10:00 a.m. on March 13, 2014, and that Respondent must pay restitution jointly and severally with co-defendants Estrellita Miguel and Jennifer Miguel to Colate Capital, LLC in the amount of \$2,715.17.

Respondent was designated to serve her sentence at Federal Correction Institution II in Victorville, California. Respondent began her sentence on October 30, 2013. On September 8, 2014, Respondent escaped from custody. On that day, Respondent was found missing during the 4:00 p.m. stand up count. Respondent is still on escape status.

Administrative Actions (cont. from page 10)

On January 30, 2004, Respondent applied for a real estate salesperson's license. On that application, Respondent answered "no" to the question asking whether Respondent had any "pending lawsuits, unpaid judgments, outstanding tax obligations, or any other type of involuntary liens" against her. By signing the application on January 8, 2004, Respondent certified that "... the statements and answers on this application and accompanying documents are true and correct. I understand that any false or untrue statement or material misstatement of fact shall constitute grounds for refusal or subsequent revocation of license and is a misdemeanor under Hawaii law." (Citations omitted.)

The following tax liens involving Respondent were on file with the Bureau of Conveyances before January 2004:

A. State of Hawaii, Department of Taxation Certificate of State Tax Lien for \$1,618.07, dated October 24, 2001.

B. State of Hawaii, Department of Taxation Certificate of State Tax Lien for \$3,074.46, dated October 24, 2001.

C. Notice of Federal Tax Lien by the Internal Revenue Service for \$21,711.50 dated May 7, 2002.

D. Notice of Federal Tax Lien by the Internal Revenue Service for \$10,684.64 dated November 5, 2002.

The following outstanding tax liens involving Respondent existed and were on file during the period Respondent was licensed:

A. State of Hawaii Department of Taxation Certificate of State Tax Lien for \$2,449.75, dated March 15, 2004.

B. State of Hawaii, Department of Taxation Certificate of State Tax Lien for \$65,890.84, dated September 17, 2008.

C. State of Hawaii, Department of Taxation Certificate of State Tax Lien for \$117,770.88, dated March 18, 2009.

D. State of Hawaii, Department of Taxation Certificate of State Tax Lien for \$2,070.49 dated April 1, 2009.

E. Notice of Federal Tax Lien by the Internal Revenue Service for \$492,247.39 dated June 17, 2009.

Petitioner incurred \$846.45 in fees, costs, or expenses to serve Respondent with the Notice through publication of the Notice in the *Honolulu Star-Advertiser*.

Violations: ("HRS") §§ 467-14(1), (2), (8), (13), (16), (20), 436B-19(2), (5), (7), (8), (12), (14), (17) and Hawai'i Administrative Rules ("HAR") §§ 16-99-3(b), 16-99-3(c), 16-99-3(v)

Order:

Revocation of Respondent's license.

Fine of \$25,000.00.

Pursuant to HRS § 92-17 Respondent pays a cost of \$846.45, the cost of publishing the Notice of Hearing.

Timothy J. Rizzo-Murray
RS 59289

Case No. REC 2015-32-L
Dated 9/30/16

Allegations:

In or around 2014 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant ("OVUII") or what is commonly referred to in this State as a "DUI" - driving under the influence (hereafter "Conviction").

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, reported the Conviction in writing to the Commission.

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

Sanction:

Fine of \$500.00.

12 Administrative Actions (cont. from page 11)

Michael H. Ferreira

RB 20314

Case No. REC 2010-283-L

Dated 9/30/16

Allegations:

Before applying for and receiving a license from the Commission the Respondent was convicted of several misdemeanors in California and the Respondent's California real estate license had been disciplined.

The Respondent did not disclose the California misdemeanors when the Respondent answered the Hawaii licensing application question that asks for criminal convictions.

The Respondent disclosed the prior California license but did not mention the discipline when the Respondent answered the Hawaii licensing application question that asks if a former license has been denied or disciplined.

Before applying for and receiving a license by the Commission the Respondent satisfied the terms and conditions of the California misdemeanors and the terms and conditions of the California discipline.

