State of Hawaii

May 2017

Real Estate Commission Bulletin

Place of Business? Brick and Mortar! Not Virtual!

The Real Estate Branch fields inquiries from out-of-state real estate licensees who want to know if a "virtual" real estate office is compliant with Hawaii real estate licensing laws and rules. The quick answer is "No." While the inquirer does not blatantly state that a virtual office is in consideration, it is apparent the caller is trying to determine if a virtual brokerage can be established, and perhaps maintained despite rules to the contrary. Questions posed include "Does the principal broker have to be a "resident" of Hawaii?" "How long may a principal broker be away from the brokerage?" "How often does a principal broker have to be physically in the office?"

The digital age is in full swing, and new territories as well as the boundaries of these new areas are being scrutinized. Brick and mortar businesses may be losing ground to virtual locations, but the existing real estate licensing laws and rules still require a definite place of business, where regularly scheduled office hours are maintained, and the principal broker has direct supervision of associated licensees and management oversight of all real estate-related activity emanating from the brokerage.

If you're a real estate licensee thinking of becoming a Hawaii-licensed broker, and opening up a brokerage here, read and pay heed to the below Hawaii Administrative Rules ("HAR") and Hawaii Revised Statutes ("HRS") .

§16-99-3(m) HAR states there shall be a principal broker or one or more brokers-in-charge, or both, at the principal place of business . . who shall be immediately responsible for the real estate operations conducted at that place of business.

§16-99-3(n) HAR states a brokerage firm shall maintain a principal place of business located in this State at a business address registered with the commission from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained.

§16-99-2 HAR defines place of business as follows:
"Place of business" means the **physical place** where business is conducted **other than a post office box, telephone, telephone answering service, letter or mail drop service**, or motor vehicle within the State, and may include a home occupation office. The place of business shall conform with the permitted use under the zoning code of the county in which the place of business is situated and with any declarations, bylaws, house rules, recorded restrictions, or covenants that may govern the place of business. The commission may use as guidelines, but is not limited to, the following factors in finding that a brokerage firm is maintaining a place of business: **physical presence of the broker during reasonable scheduled office hours**; on-site maintenance of confidential clients' files which shall be immediately accessible to the commission upon request; the prominent display of the brokerage firm's name or trade name as licensed by the commission and the listing of the brokerage firm name where permissible in the building directory; the operation of the brokerage firm at a place of business directly accessible to the public; and the on-site maintenance of personnel and compensation records on all real estate salespersons and broker-salespersons employed by or associated with the brokerage firm. Client files as used in this definition includes but is not limited to: real estate contracts, escrow records, trust account records, and confidential client data. "Place of business" does not include the operation of a place of business designed to evade the requirements of the definition as set forth in this paragraph. Each brokerage firm shall have one, and only one, principal place of business. (emphasis added)

§16-99-4 HAR indicates that a client's trust fund account shall be maintained "in this State", and shall designate the principal broker as trustee.

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Place of Business? Brick and Mortar! Not Virtual!

The display of a license is required of both the brokerage and the broker by §16-99-6 HAR and §467-12(a) HRS as follows:

§16-99-6 HAR Display of license. The brokerage firm's certificate of license shall be conspicuously displayed in the principal place of business.

§467-12 HRS Place of business and posting of license. (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and the rules of the commission, and shall display therein the real estate broker's license and upon request make available any associating real estate salesperson's license.

§16-99-2 HAR indicates that use of a mail drop/answering service is insufficient to meet the requirements of §§16-99-3 and 16-99-6 HAR and §467-12 HRS. Similarly, a "virtual office" location may not meet the same requirements.

§467-1.6 HRS Principal brokers spells out the responsibilities of the principal broker, and states directly, "The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees."

An inappropriate principal place of business impedes regulatory oversight. It also hampers a consumer's ability to conduct timely and expedient transactions with their real estate agent. Licensees are encouraged to review the laws and rules and seek competent legal counsel to determine if their brokerage is in compliance with laws and rules relating to the business of real estate.