The Respondent self-disclosed to the Commission eventually that his California license had been disciplined, and, the Respondent self-disclosed a conviction that has been addressed in a separate case.

Representations by Respondent:

Respondent represents that:

- Respondent understands that he is ultimately responsible for application materials submitted to the Commission and accepts responsibility for the same;

- Respondent did not at any time intend to hide or conceal any information from the Commission;

- Respondent relied heavily on a recruiter to assist with submitting his initial application materials to the Commission and believes the recruiter in good faith advised Respondent that traffic-related offenses and misdemeanors need not be disclosed because the "DCCA Real Estate Licensing Branch is interested and focused on crimes of moral turpitude - theft, embezzlement, fraud and felonies."

- There are other mitigating factors Respondent wishes the Commission to consider including but not limited to having cooperated fully with RICO, providing character references to RICO for consideration, not receiving any complaint about work he performed in the real estate industry in either California or Hawaii, taking classes for improvement and growth recently including an ethics course, and, eventually self-reporting the California discipline and another petty misdemeanor to the Commission.

Violations: HRS § 436B-19(2), (5), (15), (17) and HRS § 467-20

Sanction:

Fine of \$1,000.00.

Michael P. Ireland

RS 60874

Case No. REC 2013-130-L

Dated 9/30/16

Facts Supporting Licensing Violations:

The Commission has a strong interest in assuring that Hawaii real estate licensees are upstanding and law-abiding citizens.

Criminal convictions by real estate licensees can and do impact the integrity and reputation of the real estate profession by casting upon it a negative light. Criminal convictions may also impact, negatively, an individual licensee's character and fitness to engage the public as a real estate professional.

The Commission regulates licensees who commit crimes, even crimes of "driving under the influence," because they can and do impact negatively society and the reputation and integrity of the real estate profession. Moreover crimes of "driving under the influence" also impact the real estate licensee's traditional function or duty of driving such that the Commission

has historically disciplined licensees when they have been so convicted.

In or around 2011 the Respondent was convicted in Hawaii of the crime of operating a vehicle 'under the influence of an intoxicant ("OVUII") or what is commonly referred to as a "DUI" or driving under the influence (hereafter "Conviction").

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, self-reported the Conviction in writing to the Commission.

The Respondent has been previously disciplined by the Commission, in part, for a former DUI conviction.

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

Sanction:

Fine of \$1,500.00.

(cont. page 13)

Administrative Actions (cont. from page 12)

November 2016

Frankie Rippee

Case No. REC LIC 2015-002
Dated 11/23/16

Findings of Fact:

On or about December 2, 2015, Petitioner requested an administrative hearing with the Commission to contest the denial of his application for a real estate salesperson's license.

Petitioner's request for hearing was received by the Office of Administrative Hearings on or about December 2, 2015, and the matter was duly set for hearing.

Petitioner was served with the Notice of Hearing and Pre-Hearing Conference on December 16, 2015.

Petitioner failed to appear at the May 16, 2016 pre-hearing conference.

Petitioner failed to appear at the June 21, 2016 hearing; nor did anyone appear at the hearing on Petitioner's behalf even though the hearing was delayed approximately 10 minutes to await the arrival of Petitioner. No communication was received from Petitioner since the filing of Petitioner's request for hearing.

Respondent was prepared to proceed with the hearing. Respondent's Exhibits A thru Y were received into evidence and Respondent's witness was prepared to testify.

Conclusions of Law: Petitioner did not prove by a preponderance of the evidence that the denial was improper and, accordingly, affirm its denial of Petitioner's application for a real estate salesperson's license.

James P. Brennan

RS 34773

Case No. REC 2016-36-L
Dated 11/23/16

Allegations:

Sometime in 2015 the Respondent handled a short term rental transaction which included advertising the property on Craigslist, executing a 30-day rental agreement with the tenants, and, collecting a security deposit and rent from them. Six weeks later the tenancy ended, and, the Respondent returned the security deposit to the tenants. The funds for the transaction appear to have been deposited in and disbursed from the Respondent's personal bank account. The Respondent's broker appears to have been unaware of the transaction, and, the transaction was not processed through the brokerage firm.

Violations: HRS §436B-19(7), HRS §§467-14(6), (13), HAR §§ 16-99-4 (g), 16-99-4 (i)

Respondent represents that he made an error in judgment in his haste to handle what he perceived to be a short, isolated and simple transaction for his friend - the owner of the property - who was out of town at the time, he has learned from his mistakes and this experience, and, he asserts that this will not happen again. Respondent also represents that but for this matter he has maintained a complaint-free and discipline-free history as a licensee of 32 years.

Sanction:

Fine of \$1,250.00.

Sarah R. McClendon

RS 71874

Case No. REC 2014-169-L
Dated 11/23/16

Uncontested Facts:

Respondent was licensed by the Commission as a real estate salesperson under License Number RS-71874 on or about November 12, 2008.

Respondent was licensed by the Commission as a real estate broker under License Number RB-21999 on or about March 8, 2016.

RICO alleges that Respondent: (a) engaged in real estate activity as a broker prior to obtaining her real estate broker's license; (b) managed properties while she was a real estate salesperson without the knowledge of her supervising broker; (c) used her personal bank account for client trust funds; and (d) failed to provide written rental agreements for rentals.

Sanction:

Voluntary revocation of license.

December 2016

H.I.M. USA PROPERTIES, Introduction:

**LLC, a.k.a. H.I.M. USA
PROPERTIES, LLC, a real
estate broker
RB 18709**

Case No. REC 2009-349-L
Dated 12/16/16

On March 23, 2016, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office (“Petitioner”), filed a petition for disciplinary action against the real estate broker’s license of HIM USA Properties, LLC, a.k.a. H.I.M. USA Properties, LLC, (“Respondent”). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On or about April 2, 2016, the copy of the notice of hearing and pre-hearing conference sent to Respondent was returned by the post office, “Return to Sender, Unable to Forward”. On May 20, 2016, Petitioner filed an Ex Parte Motion for Leave to Serve by Publication. An order granting the motion was issued and on June 24, 2016, Petitioner filed an affidavit of the clerk of the Honolulu Star Advertiser confirming publication of the notice of hearing.

On September 1, 2016, the hearing in the above-captioned matter was convened by the Hearings Officer pursuant to Hawaii Revised Statutes (“HRS”) Chapters 91, 92 and 467. Petitioner was represented by its attorney, Esther L. Brown, Esq. Respondent did not appear.

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

Findings of Fact:

Respondent was originally licensed as a real estate broker, License No. RB 18709, by the Real Estate Commission (“Commission”) on March 2, 2005. Respondent’s real estate broker’s license expired on December 31, 2008 and was forfeited on December 31, 2010.

Marcelo M. Lopez, Jr. (“Lopez”), was a member and organizer of Respondent at all relevant times. Lopez was licensed by the Commission as a real estate salesperson, License No. RS 55682, on May 1, 1996. Lopez’s license expired on December 31, 2008 and was forfeited on December 31, 2013.

On or about December 11, 1995, Lopez signed and submitted to the Commission an application for a real estate salesperson’s license (“1995 Application”).

By letter dated January 26, 1996, the Commission informed Lopez that his 1995 Application had been denied.

Lopez appealed the denial and was subsequently granted his real estate salesperson’s license.

On July 25, 2003, a lawsuit was filed in the First Circuit Court against Lopez and Hawaii International Mortgage, Inc. (“2003 Lawsuit”). The Complaint included allegations against Lopez for invasion of privacy, defamation, emotional distress, and negligence.

The 2003 Lawsuit was not dismissed until April 13, 2005, when the parties to the Lawsuit, including Lopez, filed a stipulation for dismissal of the Lawsuit.

In or about February 2005, Respondent was established as a limited liability company in Hawaii. Lopez was listed in the Articles of Organization as one of Respondent’s organizers.

In or about February 2005, an application for a real estate broker’s license was signed and submitted to the Commission on behalf of Respondent, by the organizers of Respondent including Lopez (“2005 Application”).