Recovery Fund

What is the Real Estate Recovery Fund?

In summary, the law on the real estate recovery fund states that any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker or salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the Commission's settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than $25,000 per transaction. No action for a judgment which subsequently results in a court order for collection from the real estate recovery fund shall be started later than **two years from the accrual of the cause of action thereon**.

After a judgment based on "fraud, misrepresentation, or deceit" is obtained and after the "aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court", the court may issue an order "directed to the Commission requiring payment from the real estate recovery fund."

The aggrieved person shall notify the commission in writing **simultaneously** upon filing a complaint in the court and commencing action for a judgment against a real estate licensee which may result in collection from the real estate recovery fund. The notification shall include the statutory notice and two copies of the complaint and any pleadings filed with the courts. The Commission has no forms for claims to the real estate recovery fund.

The Commission will be represented by contracted attorneys and may intervene in and defend any such action. The Commissions attorneys do not represent the plaintiffs (aggrieved persons) or the defendants (real estate licensees) but represent the Commission and the statutory interests of the real estate recovery fund.

In addition, the Commission encourages you to file a complaint with the Regulated Industries Complaints Office (RICO) for possible disciplinary action against the real estate licensee(s). They can be contacted at:

Regulated Industries Complaints Office
Leiopapa A Kamehameha Building
235 South Beretania Street, 9th Floor
Honolulu, HI 96813
Telephone: (808) 587-3222

Should you have any questions, please call (808) 586-2643.

NOTE: Please review Hawaii Administrative Rules (HAR) §16-99-79 Recovery fund settlement procedures, and Hawaii Revised Statutes (HRS) §467-16 Real estate recovery fund; use of fund; fees.

The Chair's Message

Aloha!

It's legislative season! Since this article is being written during the second half of session and may be published after the legislature wraps up, we tried to provide a summary of the pertinent bills related to real estate licensing and development that will likely be passed this year. It is interesting to note that this legislative session started with about one hundred and thirty (130!) proposed bills, all related to condominiums! Currently, there are about ten remaining condominium-related bills. The three that are summarized below are on the commission's radar in particular, two are condominium-related, and the third is targeting the client trust account managed by real estate principal brokers.

S.B. No. 393, H.D.1; Condominiums; Associations; Board of Directors; Mixed-use Projects; Elections.

In mixed use condominium there are typically classes of unit owners (i.e., commercial and residential). Many bylaws of mixed use condominiums will provide that certain directors be elected by certain classes to ensure fair representation of product types on the board. This bill specifies that in mixed use condominium projects where you have different class elections, a class director can be removed or replaced by an election by a vote of majority of common interest of members of that specific class. Also in such mixed use condominiums and mixed boards, the bill provides that the board may cast votes allocated to any nonresidential unit owned by the association in any director election where those eligible to vote are limited to owners of one or more nonresidential units.

S.B. No. 292 H.D.1, S.D.1; Condominiums, condominium Property Regimes; Repeal.

As you know, the Condominium Act was recodified on July 1, 2006 under HRS, Chapter 514B. This bill repeals the former Condominium Act, Chapter 514A of the HRS, relating to the creation and registration of condominium property regimes. Until now, the projects created and registered under 514A could continue operating and selling under the provisions of the former Condominium Act (except for the management provisions). This bill would discontinue or terminate any 514A registrations. The bill explains that "although there are still some condominium projects that were created before July 1, 2006, but have never been built and sold to anyone in the general public, the legislature notes that the developers of such projects have had more than a decade to bring their condominium projects created under chapter 514A to market." The concern of the Commission with this bill is that there are many 2-unit condominium regimes created and registered by families to permit the sale of the units in the future. For instance, parents may have sold one unit (single family house) and are residing in the other unit (single family house) until they decide to sell later. As such, not only large developers, but also small family owned properties will need to strategize for full re-registration under 514B for any unsold units.

SB No. 394 S.D.1; Real Estate Brokers; Client Trust Accounts; Criminal Penalties; Real Estate Commission; Registration; Renewal; Enforcement.

The legislature finds that "a real estate broker could mishandle accounts or abruptly terminate business without sufficient protections in place to safeguard client information and trust account funds." This bill basically creates criminal penalties for real estate brokers for mishandling of the client trust account funds. It also sets for reporting standards for the principal broker and authorizes the Commission to take action in circuit court to enforce its requirements. Although this bill will likely not pass, it's worthwhile mentioning and its introduction is indicative of what might be coming next legislative session.

Nikki Senter, Chair

Administrative Actions

September 2016

Faye C.K. Lee, Thomas Zhuang, and Sweet Home Realty, Inc.
RB 15531
RB 21340
RB 21339

Case No. REC 2014-152-L,
REC 2014-292-L, REC 2015-137-L
Dated 1/27/17

Findings of Facts:

Respondent Lee was first licensed as a real estate salesperson under license number RS 41306 on or about November 30, 1987.

On or about October 4, 1990, Respondent Lee's license was upgraded to a real estate broker's license. Her real estate broker's license is currently set to expire on December 31, 2016.

On February 7, 2013, the Real Estate Commission's Final Order was issued in cases REC 2009-364-L, REC 2010-331-L, REC 2011-111-L and REC 2011-112-L related to the real estate broker's licenses of Respondent Lee and of her company, Golden House Management, Inc. The Real Estate Commission revoked the real estate broker's license of Golden House Management, Inc., and ordered the real estate broker's license of Respondent Lee be placed on probation with conditions.

In this prior disciplinary proceeding, the hearings officer had recommended that Ms. Lee's license be revoked. The Real Estate Commission gave Ms. Lee a "break" by modifying that recommendation and ordering probation instead of revocation.

Among the conditions imposed by the aforesaid Final Order were the following:

a. Respondent Lee shall not be a principal broker, sole proprietor, or broker-in-charge.

b. Respondent Lee shall not have disbursement authority for funds or property received in trust and shall timely relinquish all such funds or property to Respondent Lee's supervising principal broker.

c. Respondent Lee shall not practice real estate unless she is associated with and under the direct supervision of a principal broker at all times.

Following the issuance of the aforesaid Final Order, Ms. Lee's real estate license was under the supervision of real estate broker Jerald Y. Nakasone from March 2013 through June 2013.

It appears that most of Ms. Lee's real estate business at that time consisted of managing rental properties. At the time, she was managing approximately 80 such accounts. In addition, she also used Mr. Nakasone's office to close out three condominium sales.

During a portion of that time, Ms. Lee convinced Mr. Nakasone that she required disbursement authority for funds received in trust while reconciling and balancing accounts from transfer from Golden House Management, Inc., to Mr. Nakasone. Petitioner alleged that Mr. Nakasone failed to supervise Ms. Lee during this process.

Because of his alleged failure to supervise Ms. Lee, Mr. Nakasone agreed with Petitioner on a Settlement Agreement Prior to Filing of Petition for Disciplinary Action, which Settlement Agreement was approved by the Real Estate Commission on June 26, 2015. As part of this Settlement Agreement, Mr. Nakasone agreed to pay a fine of $500.00.

During the time Ms. Lee was supposed to have been supervised by Mr. Nakasone, she did in fact convince him that she required disbursement authority for funds or property held in trust and failed to timely relinquish authority over all such funds or property to Mr. Nakasone as required by the terms of aforesaid Final Order.

For the period from at least August 17, 2013, to September 24, 2013, Ms. Lee continued to engage in real estate activity but was not affiliated with or under the supervision of a principal broker. During that time period, she continued to have disbursement authority for funds or property received in trust. Both of these activities were in violation of the aforesaid Final Order.