The instructions for the 2005 Application read in part, “Questions 1 through 6 refer to the applicant, to any officer or director of the corporation, to any manager or member of the LLC, or to any partner of the partnership or LLP.” (emphasis added).

Question I of the 2005 Application asked, “Has an application for license or a real estate license ever been denied, suspended, fined, involuntarily terminated, revoked, or otherwise subject to disciplinary action, regardless of outcome?” Respondent answered “No” despite the Commission’s denial of Lopez’ 1995 Application.

Question 6 of the 2005 Application asked, “Are there any pending lawsuits, unpaid judgments, outstanding tax obligations, or any other type of involuntary liens against you?” Respondent answered “No” despite the existence of the 2003 Lawsuit pending against Lopez.

By signing and submitting to the Commission the

Administrative Actions (cont. from page 14)

2005 Application, Respondent certified “that the statements and answers on this application and accompanying documents are true and correct” and that, “I understand that any false or untrue statement or material misstatement of fact shall constitute grounds for refusal or subsequent relocation of license and is a misdemeanor under Hawaii law (Sections 467-20 and 710-1017, HRS).”

In reliance on the statements and representations made in the 2005 Application, the Commission issued a real estate broker’s license, RB 18709, to Respondent on or about March 2, 2005.

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

Order:

Revocation of license.

Respondent ordered to reimburse Petitioner the cost of publishing notice of the hearing in the sum of \$611.33.

Ashli P. Quevedo

RS 74911

Case No. REC 2015-215-L

Dated 12/16/16

Allegations:

In or around 2015 the Respondent was convicted in Hawaii of the crime of operating a vehicle under the influence of an intoxicant (“OVUII”) or what is commonly referred to in this state as a “DUI” - driving under the influence (hereafter “Conviction”).

The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, reported the Conviction in writing to the Commission.

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

Sanction:

Fine of \$500.00.

Michael M. Okamoto

RS 72527

Case No. REC 2016-58-L

Dated 12/16/16

Allegations:

Before being issued a license by the Commission in 2009, the Respondent was convicted in Colorado, in 2001, of two separate misdemeanors involving dishonesty. The Respondent fulfilled the terms of each conviction but failed to disclose them to the Commission in 2009 in answer to the licensing application question that asks for criminal convictions in the previous 20 years.

The Respondent self-disclosed both misdemeanors in writing to the Commission on his broker license application, and, the Respondent provided the Commission with character letters too.

Violations: HRS § 436B-19(2), (5), (17) and HRS § 467-20,

Sanction:

Fine of \$500.00.

Gina Trinidad Carlos

RS 67841

Case No. REC 2016-150-L

Dated 12/16/16

Allegations:

In November, 2015, the Respondent was fined through a Consent Order (hereafter “Consent Order”) of the DCCA Securities Commissioner for possibly soliciting and selling investment products to a handful of consumers without first being a registered securities agent. Some of the consumers who invested were harmed.

The Respondent fulfilled all terms of the Consent Order including making restitution to consumers affected by the Respondent’s conduct.

Violations: HRS §§436B-19(8), (12), (17) and HRS §467-14(8)

Sanction:

Fine of \$500.00

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 §436B-19(1)	Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license.
HRS §436B-19(2)	Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements.
HRS §436B-19(5)	Procuring a license through fraud, misrepresentation, or deceit.
HRS §436B-19(6)	Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license.
HRS §436B-19(7)	Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
HRS §436B-19(8)	Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity.
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(15)	
HRS §436B-19(16)	Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required.
HRS §436B-19(17)	Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.
HRS §467-1	Definitions
HRS §467-14(1)	Making any misrepresentation concerning any real estate transaction.
HRS §467-14(2)	Making any false promises concerning any real estate transaction of a character likely to mislead another.
HRS §467-14(6)	When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson is associated;
HRS §467-14(8)	Conduct constituting fraudulent or dishonest dealings.
HRS §467-14(13)	Violating this chapter, chapters 484, 514A, 514B, 514E, or 515, or section §516-71, or the rules adopted pursuant thereto.
HRS §467-14(16)	Converting other people's moneys to the licensee's own use.
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
HAR §16-99-3(b)	The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.
HAR §16-99-3(c)	The licensee shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.
HAR §16-99-3(v)	The licensee shall not convert other people's money to the licensee's own use.