Mr. Zhuang and Sweet Home Realty obtained their real estate brokers' licenses on August 7, 2013. Ms. Lee became associated with them on September 24, 2013.

In her testimony, Ms. Lee alleged some confusion about when Mr. Nakasone terminated her supervised status and when she was supervised by Mr. Zhuang and Sweet Home Realty. At the very least, however, she testified that she knew about the termination in August of 2013.

From Mr. Zhuang's Exhibit 1, it can be determined that Mr. Nakasone released supervision of Ms. Lee on August 17, 2013, and that Ms. Lee knew this no later than August 24, 2013, when she signed and dated the same document already signed and dated by Mr. Nakasone.

Moreover, it is clear from her testimony and her Exhibit I that while Ms. Lee may have requested

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to work with Mr. Zhuang on August 25, 2013 when he signed a receipt for a copy of the Commission's Final Order and accepted responsibility for supervising her, problems with certification by the Honolulu Board of Realtors delayed Ms. Lee's beginning date with Mr. Zhuang until September 24, 2013.

The Hearings Officer cannot accept Ms. Lee's assertion in her Exhibit I that she found out in early September 2013 that her license was put on inactive status by the Honolulu Board of Realtors and "after that" Mr. Nakasone terminated their relations and she "start to search" and found Mr. Zhuang. Her own evidence showed that she "found" Mr. Zhuang no later than August 25, 2013, and not in early September of 2013.

At the beginning of her association with Mr. Zhuang and Sweet Home Realty, Ms. Lee brought about 60 properties under her management with her.

After becoming associated with Mr. Zhuang and Sweet Home Realty, Ms. Lee continued to have disbursement authority for funds or property received in trust. Ms. Lee was allowed to use, and did use, a stamp of Mr. Zhuang's signature to control the trust account of Mr. Zhuang and Sweet Home Realty.

During the course of the hearing, it was announced that a settlement bad been reached between Petitioner and Mr. Thomas Zhuang and Sweet Home Realty. Those two Respondents had agreed to admit to one violation based on their failure to supervise Ms. Lee and further agreed to a fine of $1,000.00 in total for both Respondents.

On February 19, 2014, a civil action was filed against Ms. Lee relating to her real estate activity. Ms. Lee appeared in court and negotiated a settlement, so the case was dismissed without prejudice.

On September 16, 2014, another civil action was filed against Ms. Lee relating to her real estate activity, namely failure to return a security deposit. Ms. Lee appeared in court and negotiated a settlement, and the case was dismissed with prejudice.

It appears from her testimony that Ms. Lee believes going to court over issues relating to the return of security deposits are not major events and are just a routine part of the business of managing rental properties. She won once and lost five times but did not consider that "losing." However, Petitioner did not establish that any of these court appearances, outside of the two listed above, occurred after the Commission's Final Order put Ms. Lee on probation.

Ms. Lee's status with Mr. Zhuang and Sweet Home Realty was terminated around October 21, 2015. She then became associated with a new broker, Mr. Clifford Lew, and brought about 40 rental management accounts with her.

At the beginning of the hearing, Petitioner announced that a settlement had been reached between Petitioner and Mr. Thomas Zhuang and Sweet Home Realty. Those two Respondents had agreed to admit to one violation based on their failure to supervise Ms. Lee and further agreed to a fine of$1,000.00 in total for both Respondents. No settlement documents were provided to the Hearings Officer.

On or about May 19, 2014, Petitioner received a complaint from Mr. Kenneth Carrington against Respondents Lee and Sweet Home Realty, Inc. Mr. Carrington alleged that:

a. Mr. Carrington gave Respondents $1,000.00 to use for eviction of tenants, but Respondents failed to begin eviction proceedings and failed to return the money;
b. Respondents failed to account for rental income received by Respondents;
c. Respondents failed to transfer security deposits to Mr. Carrington's new property manager after he terminated his agreement with Respondents.

After receiving this complaint, Petitioner's investigator contacted Respondents regarding the allegations by Mr. Carrington.

Respondents repeatedly refused to give any money to Mr. Carrington, insisting that he owed Respondents money for charges allegedly incurred by his tenants for failure to pay the rent on time.

Respondents repeatedly refused to transfer the security deposits from Mr. Carrington's tenants (in the amounts of $885.00 and $1,350.00) to Mr. Carrington's new property manager after Mr. Carrington terminated his property management agreement with Respondents. Respondents continued to insist that Mr. Carrington owed Respondents money for charges allegedly incurred by his tenants for failure to pay the rent on time.

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Respondents eventually transferred $1,107.00 to Mr. Carrington's new property manager with no explanation as to why the entire balance was not transferred.

By check dated September 27, 2014, Respondents paid back Mr. Carrington the $1,000.00 he had given them for the eviction which never occurred and which was a subject of his May 19, 2014 complaint to Petitioner.

By check dated October l, 2014, Respondents eventually transferred an additional $243.00 to the new property manager, for a total of $1,350.00, which represented the security deposit amount for one of Mr. Carrington's tenants.

The remaining $885.00 security deposit was never transferred to the new property manager. Ms. Lee testified that this security deposit pertained to one tenant in the Kili Drive condominium that did not pay rent, due to an injury to the tenant's spouse, for almost all of 2013 and owed $8,023.50 in rent as of 0ctober 25, 2013. Mr. Carrington had tolerated this delinquency up until this point in time, after which he asked Respondent Lee to evict this tenant. Ultimately, by January of 2014, Mr. Carrington received the proceeds of $1,920.35 from a $2,000 rent check received by Respondents, which was part of the back rent owed by this tenant. Ms. Lee attributed the difference in the two amounts to a charge for her management fee.

Handling of the $2,000.00 check is not part of the charges in this complaint. Ms. Lee brought the situation up in terms of mitigation of other potential violations, as she asserted that the $2,000 check was no good so that she was never compensated for that amount even though she sent her own check to Mr. Carrington for $1,920.35.

Ms. Lee insisted that her management contract with Mr. Carrington provided that any unpaid late charge fees to the tenant would be charged to the owner per Section 5 (c) of that agreement that was submitted as part of Ms. Lee's Exhibit 1. However, the letters to the tenant submitted by Ms. Lee as part of her Exhibit I show late fee charges of $97.35 only for February, March, and May of 2013, and January of 2014, for a total of $389.40, some $495.60 less than the $885.00 security deposit at issue. Furthermore, the tenant's security deposit was not the landlord's property. Ms. Lee had no right to appropriate any portion of that security deposit, especially when the landlord had not terminated the tenant but was instead transferring management of the unit to a new company,

On or about May 15, 2015, Petitioner received a complaint from Ms. Mai-Ling Gibbons against Respondents alleging that Respondents performed repairs without authorization and failed to turn over the tenant's security deposit to Ms. Gibbons' new property manager. This complaint pertained to Ms. Gibbons' property in the Sunrise Condominium in Ewa Beach.

On Sunday, January 29, 2015, Respondent Lee was notified by the Sunrise . manager that the water heater in Ms. Gibbon's unit was leaking and needed to be replaced.

On January 29, 2015, Ms. Lee called and left a message for Ms. Gibbons, informing her that the water heater needed to be replaced, and that the cost would be $2,000.00. The cost was this high because this was an alleged emergency situation that had to be corrected that evening. Ms. Gibbons returned this call about four hours later and told Ms. Lee that the work to be done was not authorized by Ms. Gibbons and that she would call Home Depot the next day and get a price quote for a replacement. At this point, Ms. Lee had already had the water heater replaced but did not inform Ms. Gibbons of that fact.