Statutory/Rule Violations (cont. from page 16)

- HAR §16-99-4(a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.
- HAR §16-99-4(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts.
- HAR §16-99-4(g) Property of others coming initially into the possession, custody, or control of a salesperson or broker-salesperson, to be held in trust for the benefit of the depositor, and or for the benefit of third persons, shall be received on behalf of the salesperson's or broker-salesperson's principal broker or broker in charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker-salesperson's principal broker or broker in charge, unless the salesperson or broker-salesperson is instructed as to another time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, and rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.
- HAR §16-99-4(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or broker in charge. A principal broker or broker in charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm any where the principal broker or broker in charge could place them, but shall not authorize any other disposition.

A principal broker or broker in charge shall be held responsible for any trust properties the principal broker or broker in charge authorizes a salesperson, broker-salesperson, or employee to handle.

Changes to Prelicense Education Equivalency Application

Individuals interested in pursuing a career in real estate in Hawaii must take and pass the prelicense course for either salespersons or brokers, depending on what level of license they wish to obtain. Hawaii does not offer license reciprocity with any other state at this time. Instead, license candidates may apply for the Prelicense Education Equivalency ("EW"), which waives taking the prelicense course, by qualifying for specified categories. A second "waiver" is the Equivalency to the Uniform Section of the Hawaii Real Estate Licensing Exam ("UEE"), which waives the candidate from sitting for the general or national portion of the Hawaii licensing exam, and requires passing only the State portion of the exam.

For the EW, the qualifying categories in § 16-99-37, Hawaii Administrative Rules ("HAR") were reduced from the previous five (5) to three (3) for salesperson candidates, and to two (2) categories for broker candidates. The acceptable categories for salesperson candidates are for:

- "(1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited law school in the United States; or
- (3) Bachelor of arts or bachelor of science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business. . . ."

For real estate broker applicants, "(b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and
 - (2) Graduates of an accredited law school in the United States. . . ."
- Subsection (3) above was deleted as an equivalency category for real estate broker applicants.

(Note: Deleted categories for the salesperson and broker applicant were, "(4) Those who have successfully completed at least six semester credits in real estate, business, business law, real estate development, or finance courses at an accredited college or university; and (5) Those who have received a professional designation and recognized certificates of completion as accepted by the commission including a GRI designation; certificate in advanced real estate from the University of Hawaii, small business management program.")

The prelicense salesperson curriculum remains at 60 hours, and the broker prelicense curriculum remains at 80 hours.

Broker Experience Certificate

If you are a real estate salesperson and are aspiring to become a real estate broker, one of the requirements to sit for the broker's license exam is to qualify for and complete the Broker Experience Certificate ("BE"). To qualify for the BE, a salesperson licensee must "... have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for **at least three years within the five-year period immediately prior to the application** for experience certificate." (emphasis added)

"Full-time" means averaging at least forty hours a week devoted to real estate salesperson activity. No pro rata credit shall be given to part-time real estate salesperson activity."

Out-of-state applicants shall also have experience as a full-time licensed real estate salesperson for at least three years within the five-year period immediately prior to the application for experience certificate, or possess a current, unencumbered out-of-state real estate broker's license.

The BE application includes a certification statement regarding the NUMBER OF WEEKS the applicant has accumulated within the stated time period. You will be amazed, amused, and maybe, appalled, at the information used to fill in this blank.

Here is the section of the Experience Certification Statement required to be completed by the Principal Broker or Broker-in-Charge:

Part II. PERIOD COVERED BY THIS STATEMENT. The applicant was associated with the brokerage firm indicated below for the stated period. I was the principal broker or broker-in-charge of the brokerage firm during this period, or I am the current principal broker or broker-in-charge of the brokerage firm and have records to verify the information provided below.