On January 30, 2015, Ms. Gibbons obtained a quote from Home· Depot to replace the water heater for $700.00. She then asked the resident manager of the condominium to assist with taking a picture of the leaking water heater to ensure the correct replacement would be ordered from Home Depot. At that point, Ms. Gibbons was informed for the first time that Ms. Lee had already had the water heater replaced.

Subsequently, Ms. Gibbons informed Ms. Lee that she would not pay for work she had not authorized, and, further, she was not willing to pay more than $700 for the water heater.

Despite several attempts at communication by Ms. Gibbons from January 31, 2015 onwards, Ms. Lee would not respond to inquiries about the water heater. Accordingly, on February 20, 2015, Ms. Gibbons terminated the property management agreement and gave Ms. Lee the name of the new property manager.

In response, on February 21, 2015, Ms. Lee sent an e-mail to Ms. Gibbons stating that Ms. Gibbons

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Administrative Actions (cont. from page 6)

owed an unspecified amount of money to her and threatening to go to court and attach a lien for damages to Ms. Gibbons' condominium unit .

On March 30,2015, Ms. Gibbons requested Ms. Lee transfer the tenant's security deposit to the new property manager. Ms. Lee did not respond and did not transfer the security deposit. ·

After Petitioner's investigator began contacting Respondents about Ms. Gibbons' complaint, Respondent Zhuang informed Petitioner that Ms. Gibbons was not responding to messages to her and the water heater replacement had been an emergency situation. He stated that Respondents would hold the owner's security deposit of $1,150 until the owner paid $2, 156 for the water heater repair invoice plus compensation in the amount of $558. However, the security deposit was the property of the tenant, not the owner, and none of the Respondents had the right to hold the security deposit as "ransom" or leverage to get Ms. Gibbons to pay for anything.

After repeated questioning by RICO's investigator, Respondent Zhuang transferred the security deposit to the new property manager on or about August 21,2015.

Ms. Gibbons has never paid anything for the water heater.

A memorandum from the Sunrise Condominium and an e-mail to Ms. Gibbons dated January 29, 2015, Petitioner's Exhibit 7, gave Ms. Gibbons until February 9, 2015, to replace the water heater or face a fine. Based upon this, the Hearings Officer finds that the leaking water heater in Ms. Gibbons' condominium unit on January 29, 2015, was not an emergency situation. Further Ms. Gibbons was not unreasonable in waiting until the next day after Ms. Lee's initial call and getting a quote from Home Depot before authorizing replacement of the water heater. This was the case whether or not the water heater was an electric one or a more expensive gas one for around $1,300.

Respondent Lee's failures to comply with the Commission's Order were numerous and serious. Her excuses were not credible and, in any event, did not excuse the fact that she knew what she was doing and knew, or should have known, that she was doing real estate business without the supervision of a licensed broker. In and of themselves, these failures were sufficient to justify revocation of her license. The other violations would not, in and of themselves, necessarily justify revocation of Ms. Lee's license. At a minimum, they are certainly troublesome, especially where Ms. Lee escalated what might be considered two normal disagreements with her clients into major confrontations involving the improper handling of tenant security deposits. In connection with the failure to comply with the Commission's Order, therefore, these other violations serve to emphasize that Respondent Lee does not deserve any more "breaks" and that it is now time to revoke her license.

In accord with the position stated by Petitioner, the Hearings Officer recommends that no fine be imposed upon Respondent Faye C.K. Lee in connection with the revocation or her license.

On April 18, 2016, the Hearings Officer issued his Findings of Fact, Conclusions of Law, and Recommended Order as to Respondent Faye C.K. Lee. Exceptions were filed, and argument was held before the Real Estate Commission ("Commission").

On September 12,2016, the Commission issued its Commission's Order of Remand. This Order of Remand remanded the matter to the Hearings Officer "for the taking of further evidence regarding Thomas Zhuang and Sweet Home Realty, Inc."

The Order of Remand further stated: Absent a formal Settlement Agreement document memorializing an agreement to these or any other terms, the Commission remands for taking of further evidence regarding Mr. Zhming and Sweet Home Realty, Inc., and the Hearings Officer's recommendations as to findings of fact, conclusions of law, and recommended sanctions, if any, for these two Respondents.

Having reviewed and considered the discussion at the hearing on October 26, 2016, together with the entire record of the proceeding, the Hearings Officer renders the following Supplemental Findings of Fact, Conclusions of Law, and Recommended Order Pertaining to Thomas Zhuang and Sweet Home Realty, Inc.

FINDINGS OF FACT

To the extent that any Findings of Fact are more properly construed as Conclusions of Law, they shall be so construed.

Except as to any Findings of Fact specifically modified herein, the Findings of Fact issued on

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Administrative Actions (cont. from page 7)

April 18, 2016, are reaffirmed and incorporated by reference herein.

There was no settlement between Petitioner and Respondents Thomas Zhuang and/or Sweet Home Realty, Inc. Accordingly, Findings of Fact Nos. 19 and 24 in the Findings of Fact issued on April 18, 2016, are incorrect and should no longer be operative.

At the beginning of the relationship between Ms. Lee, on the one hand, and Mr. Zhuang and Sweet Home Realty, Inc., on the other hand, Mr. Zhuang oversaw everything done by Ms. Lee. Mr. Zhuang is president of Sweet Home Realty, Inc. Later in that relationship, however, as Mr. Zhuang admitted in his testimony at the hearing on December 21, 2015, Mr. Zhuang and his company did not oversee Ms. Lee's activities. Mr. Zhuang and his company provided Ms. Lee with a rubber stamp so she could make disbursements from an account or accounts pertaining to managed properties without Mr. Zhuang's signature or approval.

The Conclusions of Law issued on April 18, 2016, are reaffirmed and incorporated by reference herein.

The last Conclusion of Law issued on April 18, 2016, is based upon a finding of the existence of a settlement agreement between Petitioner and Respondents Thomas Zhuang and Sweet Home Realty, Inc., that is incorrect. Accordingly, that Conclusion of Law is no longer operative.

Petitioner has charged Respondents Thomas Zhuang and Sweet Home Realty with violating Hawaii Revised Statutes ("HRS") §467-1.6(a) (Failure to Supervise).

Petitioner has proven by a preponderance of the evidence that Respondents Thomas Zhuang and Sweet Home Realty, Inc., have both violated HRS §467-1.6(a).

The Commission's Order of Remand did not in any way reopen Respondent Lee's case, and she was not entitled to present further evidence or argument at the remand hearing held October 26, 2016.

Faye C.K. Lee
Failure to comply with the Commission's Order

Violations:
HRS §467-14(3), § 467-14(7), § 467-14(8), § 467-14(20), § 436B-19(2), § 436B-19(7), § 436B-19(11).
Order: Revocation of license.

Thnomas Zhuang and Sweet Home Realty, Inc.
Violations: HRS § 467-1.6(a).

Sanctions:
Fine of $1,000.00 for Zhuang and Sweet Home Realty.

September 2016

Mitch Thompson
a.k.a. Mitchell R. Thompson
RS 60661

Case No. REC 2015-210-L
Dated 1/27/17

Uncontested Facts:
Between 2001 and 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 "Convictions"). See HRS § 291E-61.

The Respondent did not disclose the Convictions when answering the licensing application or renewal questions that asks for criminal convictions.

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

Violations:
HRS § 436B-19(2), (5), (12), (14), (17) and HRS § 467-20

Sanctions:
Fine of $1,000.00.

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September 2016

Star International, LLC and Carol Star
RB 18843
RB 18509

Case No. REC 2016-177-L
Dated 1/27/17

Allegations:
During the summer of 2016, in at least two separate Craigslist postings, the Respondents advertised the same property for sale or lease without including the brokerage firm in the postings. Upon being informed of the omission by RICO the Respondents attempted to correct the postings immediately, and furnished proof to RICO of their attempts. Shortly thereafter the postings were removed from Craigslist.