Period Covered: From (month/day/year): _____ To (month/day/year): _____
Name of Brokerage Firm: _____ License No.: RB _____

NUMBER OF WEEKS _____ the applicant devoted **40 hours per week** to real estate salesperson license activity, whether in or out of the office (do not count time spent on clerical or other non-real estate duties.)

Take a look at actual responses received by the Commission.

NUMBER OF WEEKS 40 the applicant devoted **40 hours per week** to real estate salesperson license activity

NUMBER OF WEEKS full time the applicant devoted **40 hours per week** to real estate salesperson license activity

NUMBER OF WEEKS many the applicant devoted **40 hours per week** to real estate salesperson license activity

NUMBER OF WEEKS all the applicant devoted **40 hours per week** to real estate salesperson license activity

NUMBER OF WEEKS _____ the applicant devoted **40 hours per week** to real estate salesperson license activity (Left BLANK!)

NUMBER OF WEEKS 1,520 the applicant devoted **40 hours per week** to real estate salesperson license activity

(Note: There are 152 weeks in a year. Only the previous FIVE (5) years are considered when applying for the Broker Experience Certificate. What is 152×5 ? It equals a total of 760 weeks. Has the applicant worked a solid five years with NO TIME OFF? No vacation? HMMMMMM. The total of 1,520 weeks equals 10 years! Come on!)

If incorrect answers are found, this will delay the processing of the application. This is a certification statement signed by the applicant and the PB or BIC. The signatures attest to the accuracy of the information provided. Read carefully and answer correctly.

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
Bly School of Real Estate	808-738-8818
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
Digital Learning Centers, LLC dba REMI School of Real Estate	808-230-8200
Inet Realty	808-955-7653
ProSchools, Inc.	800-452-4879
Ralph Foulger's School of Real Estate	808-239-8881
Seiler School of Real Estate	808-874-3100
Vitousek Real Estate Schools, Inc.	808-946-0505



State of Hawaii Real Estate Commission

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This material may be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 808-586-2643 to submit your request.

Continuing Education Providers

Abe Lee Seminars	808-942-4472	OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
All Islands Real Estate School	808-564-5170	Preferred Systems, Inc.	888-455-7437
American Dream Real Estate School LLC	720-322-5470	ProSchools, Inc.	800-299-2207
At Your Pace Online, LLC	877-724-6150	Ralph Foulger's School of Real Estate	808-239-8881
The Berman Education Company, LLC	808-572-0853	Realtors Association of Maui, Inc.	808-873-8585
Bly School of Real Estate	808-738-8818	REMI School of Real Estate	808-230-8200
Building Industries Association of Hawaii	808-629-7505	Russ Goode Seminars	808-597-1111
Carol Ball School of Real Estate	808-871-8807	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7359
Carol M. Egan, Attorney at Law	808-222-9725	Vitousek Real Estate Schools, Inc.	808-946-0505
The CE Shop, Inc.	888-827-0777	West Hawaii Association of Realtors	808-329-4874
Coldwell Banker Pacific Properties Real Estate School	808-597-5550		
Continuing Ed Express LLC	866-415-8521		
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		
International Association of Certified Home Inspectors (InterNACHI)	303-502-6214		
Kauai Board of Realtors	808-245-4049		
McKissock, LP	800-328-2008		

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

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2017 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, February 08, 2017

Wednesday, March 08, 2017

Wednesday, April 12, 2017

Wednesday, May 10, 2017

Wednesday, June 14, 2017

Wednesday, July 12, 2017

Wednesday, August 09, 2017

Wednesday, September 13, 2017

Wednesday, October 11, 2017

Wednesday, November 08, 2017

Wednesday, December 06, 2017

Real Estate Commission – 9:00 a.m.

Friday, February 24, 2017

Friday, March 24, 2017

Friday, April 21, 2017

Friday, May 26, 2017

Friday, June 30, 2017

Friday, July 28, 2017

Friday, August 25, 2017

Friday, September 29, 2017

Friday, October 27, 2017

Wednesday, November 22, 2017

Friday, December 15, 2017

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 (808) 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 (808) 586-2643 to submit your request.