Violations:
HRS § 467-14(13) and HAR § 16-99-11(a)

Sanctions:
Fine of $250.00.

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-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(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(7)	Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation.
HRS §436B-19(11)	Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public.
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.
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(3)	Pursuing a continued and flagrant course of misrepresentation.
HRS §467-14(7)	Failing to account for moneys belonging to others.
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.

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Statutory/Rule Violations (cont. from page 9)

HRS §467-14(16)	Converting other people's moneys to the licensees 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(v)	The licensee shall not convert other people's money to the licensee's own use.
§16-99-11(a)	All real estate advertising and promotional materials shall 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.

Klein and Lee Reappointed as O'ahu Commissioners

Aleta Klein, was confirmed for a second four-year term as an O'ahu commissioner, by the Hawaii State Senate. Her second term will expire June 30, 2021. Ms. Klein is an active participant with the Commission's Ad Hoc Committee on Education. She 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 the principal broker of KleinCo, LLC. She is a trained mediator.

Laurie Lee was confirmed for a second four-year term as a commissioner, representing O'ahu. Her new term will end June 30, 2021. She is an O'ahu broker, and since 2005, the principal broker of Pacific Island Realty, LLC. Pacific Island Realty, LLC is the exclusive broker for Stanford Carr Development, LLC. Her real estate experience includes general brokerage, developer sales, and sales management of new home communities.

New Commissioner from Hilo

Sean Ginoza's, Broker, Hilo, HI, position was confirmed recommended by the Senate as the newest member of the Hawaii Real Estate Commission by the Twenty-Ninth State Legislature on March 24, 2017. He was an interim appointee effective November 9, 2016. Mr. Ginoza's appointment will expire June 30, 2018.

Mr. Ginoza is associated with Ginoza Realty, Inc., which focusses on property management. He is the Vice President and a Director for the brokerage. He started full-time with Ginoza Realty in 2007. Mr. Ginoza attended Waiakea High School, and the University of Northern Colorado. He is a member of the Hawaii Island REALTORS®.

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

 The Hawaii Real Estate Commission Bulletin is funded by the Real Estate Education Fund, Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs.

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
All Islands Real Estate School	808-564-5170
American Dream Real Estate School LLC	720-322-5470
At Your Pace Online, LLC	877-724-6150
The Berman Education Company, LLC	808-572-0853
Bly School of Real Estate	808-738-8818
Building Industries Association of Hawaii	808-629-7505
Carol Ball School of Real Estate	808-871-8807
Carol M. Egan, Attorney at Law	808-222-9725
The CE Shop, Inc.	888-827-0777
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
OnCourse Learning Corporation, dba Career WebSchool	800-532-7649
Preferred Systems, Inc.	888-455-7437
ProSchools, Inc.	800-299-2207
Ralph Foulger's School of Real Estate	808-239-8881
Realtors Association of Maui, Inc.	808-873-8585
REMI School of Real Estate	808-230-8200
Russ Goode Seminars	808-597-1111
USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7359
Vitousek Real Estate Schools, Inc.	808-946-0505
West Hawaii Association of Realtors	808-329-4874

State of Hawaii
Real Estate Commission
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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	Real Estate Commission – 9:00 a.m.
Wednesday, May 10, 2017	Friday, May 26, 2017
Wednesday, June 14, 2017	Friday, June 30, 2017
Wednesday, July 12, 2017	Friday, July 28, 2017
Wednesday, August 09, 2017	Friday, August 25, 2017
Wednesday, September 13, 2017	Friday, September 29, 2017
Wednesday, October 11, 2017	Friday, October 27, 2017
Wednesday, November 08, 2017	Wednesday, November 22, 2017
Wednesday, December 06, 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.